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STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

2006

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 6, 2006
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General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendment passed by the
California Legislature

2005–06 Regular Session
2005–06 First Extraordinary Session
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CHAPTER 362

An act to amend Section 493 of the Streets and Highways Code, relating to state highways.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 493 of the Streets and Highways Code is amended to read:

493. (a) Route 193 is from:

(1) Route 65 near Lincoln to Route 80 near Newcastle.

(2) Route 49 near Cool to Route 49 near Placerville via Georgetown.

(b) Upon a determination by the commission that it is in the best interests of the state to do so, the commission may, upon terms and conditions approved by it, relinquish to the City of Lincoln the portion of Route 193 that is located within the city limits of that city if the city agrees to accept it. The following conditions shall apply upon relinquishment:

(1) The relinquishment shall become effective on the date following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(2) On and after the effective date of the relinquishment, the relinquished portion of Route 193 shall cease to be a state highway.

(3) The portion of Route 193 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(4) For the portion of Route 193 relinquished under this subdivision, the City of Lincoln shall apply for approval of a Business Route designation for the relinquished portion of the highway in accordance with Chapter 20, Topic 21, of the Highway Design Manual.

(5) For the portion of Route 193 relinquished under this subdivision, the City of Lincoln shall install and maintain within its jurisdiction signs directing motorists to the continuation of Route 193 to the east and to Routes 65 and 80 to the west.

CHAPTER 363

An act to amend Section 65091 of the Government Code, relating to land use.

[Approved by Governor September 20, 2006. Filed with
Secretary of State September 20, 2006.]

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

SECTION 1. Section 65091 of the Government Code is amended to read:

65091. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways:

(1) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property as shown on the latest equalized assessment roll. Instead of using the assessment roll, the local agency may use records of the county assessor or tax collector if those records contain more recent information than the information contained on the assessment roll. Notice shall also be mailed to the owner's duly authorized agent, if any, and to the project applicant.

(2) When the Subdivision Map Act (Div. 2 (commencing with Section 66410)) requires notice of a public hearing to be given pursuant to this section, notice shall also be given to any owner of a mineral right pertaining to the subject real property who has recorded a notice of intent to preserve the mineral right pursuant to Section 883.230 of the Civil Code.

(3) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

(4) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of using the assessment roll, the local agency may use records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.

(5) If the notice is mailed or delivered pursuant to paragraph (3), the notice shall also either be:

(A) Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing.

(B) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled, is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

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 364

An act to amend Sections 61, 62, 69.5, 170, 6360.1, 8106, 9271, 30459.1, 32471, 40211, 41171, 43152.9, 43522, 45867, 46622, 50156.11, 55332, 60063, 60101, 60201.3, 60604, 60606, and 60636 of, to amend the heading of Part 2 (commencing with Section 7301) of Division 2 of, to add Sections 9152.2, 30178.3, 30459.15, 32402.2, 32471.5, 38800, 40112.2, 40211.5, 41101.2, 41171.5, 43452.2, 43522.5, 45652.2, 45867.5, 46502.2, 46628, 50140.2, 55222.2, 55332.5, 60522.2, and 60637 to, and to repeal Sections 8106.1, 8106.5, 8106.8, 60045, and 60046 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 61 of the Revenue and Taxation Code is amended to read:

61. Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

(a) The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised. The balance of the property, other than the mineral rights, shall not be reappraised pursuant to this section.

(b) The creation, renewal, extension, or assignment of a taxable possessory interest in tax exempt real property for any term. For purposes of this subdivision:

(1) "Renewal" and "extension" do not include the granting of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto.

(2) Any "renewal" or "extension" of a possessory interest during the reasonably anticipated term of possession used by the assessor to value that interest does not cause a change in ownership until the end of the reasonably anticipated term of possession used by the assessor to value that interest. At the end of the reasonably anticipated term of possession used by the assessor, a new base year value, based on a new reasonably anticipated term of possession, shall be established for the possessory interest.

(3) "Assignment" of a possessory interest means the transfer of all rights held by a transferor in a possessory interest.

(c) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options); or (2) any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

Only that portion of a property subject to that lease or transfer shall be considered to have undergone a change in ownership.

For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13

(commencing with Section 5800) and floating homes subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(d) (1) (A) A sublease of a taxable possessory interest in tax-exempt real property for a term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(B) The termination of a sublease of a taxable possessory interest in tax-exempt property with an original term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(C) Any transfer of a sublessee's interest with a remaining term, including renewal options, that exceeds half of the remaining term of the leasehold.

(2) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that does not exceed half the remaining term of the leasehold, including renewal options.

(e) The creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63 and Section 65.

(f) The creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63.

(g) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

(h) Any interests in real property that vest in persons other than the trustor (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable.

(i) The transfer of stock of a cooperative housing corporation, vested with legal title to real property that conveys to the transferee the exclusive right to occupancy and possession of that property, or a portion thereof. A "cooperative housing corporation" is a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

(j) The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

SEC. 1.1. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800) and floating homes subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980-81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(*l*) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or

between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision (e) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars ($20,000) in the year in which the transfer occurs. As used in this subdivision, "child" or "ward" includes a minor or an adult. As used in this subdivision, "eligible dwelling unit" means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

(o) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(p) Commencing with the lien date for the 2006–07 fiscal year, any transfer between registered domestic partners, as defined in Section 297 of the Family Code, including, but not limited to:

(1) Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.

(2) Transfers that take effect upon the death of a registered domestic partner.

(3) Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or

decree of dissolution of a registered domestic partnership or legal separation.

(4) The creation, transfer, or termination, solely between registered domestic partners, of any coowner's interest.

(5) The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.

SEC. 1.2. Section 69.5 of the Revenue and Taxation Code is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowners' exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with all of the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base year value.

(D) It provides that its provisions are operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowners' exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale, or at the time when the original property was substantially damaged or destroyed by misfortune or calamity, or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowners' exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated that is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section, except that this paragraph shall not apply to any person who becomes severely and permanently disabled subsequent to being granted, as a claimant, the property tax relief provided by this section for any person over the age of 55 years. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format that is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A manufactured home or a manufactured home and any land owned by the claimant on which the manufactured home is situated. For purposes of this paragraph, "land owned by the claimant" includes a pro rata interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(A) If the manufactured home or the manufactured home and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base year value of the manufactured home or the base year value of the

manufactured home and the land on which it is situated, as appropriate. If the manufactured home dwelling that constitutes the original property of the claimant includes an interest in a resident-owned mobilehome park, the assessor shall transfer to the claimant's replacement dwelling the base year value of the claimant's manufactured home and his or her pro rata portion of the real property of the park. No transfer of base year value shall be made by the assessor of that portion of land that does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g).

(B) If the manufactured home or the manufactured home and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base year value of the claimant's original property either to the manufactured home or the manufactured home and the land on which it is situated, as appropriate. If the manufactured home dwelling that constitutes the replacement dwelling of the claimant includes an interest in a resident-owned mobilehome park, the assessor shall transfer the base year value of the claimant's original property to the manufactured home of the claimant and his or her pro rata portion of the park. No transfer of base year value shall be made by the assessor to that portion of land that does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of the original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership that either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

(f) (1) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that shall be designed by the State Board of Equalization and that the assessor shall make available upon request, the following information:

(A) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(B) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(i) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that

the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(ii) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(C) The address and, if known, the assessor's parcel number of the original property.

(D) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(E) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(F) Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed subject to subdivision (k) or (m).

(2) A claim for transfer of base year value under this section that is filed after the expiration of the filing period set forth in subparagraph (F) of paragraph (1) shall be considered by the assessor, subject to all of the following conditions:

(A) Any base year value transfer granted pursuant to that claim shall apply commencing with the lien date of the assessment year in which the claim is filed.

(B) The full cash value of the replacement property in the assessment year described in subparagraph (A) shall be the base year value of the real property in the assessment year in which the base year value was transferred, factored to the assessment year described in subparagraph (A) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property that does not qualify for property tax relief pursuant to the criteria set forth in subparagraphs (A) and (B) of paragraph (4) of subdivision (h).

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of the original property.

(2) "Base year value of the original property" means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant, or in the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, determined as of the date immediately prior to the misfortune or calamity.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base year value of the original property" shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling. For purposes of this paragraph, "area of reasonable size that is used as a site for a residence" includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site. For purposes of this paragraph, "land owned by the claimant" includes an ownership interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of the original property includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land

purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property. For purposes of this paragraph, "area of reasonable size that is used as a site for a residence" includes all land if any nonresidential uses of the property are only incidental to the use of the property as a residential site. For purposes of this paragraph, "land owned by the claimant" includes an ownership interest in a resident-owned mobilehome park that is assessed pursuant to subdivision (b) of Section 62.1.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means, either:

(A) Its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(B) In the case where the original property has been substantially damaged or destroyed by misfortune or calamity and the owner does not rebuild on the original property, its full cash value, as determined in accordance with Section 110, immediately prior to its substantial damage or destruction by misfortune or calamity, as determined by the county

assessor of the county in which the property is located, without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1, for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) "Property that is eligible for the homeowners' exemption" includes property that is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(13) For the purposes of this section property is "substantially damaged or destroyed by misfortune or calamity" if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.

(h) (1) Upon the timely filing of a claim described in subparagraph (F) of paragraph (1) of subdivision (f), the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes that were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed

the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), and the assessor shall grant the rescission, if a written notice of rescission is delivered to the office of the assessor as follows:

(1) A written notice of rescission signed by the original filing claimant or claimants is delivered to the office of the assessor in which the original claim was filed.

(2) (A) Except as otherwise provided in this paragraph, the notice of rescission is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(B) Notwithstanding any other provision in this division, any time the notice of rescission is delivered to the office of the assessor within

six years after relief was granted, provided that the replacement property has been vacated as the claimant's principal place of residence within 90 days after the original claim was filed, regardless of whether the property continues to receive the homeowners' exemption. If the rescission increases the base year value of a property, or the homeowners' exemption has been incorrectly allowed, appropriate escape assessments or supplemental assessments, including interest as provided in Section 506, shall be imposed. The limitations periods for any escape assessments or supplemental assessments shall not commence until July 1 of the assessment year in which the notice of rescission is delivered to the office of the assessor.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3) or (4), shall apply to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, except as provided in paragraph (4), this section shall apply to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(4) The amendments made to subdivision (e) by the act adding this paragraph shall apply only to replacement dwellings under Section 69 that are acquired or newly constructed on or after October 20, 1991, and shall apply commencing with the 1991–92 fiscal year.

(k) (1) In the case in which a county adopts an ordinance pursuant to paragraph (2) of subdivision (a) that establishes an applicable date which is more than three years prior to the date of adoption of the ordinance, those potential claimants who purchased or constructed replacement dwellings more than three years prior to the date of adoption of the ordinance and who would, therefore, be precluded from filing a

timely claim, shall be deemed to have timely filed a claim if the claim is filed within three years after the date that the ordinance is adopted. This paragraph may not be construed as a waiver of any other requirement of this section.

(2) In the case in which a county assessor corrects a base year value to reflect a pro rata change in ownership of a resident-owned mobilehome park that occurred between January 1, 1989, and January 1, 2002, pursuant to paragraph (4) of subdivision (b) of Section 62.1, those claimants who purchased or constructed replacement dwellings more than three years prior to the correction and who would, therefore, be precluded from filing a timely claim, shall be deemed to have timely filed a claim if the claim is filed within three years of the date of notice of the correction of the base year value to reflect the pro rata change in ownership. This paragraph may not be construed as a waiver of any other requirement of this section.

(3) This subdivision does not apply to a claimant who has transferred his or her replacement dwelling prior to filing a claim.

(4) The property tax relief provided by this section, but filed under this subdivision, shall apply prospectively only, commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.

(*l*) No escape assessment may be levied if a transfer of base year value under this section has been erroneously granted by the assessor pursuant to an expired ordinance authorizing intercounty transfers of base year value.

(m) (1) The amendments made to subdivisions (b) and (g) of this section by Chapter 613 of the Statutes of 2001 shall apply:

(A) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(B) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but not to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

(C) With respect to the transfer of base year value by a severely and permanently disabled person, to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(2) The property tax relief provided by this section in accordance with this subdivision shall apply prospectively only commencing with the lien date of the assessment year in which the claim is filed. There shall be no refund or cancellation of taxes prior to the date that the claim is filed.

(n) A claim filed under this section is not a public document and is not subject to public inspection, except that a claim shall be available for inspection by the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, and the executor or administrator of the transferee's or transferor's estate.

SEC. 1.3. Section 170 of the Revenue and Taxation Code is amended to read:

170. (a) Notwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein. The ordinance may also specify that the assessor may initiate the reassessment where the assessor determines that within the preceding 12 months taxable property located in the county was damaged or destroyed.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph, "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government, has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

The application for reassessment may be filed within the time specified in the ordinance or within 12 months of the misfortune or calamity, whichever is later, by delivering to the assessor a written application requesting reassessment showing the condition and value, if any, of the property immediately after the damage or destruction, and the dollar amount of the damage. The application shall be executed under penalty

of perjury, or if executed outside the State of California, verified by affidavit.

An ordinance may be made applicable to a major misfortune or calamity specified in paragraph (1) or to any misfortune or calamity specified in paragraph (2), or to both, as the board of supervisors determines. An ordinance may not be made applicable to a misfortune or calamity specified in paragraph (3), unless an ordinance making paragraph (2) applicable is operative in the county. The ordinance may specify a period of time within which the ordinance shall be effective, and, if no period of time is specified, it shall remain in effect until repealed.

(b) Upon receiving a proper application, the assessor shall appraise the property and determine separately the full cash value of land, improvements and personalty immediately before and after the damage or destruction. If the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by ten thousand dollars ($10,000) or more, the assessor shall also separately determine the percentage reductions in value of land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to this subdivision, and the taxes due on the property shall be adjusted as provided in subdivision (e). However, the amount of the reduction shall not exceed the actual loss.

(c) The assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the applicant may appeal the proposed reassessment to the local board of equalization within six months of the date of mailing the notice. If an appeal is requested within the six-month period, the board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the board regarding the damaged value of the property shall be final, provided that a decision of the local board of equalization regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage.

Those reassessed values resulting from reductions in full cash value of amounts, as determined above, shall be forwarded to the auditor by the assessor or the clerk of the local equalization board, as the case may be. The auditor shall enter the reassessed values on the roll. After being entered on the roll, those reassessed values shall not be subject to review, except by a court of competent jurisdiction.

(d) (1) If no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity that may qualify the property owner for relief under an ordinance adopted under this section, the assessor shall provide the last known owner of the property with an application for reassessment. The property owner shall file the completed application within 12 months after the occurrence of said damage. Upon receipt of a properly completed, timely filed application, the property shall be reassessed in the same manner as required in subdivision (b).

(2) This subdivision does not apply where the assessor initiated reassessment as provided in subdivision (a) or (*l*).

(e) The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be applied to the amount of the reassessment as determined in accordance with this section and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, to be determined on the basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus, (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. For purposes of applying the preceding calculation in prorating supplemental taxes, the term "fiscal year" means that portion of the tax year used to determine the adjusted amount of taxes due pursuant to subdivision (b) of Section 75.41. If the damage or destruction occurred after January 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year. However, if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after the completion of restoration.

(f) Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 (commencing with Section 5096) of Part 9, as an erroneously collected tax or by order of the board of supervisors without the necessity of a claim being filed pursuant to Chapter 5.

(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value.

If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date.

(h) (1) When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:

(A) If the completion of the repair, restoration, or reconstruction occurs on or after January 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll. The second additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value to be enrolled on the roll being prepared.

(B) If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding January 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.

(2) On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.

(3) For purposes of this subdivision, "new taxable value" shall mean the lesser of the property's (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section.

(j) This section applies to all counties, whether operating under a charter or under the general laws of this state.

(k) Any ordinance in effect pursuant to Section 155.1, 155.13, or 155.14 shall remain in effect according to its terms as if that ordinance was adopted pursuant to this section, subject to the limitations of subdivision (b).

(*l*) When the assessor does not have the general authority pursuant to subdivision (a) to initiate reassessments, if no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity, that may qualify

the property owner for relief under an ordinance adopted under this section, the assessor may, with the approval of the board of supervisors, reassess the particular property for which approval was granted as provided in subdivision (b) and notify the last known owner of the property of the reassessment.

SEC. 1.4. Section 6360.1 of the Revenue and Taxation Code is amended to read:

6360.1. There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, a "Buddy Poppy" or any other symbolic, impermanent lapel pin that memorializes United States military veterans killed in foreign wars of the United States, by any corporation established by the Congress of the United States pursuant to Chapter 2301 (commencing with Section 23101) of Title 36 of the United States Code, or any of that corporation's subordinate state or territorial subdivisions, local chapters, posts, or auxiliaries.

SEC. 1.5. The heading of Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code is amended to read:

PART 2. MOTOR VEHICLE FUEL TAX LAW

SEC. 2. Section 8106 of the Revenue and Taxation Code is amended to read:

8106. In lieu of the collection and refund of the tax on tax-paid motor vehicle fuel exported, removed, sold, or used by a supplier in a manner that would entitle the supplier to claim a refund under Section 8101, credit may be given the supplier upon the supplier's tax return, and the determination of the amount of tax shall be determined in accordance with any rules and regulations the board may prescribe.

SEC. 3. Section 8106.1 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 8106.5 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 8106.8 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 9152.2 is added to the Revenue and Taxation Code, to read:

9152.2. Notwithstanding Section 9152, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 7. Section 9271 of the Revenue and Taxation Code is amended to read:

9271. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 9255.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 8. Section 30178.3 is added to the Revenue and Taxation Code, to read:

30178.3. Notwithstanding Section 30178, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be

approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 9. Section 30459.1 of the Revenue and Taxation Code is amended to read:

30459.1. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 30455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 10. Section 30459.15 is added to the Revenue and Taxation Code, to read:

30459.15. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by the following:

(1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) A taxpayer that has purchased untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(d) Offers in compromise shall not be considered under the following conditions:

(1) The taxpayer has been convicted of felony tax evasion under this part during the liability period.

(2) The taxpayer has filed a statement under paragraph (3) of subdivision (e) and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a

greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(3) For liabilities generated in the manner described in paragraph (2) of subdivision (c), the taxpayer shall file with the board a statement, under penalty of perjury, that he or she will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for his or her own use or consumption.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 30455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 11. Section 32402.2 is added to the Revenue and Taxation Code, to read:

32402.2. Notwithstanding Section 32402, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy,

through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 12. Section 32471 of the Revenue and Taxation Code is amended to read:

32471. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 32455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 13. Section 32471.5 is added to the Revenue and Taxation Code, to read:

32471.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 14 (commencing with Section 32001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of

a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 32455. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 14. Section 38800 is added to the Revenue and Taxation Code, to read:

38800. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a

final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 18.5 (commencing with Section 38101), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from persons who no longer harvest timber, or property owners that no longer harvest their property, except where the taxpayer making the offer has their primary residence located on the property that generated the timber tax liability.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 38705. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 15. Section 40112.2 is added to the Revenue and Taxation Code, to read:

40112.2. Notwithstanding Section 40112, a refund of an overpayment of any surcharge, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 16. Section 40211 of the Revenue and Taxation Code is amended to read:

40211. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement, the total of which reduction of surcharge and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 17. Section 40211.5 is added to the Revenue and Taxation Code, to read:

40211.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final surcharge liability" means any final surcharge liability arising under Part 19 (commencing with Section 40001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that

compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, "person" means the taxpayer, any member of the surcharge payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

SEC. 18. Section 41101.2 is added to the Revenue and Taxation Code, to read:

41101.2. Notwithstanding Section 41101, a refund of an overpayment of any surcharge, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 19. Section 41171 of the Revenue and Taxation Code is amended to read:

41171. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement, the total of which reduction of surcharge and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars ($500) is

approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 20. Section 41171.5 is added to the Revenue and Taxation Code, to read:

41171.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final surcharge liability" means any final surcharge liability arising under Part 20 (commencing with Section 41001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 41131. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, "person" means the surcharge payer, any member of the surcharge payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

SEC. 21. Section 43152.9 of the Revenue and Taxation Code is amended to read:

43152.9. (a) The fee imposed pursuant to Section 25205.6 of the Health and Safety Code, which is collected and administered under Section 43054, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship subject to the fee imposed pursuant to Section 25205.6 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 22. Section 43452.2 is added to the Revenue and Taxation Code, to read:

43452.2. Notwithstanding Section 43452, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 23. Section 43522 of the Revenue and Taxation Code is amended to read:

43522. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute which arises under Section 105190 or 105310 of the Health and Safety Code.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 43651.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 24. Section 43522.5 is added to the Revenue and Taxation Code, to read:

43522.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 22 (commencing with Section 43001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest

or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 43651. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by

the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 25. Section 45652.2 is added to the Revenue and Taxation Code, to read:

45652.2. Notwithstanding Section 45652, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 26. Section 45867 of the Revenue and Taxation Code is amended to read:

45867. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 45982.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section

11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 27. Section 45867.5 is added to the Revenue and Taxation Code, to read:

45867.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 23 (commencing with Section 45001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a

greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fee, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 45855. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

SEC. 28. Section 46502.2 is added to the Revenue and Taxation Code, to read:

46502.2. Notwithstanding Section 46502, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 29. Section 46622 of the Revenue and Taxation Code is amended to read:

46622. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fee, or penalties, or total fees and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret,

or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation of settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 30. Section 46628 is added to the Revenue and Taxation Code, to read:

46628. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess

of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 24 (commencing with Section 46001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to

partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

SEC. 31. Section 50140.2 is added to the Revenue and Taxation Code, to read:

50140.2. Notwithstanding Section 50140, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 32. Section 50156.11 of the Revenue and Taxation Code is amended to read:

50156.11. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30

days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 33. Section 55222.2 is added to the Revenue and Taxation Code, to read:

55222.2. Notwithstanding Section 55222, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 34. Section 55332 of the Revenue and Taxation Code is amended to read:

55332. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30

days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 55381.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 35. Section 55332.5 is added to the Revenue and Taxation Code, to read:

55332.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 30 (commencing with Section 55001), or

related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one

liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 55381. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

SEC. 36. Section 60045 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 60046 of the Revenue and Taxation Code is repealed.

SEC. 38. Section 60063 of the Revenue and Taxation Code is amended to read:

60063. (a) The board may accept from the person who receives diesel fuel removed at a refinery or terminal rack an amount equal to the tax due and required to be paid by the refiner or positionholder upon the removal of the diesel fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 60051 or 60052, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

(b) The refiner or positionholder shall remain primarily liable for payment of the tax imposed by Section 60051 or 60052 for diesel fuel removed at the refinery or terminal rack, as the case may be, plus any penalty or interest, until the amount is finally paid and credited to the account of the responsible refiner or positionholder; provided, however, that the board, at its discretion, may relieve the refiner or positionholder from primary liability for payment of tax imposed by Section 60051 or 60052 and hold another person primarily liable for the tax if (i) the Internal Revenue Service authorizes payment of fuel taxes by the receiving party under a two-party exchange agreement, and (ii) under the Internal Revenue Service approach to a two-party exchange agreement, another person is primarily liable for payment of the tax, and (iii) the board elects to follow the Internal Revenue Service approach.

(c) The board may adopt those regulations as it deems appropriate to carry out this section.

SEC. 39. Section 60101 of the Revenue and Taxation Code is amended to read:

60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue

Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity.

SEC. 40. Section 60201.3 of the Revenue and Taxation Code is amended to read:

60201.3. (a) A supplier is relieved from liability for diesel fuel tax insofar as the sales of the diesel fuel are represented by accounts which have been found worthless and charged off for income tax purposes. If the supplier has previously paid the amount of the tax, he or she may, under the rules and regulations prescribed by the board, take a credit in that amount. If those accounts are thereafter in whole or in part collected by the supplier, the gallons of diesel fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the tax thereon shall be paid with the return. The board may, at its option, require the supplier to submit periodic reports listing accounts delinquent for a 90-day period or more.

(b) Any customer of a supplier who has failed to pay for diesel fuel purchased and for which the supplier has been allowed a credit under subdivision (a) is liable to the state for the diesel fuel tax as an unlicensed supplier and the tax, applicable penalties, and interest become immediately due and payable under the unlicensed persons provisions contained in Article 6 (commencing with Section 60360) of Chapter 6. The notice of determination issued under Section 60361 shall be given to the customer within three years of the last day of the calendar month following the reporting period for which the supplier took a credit for the tax previously paid on the customer's account or within three years after the date a refund of the tax was paid.

SEC. 41. Section 60522.2 is added to the Revenue and Taxation Code, to read:

60522.2. Notwithstanding Section 60522, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

SEC. 42. Section 60604 of the Revenue and Taxation Code is amended to read:

60604. Every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state shall keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the board may require. Failure to maintain records will constitute a misdemeanor punishable as provided in Section 60706.

SEC. 43. Section 60606 of the Revenue and Taxation Code is amended to read:

60606. The board or its authorized representative may examine the books, records, and equipment of any interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, or person dealing in, removing, transporting, or storing diesel fuel and may investigate the character of the disposition that the interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, or person makes of the diesel fuel in order to ascertain whether all taxes due under this part are being properly reported and paid.

SEC. 44. Section 60636 of the Revenue and Taxation Code is amended to read:

60636. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 60609.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 45. Section 60637 is added to the Revenue and Taxation Code, to read:

60637. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest

or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(*l*) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by

the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 46. 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 365

An act to amend, repeal, and add Sections 26721.2 and 26750 of the Government Code, relating to county fees.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 26721.2 of the Government Code is amended to read:

26721.2. (a) For any action commenced in the superior court, the fee for the service of the summons, the complaint for which the summons is issued, and all other documents or notices required to be served with the summons and complaint, is thirty dollars ($30).

(b) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. Section 26721.2 is added to the Government Code, to read:

26721.2. (a) For any action commenced in the superior court, the fee for the service of the summons, the complaint for which the summons is issued, and all other documents or notices required to be served with the summons and complaint, is thirty-five dollars ($35).

(b) This section shall become operative on January 1, 2008.

SEC. 3. Section 26750 of the Government Code is amended to read:

26750. (a) The fee for serving an earnings withholding order under the Wage Garnishment Law, Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, including but not limited to the costs of postage or traveling, and for performing all other duties of the levying officer under that law with respect to the levy shall be twenty-five dollars ($25).

(b) Except as provided in Section 26746, no additional fees, costs, or expenses may be charged by the levying officer for performing the duties under the Wage Garnishment Law, Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Section 26750 is added to the Government Code, to read:

26750. (a) The fee for serving an earnings withholding order under the Wage Garnishment Law (Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure), including, but not limited to, the costs of postage or traveling, and for performing all other duties of the levying officer under that law with respect to the levy shall be thirty dollars ($30).

(b) Except as provided in Section 26746, no additional fees, costs, or expenses may be charged by the levying officer for performing the duties under the Wage Garnishment Law (Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure).

(c) This section shall become operative on January 1, 2008.

CHAPTER 366

An act to amend Section 6516.6 of the Government Code, and to add Section 97.69 to the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 6516.6 of the Government Code is amended to read:

6516.6. (a) Notwithstanding any other provision of law, a joint powers agency established pursuant to a joint powers agreement in

accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase obligations of local agencies or make loans to local agencies, which moneys the local agencies are hereby authorized to borrow, to finance the local agencies' unfunded actuarial pension liability or to purchase, or to make loans to finance the purchase of, delinquent assessments or taxes levied on the secured roll by the local agencies, the county, or any other political subdivision of the state. Notwithstanding any other provision of law, including Section 53854, the local agency obligations or loans, if any, shall be repaid in the time, manner and amounts, with interest, security, and other terms as agreed to by the local agency and the joint powers authority.

(b) Notwithstanding any other provision of law, a joint powers authority established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase or acquire, by sale, assignment, pledge, or other transfer, any or all right, title, and interest of any local agency in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency and placed for collection on the secured, unsecured, or supplemental property tax rolls. Local agencies, including, cities, counties, cities and counties, school districts, redevelopment agencies, and all other special districts that are authorized by law to levy property taxes on the county tax rolls, are hereby authorized to sell, assign, pledge, or otherwise transfer to a joint powers authority any or all of their right, title, and interest in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency for collection on the secured, unsecured, or supplemental property tax rolls in accordance with the terms and conditions that may be set forth in an agreement with a joint powers authority.

(c) Notwithstanding Division 1 (commencing with Section 50) of the Revenue and Taxation Code, upon any transfer authorized in subdivision (b), the following shall apply:

(1) A local agency shall be entitled to timely payment of all delinquent taxes, assessments, and other receivables collected on its behalf on the secured, unsecured, and supplemental tax rolls, along with all penalties, interest, costs, and other charges thereon, no later than 30 calendar days after the close of the preceding monthly or four-week accounting period during which the delinquencies were paid by or on account of any property owner.

(2) Upon its receipt of the delinquent taxes, assessments, and receivables that it had agreed to be transferred, a local agency shall pay those amounts, along with all applicable penalties, interest, costs, and other charges, to the joint powers authority in accordance with the terms and conditions that may be agreed to by the local agency and the joint powers authority.

(3) The joint powers authority shall be entitled to assert all right, title, and interest of the local agency in the enforcement and collection of the delinquent taxes, assessments, and receivables, including without limitation, its lien priority, its right to receive the proceeds of delinquent taxes, assessments, and receivables, and its right to receive all penalties, interest, administrative costs, and any other charges, including attorney fees and costs, if otherwise authorized by law to be collected by the local agency.

(4) (A) For any school district that participates in a joint powers authority using financing authorized by this section and that does not participate in the alternative method of distribution of tax levies under Chapter 3 of Division 1 of Part 8 of the Revenue and Taxation Code, the amount of property tax receipts to be reported in a fiscal year for the district under subdivision (f) of Section 75.70 of the Revenue and Taxation Code, or any other similar law requiring reporting of school district property tax receipts, shall be equal to 100 percent of the school district's allocable share of the taxes distributed to it for the then fiscal year, plus 100 percent of the school district's share of any delinquent secured and supplemental property taxes assigned from that year and 100 percent of its share of any delinquent secured and supplemental property taxes from any prior years which the school district has assigned to a joint powers authority in that fiscal year, as such delinquent taxes are shown on the delinquent tax roll prescribed by Section 2627 of the Revenue and Taxation Code, on an abstract list if one is kept pursuant to Chapter 4 (commencing with Section 4372) of Part 7 of Division 1 of the Revenue and Taxation Code, or other records maintained by the county, plus all other delinquent taxes that the school district has not assigned to a joint powers authority which are collected and distributed to the school district as otherwise provided by law, less any reduction amount required by subparagraph (B). One hundred percent of the school district's allocable share of the delinquent taxes assigned for the current fiscal year, and 100 percent of the school district's allocable share of the delinquent taxes assigned for all years prior thereto, as shown on the delinquent roll, abstract list, or other records maintained by the county, whether or not those delinquent taxes are ever collected, shall be paid by the joint powers authority to the county auditor and shall be distributed to the school district by the county auditor in the same time and manner

otherwise specified for the distribution of tax revenues generally to school districts pursuant to current law. Any additional amounts shall not be so reported and may be provided directly to a school district by a joint powers authority.

(B) When a joint powers authority finances delinquent taxes for a school district pursuant to this section, and continuing as long as adjustments are made to the delinquent taxes previously assigned to a joint powers authority, the school district's tax receipts to be reported as set forth in subparagraph (A) shall be reduced by the amount of any adjustments made to the school district's allocable share of taxes shown on the applicable delinquent tax roll, abstract list, if one is kept, or other records maintained by the county, occurring for any reason whatsoever other than redemption, which reduce the amount of the delinquent taxes assigned to the joint powers authority.

(C) A joint powers authority financing delinquent school district taxes and related penalties pursuant to this subdivision shall be solely responsible for, and shall pay directly to the county, all reasonable and identifiable administrative costs and expenses of the county which are incurred as a direct result of the compliance of the county tax collector or county auditor, or both, with any new or additional administrative procedures required for the county to comply with this subdivision. Where reasonably possible, the county shall provide a joint powers authority with an estimate of the amount of and basis for any additional administrative costs and expenses within a reasonable time after written request for an estimate.

(D) In no event shall the state be responsible or liable for a joint powers authority's failure to actually pay the amounts required by subparagraphs (A) and (B), nor shall a failure constitute a basis for a claim against the state by a school district, county, or joint powers authority.

(E) The phrase "school district," as used in this section, includes all school districts of every kind or class, including, without limitation, community college districts and county superintendents of school.

(d) The powers conferred by this section upon joint powers authorities and local agencies shall be complete, additional, and cumulative to all other powers conferred upon them by law. Except as otherwise required by this section, the agreements authorized by this section need not comply with the requirements of any other laws applicable to the same subject matter.

(e) An action to determine the validity of any bonds issued, any joint powers agreements entered into, any related agreements, including, without limitation, any bond indenture or any agreements relating to the sale, assignment, or pledge entered into by a joint powers authority or

a local agency, the priority of any lien transferred in accordance with this section, and the respective rights and obligations of any joint powers authority and any party with whom the joint powers authority may contract pursuant to this chapter, may be brought by the joint powers authority pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

(f) This section shall not be construed to affect the manner in which an agency participates in or withdraws from the alternative distribution method established by Chapter 3 (commencing with Section 4701) of Part 8 of Division 1 of the Revenue and Taxation Code.

(g) Notwithstanding any other law, on and after January 1, 2007, a joint powers authority shall not purchase or acquire, and an Educational Revenue Augmentation Fund shall not sell, assign, pledge, or otherwise transfer to a joint powers authority, the right, title, or interest of an Educational Revenue Augmentation Fund in the enforcement and collection of delinquent and uncollected property tax revenues, assessments, or other receivables placed for collection on the secured, unsecured, or supplemental rolls.

SEC. 2. Section 97.69 is added to the Revenue and Taxation Code, to read:

97.69. (a) Notwithstanding any other law, in allocating ad valorem property tax revenues to a Sales and Use Tax Compensation Fund under Section 97.68 or a Vehicle License Fee Property Tax Compensation Fund under Section 97.70, the auditor shall not allocate to those funds the revenues from delinquent and uncollected property taxes on the secured roll that have been pledged or contractually obligated to debt service repayment under Section 6516.6 of the Government Code.

(b) In implementing subdivision (a), the auditor shall proportionally increase, using nondelinquent ad valorem property tax revenues, the total amount of the ad valorem property tax revenue reduction, otherwise required by Sections 97.68 and 97.70, for all school entities in the county that have pledged or contractually obligated to debt service repayment revenues from delinquent and uncollected property taxes on the secured roll, by an amount equal to the total amount excluded under subdivision (a) to ensure that there is no reduction in the total amount of the countywide adjustment amount, as defined in Section 97.68, or the total amount of the countywide vehicle license fee adjustment amount, as defined in Section 97.70, for any fiscal year.

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 367

An act to amend Section 10502 of, and to add and repeal Article 1.5 (commencing with Section 10506.4) of Chapter 2.1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 10502 of the Public Contract Code is amended to read:

10502. The Regents of the University of California shall give public notice of a project to bidders by publication twice within the 60-day period preceding the day set for the receiving of bids as follows:

(a) In one newspaper of general circulation published in the county in which the major portion of the project is located and in one such trade paper circulated in the county in which the major portion of the work is to be done.

(b) The notices shall state the time and place for the receiving and opening of sealed bids, describe in general terms the work to be done, and describe the bidding mode by which the lowest responsible bidder will be selected.

SEC. 2. Article 1.5 (commencing with Section 10506.4) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 1.5. Best Value Construction Contracting Pilot Program

10506.4. (a) This article provides for a pilot program for the University of California when awarding construction contracts, applicable only to a single University of California campus located in the City and County of San Francisco.

(b) The Regents of the University of California shall let any contract for a project pursuant to this article to the lowest responsible bidder or else reject all bids.

(c) The lowest responsible bidder may be selected on the basis of the best value to the university, as defined in Section 10506.5. In order to implement this method of selection, the Regents of the University of

California shall adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner. These procedures shall conform to the requirements of Sections 10506.6 and 10506.7 and shall be mandatory for the University of California campuses in the pilot program.

(d) If one or more of the bids is substantially equal to the lowest bid, and at least one of those bidders is a disadvantaged business enterprise, a women business enterprise, or a disabled veteran business enterprise, the regents may award the contract in accordance with the policies and procedures adopted pursuant to Section 10500.5.

(e) If the regents deem it to be for the best interest of the university, the regents may, on the refusal or failure of the successful bidder for a project to execute a tendered contract, award it to the second lowest responsible bidder. If the second lowest bidder fails or refuses to execute the contract, the regents may likewise award it to the third lowest responsible bidder.

10506.5. For purposes of this article, the following definitions apply:

(a) "Best value" means a procurement process whereby the lowest responsible bidder may be selected on the basis of objective criteria with the resulting selection representing the best combination of price and qualifications.

(b) "Best value contract" means a contract entered into pursuant to the provisions of this article.

(c) "Best value contractor" means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(d) "Demonstrated management competency" means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(e) "Financial condition" means the financial resources needed to perform the contract. The criteria used to evaluate a bidder's financial condition shall include, at a minimum, capacity to obtain all required payment bonds, performance bonds, and liability insurance.

(f) "Labor compliance" means the ability to comply with, and past performance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder's labor compliance shall include, as a minimum, the bidder's ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the Department of Industrial Relations, its past conformance with such requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(g) "Qualifications" means financial condition, relevant experience, demonstrated management competency, labor compliance, the safety record of the bidder, and, if required by the bidding documents, some

or all of the preceding qualifications as they pertain to subcontractors proposed to be used by the bidder for designated portions of the work.

(h) "Relevant experience" means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

(i) "Safety record" means the prior history concerning the safe performance of construction contracts. The criteria used to evaluate a bidder's safety record shall include, as a minimum, its experience modification rate for the most recent three-year period, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period.

(j) "University" means the University of California.

10506.6. The university shall proceed in accordance with the following when awarding best value contracts under this article.

(a) The university shall prepare a solicitation for bids and give notice pursuant to Section 10502.

(b) The university shall establish a procedure to prequalify bidders. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) Each solicitation for bids shall do all of the following:

(1) Invite prequalified bidders to submit sealed bids in the manner prescribed by this article.

(2) Include a section identifying and describing the following:

(A) Criteria that the university will consider in evaluating bids.

(B) The methodology and rating or weighting system that will be used by the university in evaluating bids.

(C) The relative importance or weight assigned to the criteria identified in the request for bids.

(d) Final evaluation of the best value contractor shall be done in a manner that prevents cost or price information from being revealed to the committee evaluating the qualifications of the bidders prior to completion and announcement of that committee's decision.

10506.7. Selection of the best value contractor shall be made as follows:

(a) The university shall evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents, and shall assign a qualifications score to each bid.

(b) The award of the contract shall be made to the bidder whose bid is determined, by the university in writing, to be the best value to the university. To determine the best value contractor, the university shall divide each bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.

(c) The university shall issue a written decision of its contract award.

(d) Upon issuance of a contract award, the university shall publicly announce its award identifying the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the evaluation criteria listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in relation to all other responsive bidders and their respective prices. The contract file shall include documentation sufficient to support the decision to award.

10506.8. On or before January 1, 2010, the Regents of the University of California shall submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee. The report shall include, but is not limited to, the following information:

(a) A description of the projects awarded using the best value procedures.

(b) The contract award amounts.

(c) The best value contractors awarded the projects.

(d) A description of any written protests concerning any aspect of the solicitation, bid, or award of the best value contracts, including the resolution of the protests.

(e) A description of the prequalification process.

(f) The criteria used to evaluate the bids, including the weighting of the criteria and an assessment of the effectiveness of the methodology.

(g) If a project awarded under this article has been completed, an assessment of the project performance, to include a summary of any delays or cost increases.

10506.9. This article shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

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 368

An act to amend Sections 19533 and 19601 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 19533 of the Business and Professions Code is amended to read:

19533. (a) Any license granted to an association other than a fair shall be only for one type of racing, thoroughbred, harness, or quarter horse racing as the case may be, except that the board may authorize the entering of thoroughbred and Appaloosa horses in quarter horse races at a distance not exceeding five furlongs at quarter horse meetings, mixed breed meetings, and fair meetings. If the board authorizes the entering of thoroughbred or Appaloosa horses in quarter horse races, the following conditions shall be met:

(1) Any race written for participation by quarter horses, Appaloosas, and thoroughbreds shall be written as quarter horse preferred.

(2) The number of races written as quarter horse preferred at a distance exceeding 870 yards shall not exceed more than three races per program without the consent of the quarter horse horsemen's organization contracting with the association.

(3) More than one-half of the races on any program shall be for quarter horses at a distance not to exceed 550 yards, unless the consent of the quarter horse horsemen's organization is received.

(4) Mixed races with Appaloosa and quarter horses may only be written with the consent of the quarter horse horsemen's organization contracting with the association.

(5) Thoroughbreds shall constitute less than half the number of horses in these races although an exception may be granted on a race-to-race basis with the consent of the quarter horse horsemen's organization contracting with the association.

(b) The association that conducts the meeting shall pay to a thoroughbred trainers' organization an amount for a pension plan for backstretch personnel to be administered by that trainers' organization

equivalent to 1 percent of the amount available to thoroughbred horses for purses. The remainder of the portion shall be distributed as purses. Any redistributable money paid to the board pursuant to Section 19641, which is paid to a welfare fund established by a horsemen's organization from races with both thoroughbred and quarter horses, shall be divided pro rata between the two welfare funds based on the number of thoroughbreds and quarter horses in the race.

(c) (1) Notwithstanding any other provision of law, any association licensed to conduct quarter horse racing may apply to the board for, and the board shall grant, authority to conduct thoroughbred racing as part of its racing program if all of the following conditions are met:

(A) The thoroughbred races are for a claiming price of not more than five thousand dollars ($5,000), and at a distance of four and one-half furlongs or less. The races may not be stakes, allowance races, or maiden allowance races.

(B) More than one-half of the races on any program shall be for quarter horses at a distance not to exceed 550 yards, unless the consent of the quarter horse horsemen's organization is received.

(C) The consent of the quarter horse horsemen's organization contracting with the association is obtained with respect to the inclusion of thoroughbred racing.

(2) The quarter horse racing association conducting thoroughbred racing pursuant to this subdivision shall pay to a quarter horse horsemen's organization the amount specified in subdivision (e) of Section 19613, and an amount for a pension plan for backstretch personnel to be administered by a thoroughbred trainers' organization equivalent to 1 percent of the amount available to thoroughbred horses for purses. The remainder of the portion shall be distributed as purses. The quarter horse racing association shall also deduct the appropriate amount to comply with subdivision (a) of Section 19617.2 for distribution to the thoroughbred official registering agency.

SEC. 2 Section 19601 of the Business and Professions Code is amended to read:

19601. (a) Notwithstanding any other provision of law, a licensed association or fair that is conducting a live meeting in any racing zone may accept wagers on any race conducted in this state, if all of the following requirements are met:

(1) The association or fair that conducts the racing meeting and the organization that is responsible for negotiating purse agreements on behalf of the horsemen participating in that racing meeting consent to the acceptance of the wagers. However, if consent is withheld, any party may appeal the withholding of consent to the board, which may determine that consent is not required.

(2) The association or fair conducts not less than eight races on days when the association or fair is licensed to conduct racing, except that fewer than eight live races per day may be conducted by the mutual agreement of the association or fair and the organization that is responsible for negotiating purse agreements on behalf of the horsemen participating in the racing meeting.

(3) Wagering is offered only within the association's or fair's racing inclosure or within the satellite wagering facility and only within seven days of the commencement of the racing program with the transmitted race.

(4) All wagers are included in the appropriate parimutuel pool at the racetrack of the association or fair where the race is conducted, or, in the appropriate parimutuel pool of the racetrack of the association or fair that accepts the transmitted race.

(5) The association or fair accepting wagers on an out-of-zone transmitted race distributes the audiovisual signal of the race to, and accepts wagers from, all eligible satellite wagering facilities.

(b) Any association or fair accepting wagers under subdivision (a) shall deduct, from the total amount handled in each conventional and exotic parimutuel pool on the transmitted race, the same percentages deducted pursuant to Article 9.5 (commencing with Section 19610) for races at its own meeting. However, if the wagers are from a quarter horse race meeting, then the amounts deducted shall be the same as for a quarter horse race meeting. Amounts deducted under this section, including amounts deducted from wagers on out-of-zone races within the inclosure of the association or fair, shall be distributed as provided under Sections 19605.7, 19605.72, and 19605.73 with respect to wagers made within the northern zone, or Sections 19605.71, 19605.72, and 19605.73 with respect to wagers made within the central or southern zone, except that amounts distributed for purposes other than state license fees and fees payable to the Center for Equine Health, School of Veterinary Medicine, University of California at Davis, and the California Animal Health and Food Safety Laboratory shall be proportionally reduced by the amount of any fees paid to the Triple Crown or Breeder's Cup day host association pursuant to subdivision (c). The method used to calculate the reduction in proportionate share shall be approved by the board. For wagers on out-of-state and out-of-country races made within the association's or fair's inclosure, 1 percent shall be distributed to the association or fair as a satellite wagering facility commission.

(c) Nothing in this section precludes an association or fair from charging a fee as a condition of transmitting the Triple Crown or Breeder's Cup day races, except that any fee shall be allocated among all associations, fairs, and satellite wagering facilities receiving the

transmitted race in proportion to the amount wagered at each location, and the fee shall equal that charged by the entity conducting the race or races. Further, the only fee that can be charged as a condition of transmitting the signal of an out-of-zone race shall be a fee of 2.5 percent on Breeder's Cup day races.

(d) All breakage and unclaimed tickets, including unclaimed refunds, shall be distributed equally between the association or fair that accepts wagers on the transmitted race, and the horsemen, in the form of purses. The purse moneys generated by this subdivision shall be made available for purses during the meeting in which they are received by the association or fair, or, if the association or fair is not then conducting a live racing meeting, during the next succeeding meeting of the association or fair.

(e) All wagers made pursuant to this section shall be considered to have been wagered at a satellite wagering facility and shall be excluded from total handle for the purposes of Section 19611.

(f) Notwithstanding Section 19530.5, satellite wagering facilities operated by a fair, in the Counties of Fresno, Kern, or Tulare shall be considered northern zone facilities and shall receive their audiovisual signal from the association or fair conducting a racing meeting in the northern zone that is authorized to distribute the signal and accept wagers on central and southern zone races. Satellite wagering facilities operated by a fair, in the Counties of Santa Barbara or Ventura shall be considered central-southern zone facilities and shall receive the audiovisual signal from the association or fair conducting a racing meeting in the central or southern zone that is authorized to distribute the signal and accept wagers on northern zone races.

(g) All purse moneys derived from wagering on out-of-zone races at fair racing meetings shall be distributed to all breeds of horses participating in the fair meeting in direct proportion to the purse money generated by breed on live races conducted during the fair race meeting.

(h) During calendar periods when both a fair and a thoroughbred association conduct live racing, the amounts deducted under this section shall be distributed on any day of overlap as provided in Section 19607.5, except that the applicable state license fee shall be at the rate specified for nonfair meetings in subdivision (b) of Section 19605.7.

(i) During calendar periods when a thoroughbred association and a fair, or a thoroughbred association and any other breed association are conducting a racing meeting in the same zone, the thoroughbred association shall be the association authorized to distribute out-of-zone, out-of-state, or out-of-country thoroughbred or fair races, except that the thoroughbred association may waive this right and allow the other breed racing association conducting a race meeting to distribute the

signal and accept wagers on out-of-zone, out-of-state, or out-of-country thoroughbred or fair races for any racing day or days. For the purposes of this subdivision, the combined central and southern zone shall be considered one zone.

(j) In order to ensure, to the extent possible, that out-of-state and out-of-country simulcasting, furthers the purposes of this section, a committee made up of one representative from each of the then-operating thoroughbred associations or fairs that are conducting a live racing meeting in the state and one representative of the organization responsible for negotiating purse agreements on behalf of the horsemen participating in the meeting shall do the following:

(1) Determine the out-of-state or out-of-country thoroughbred races to be imported on a statewide basis pursuant to provisions of this chapter.

(2) Ensure, to the extent possible, that the fees charged by out-of-state or out-of-country entities for these signals are at the lowest obtainable rate and at the same rate statewide, in order to maximize the revenue available to in-state associations and fairs and their horsemen.

(3) Ensure, to the extent possible, due to the reciprocal nature of the interstate simulcasting business, that the maximum obtainable revenue is generated by the sale to out-of-state entities of the audiovisual signal of races conducted in this state by thoroughbred associations and fairs.

(4) Ensure that program information requirements for in-state signals comply with the standards of the board, but provide that abbreviated program formats may be used for races imported from other jurisdictions.

(k) Notwithstanding any other provision of law, any thoroughbred association or fair, when operating a live racing meeting, shall distribute the signal of all races conducted by, or disseminated by, that association or fair to, and accept wagers on these races from, any association that is licensed to conduct a live quarter horse or harness racing meeting in Orange County and that conducted such a meeting in 1998.

(*l*) Notwithstanding any other provision of law, all associations or fairs when operating as eligible satellite wagering facilities shall be in compliance with, and subject to the provisions of, Article 9.2 (commencing with Section 19605) of this chapter, and shall display the signal and accept wagers on all live races conducted in this state without regard to breed. Notwithstanding the foregoing provision, a thoroughbred racing association located in the City of Arcadia is exempt from these requirements for live harness and quarter horse races conducted at night unless the thoroughbred racing association facility is open for business at that time and is accepting wagers on other night signals pursuant to this chapter.

A quarter horse racing association located in the southern zone shall display the signal and accept wagers on all races imported by, or

conducted by, a harness racing association conducting racing in the northern zone. A harness racing association in the northern zone shall display the signal and accept wagers on all races imported by, or conducted by, a quarter horse racing association conducting racing in the southern zone. On those nights when both the harness racing association in the northern zone and the quarter horse racing association in the southern zone are conducting live racing, the audiovisual signal of both breeds shall be displayed and wagers shall be accepted on both breeds at each of the locations where the live racing is being conducted, and each association shall display the audiovisual signal and accept wagers on the other association's live or imported races throughout their respective facilities, as they do when they are conducting satellite wagering during other periods of the same day. Each association shall pay the other an additional 5 percent of the amount wagered at their respective facilities on the races imported by, or conducted by, the other racing association. With respect to harness racing, the additional 5 percent received by the harness racing association pursuant to paragraph shall be distributed as 50 percent as commissions to the racing association and 50 percent as purses to the horsemen participating in the racing meeting. Further, satellite wagering facilities located at fairs may, but are not required to, accept an audiovisual signal on out-of-state or out-of-country races unless the facility is open for business at the time and accepting wagers on other signals pursuant to this chapter.

SEC. 3. The amendments to Section 19601 of the Business and Professions Code made by this act relate to the sending and receipt of an audiovisual signal for nonthoroughbred races. Section 19601 provides for the receipt, sending, and wagering on, of satellite signals of thoroughbred racing. The amendments to Section 19601 made by this act are intended to authorize and require, as applicable, the receipt of, sending of, and wagering on, audiovisual signals of nonthoroughbred racing, particularly during times when two nonthoroughbred racing associations are conducting racing at the same time. The amendments made by this act require acceptance of the audiovisual signal by each nonthoroughbred association for the purpose of wagering, and require the payment of a fee in connection with that wagering.

CHAPTER 369

An act to amend Sections 31468, 31486.3, 31490.5, 31494.3, and 31522.5 of, and to add Section 31678.4 to, the Government Code, relating to retirement.

[Approved by Governor September 20, 2006. Filed with
Secretary of State September 20, 2006.]

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

SECTION 1. Section 31468 of the Government Code is amended to read:

31468. (a) "District" means a district, formed under the laws of the state, located wholly or partially within the county other than a school district.

(b) "District" also includes any institution operated by two or more counties, in one of which there has been adopted an ordinance placing this chapter in operation.

(c) "District" also includes any organization or association authorized by Chapter 26 of the Statutes of 1935, as amended by Chapter 30 of the Statutes of 1941, or by Section 50024, which organization or association is maintained and supported entirely from funds derived from counties, and the board of any retirement system is authorized to receive the officers and employees of that organization or association into the retirement system managed by the board.

(d) "District" also includes, but is not limited to, any sanitary district formed under Part 1 (commencing with Section 6400) of Division 6 of the Health and Safety Code.

(e) "District" also includes any city, public authority, public agency, and any other political subdivision or public corporation formed or created under the constitution or laws of this state and located or having jurisdiction wholly or partially within the county.

(f) "District" also includes any nonprofit corporation or association conducting an agricultural fair for the county pursuant to a contract between the corporation or association and the board of supervisors under the authority of Section 25905.

(g) "District" also includes the Regents of the University of California, but with respect only to employees who were employees of a county in a county hospital, who became university employees pursuant to an agreement for transfer to the regents of a county hospital or of the obligation to provide professional medical services at a county hospital, and who under that agreement had the right and did elect to continue membership in the county's retirement system established under this chapter.

(h) "District" also includes the South Coast Air Quality Management District, a new public agency created on February 1, 1977, pursuant to Chapter 5.5 (commencing with Section 40400) of Part 3 of Division 26 of the Health and Safety Code.

(1) Employees of the South Coast Air Quality Management District shall be deemed to be employees of a new public agency occupying new positions on February 1, 1977. On that date, those new positions are deemed not to have been covered by any retirement system.

(2) No retirement system coverage may be effected for an employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, unless and until the employee shall have elected whether to become a member of the retirement association established in accordance with this chapter for employees of Los Angeles County or the retirement association established in accordance with this chapter for employees of San Bernardino County. The election shall occur before January 1, 1980. Any employee who fails to make the election provided for herein shall be deemed to have elected to become a member of the retirement association established in accordance with this chapter for the County of Los Angeles.

(3) The South Coast Air Quality Management District shall make application to the retirement associations established in accordance with this chapter for employees of Los Angeles County and San Bernardino County for coverage of employees of the South Coast Air Quality Management District.

(4) An employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, and who has not terminated employment before January 1, 1980, shall be covered by the retirement association elected by the employee pursuant to paragraph (2). That coverage shall be effected no later than the first day of the first month following the date of the election provided for in paragraph (2).

(5) Each electing employee shall receive credit for all service with the South Coast Air Quality Management District. However, the elected retirement association may require, as a prerequisite to granting that credit, the payment of an appropriate sum of money or the transfer of funds from another retirement association in an amount determined by an enrolled actuary and approved by the elected retirement association's board. The amount to be paid shall include all administrative and actuarial costs of making that determination. The amount to be paid shall be shared by the South Coast Air Quality Management District and the employee. The share to be paid by the employee shall be determined by good faith bargaining between the district and the recognized employee organization, but in no event shall the employee be required to contribute more than 25 percent of the total amount required to be paid. The elected retirement association's board may not grant that credit for that prior

service unless the request for that credit is made to, and the required payment deposited with, the elected retirement association's board no earlier than January 1, 1980, and no later than June 30, 1980. The foregoing shall have no effect on any employee's rights to reciprocal benefits under Article 15 (commencing with Section 31830).

(6) An employee of the South Coast Air Quality Management District who commenced employment with the district after December 31, 1978, shall be covered by the retirement association established in accordance with this chapter for employees of San Bernardino County. That coverage shall be effected as of the first day of the first month following the employee's commencement date.

(7) Notwithstanding paragraphs (2) and (4) above, employees of the South Coast Air Quality Management District who were employed between February 1, 1977, and December 31, 1978, and who terminate their employment between February 1, 1977, and January 1, 1980, shall be deemed to be members of the retirement association established in accordance with this chapter for the employees of Los Angeles County commencing on the date of their employment with the South Coast Air Quality Management District.

(i) "District" also includes any nonprofit corporation that operates one or more museums within a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, pursuant to a contract between the corporation and the board of supervisors of the county, and that has entered into an agreement with the board and the county setting forth the terms and conditions of the corporation's inclusion in the county's retirement system.

(j) "District" also includes any economic development association funded in whole or in part by a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, and that has entered into an agreement with the board of supervisors and the county setting forth the terms and conditions of the association's inclusion in the county's retirement system.

(k) "District" also includes any special commission established in the Counties of Tulare and San Joaquin as described by Section 14087.31 of the Welfare and Institutions Code, pursuant to a contract between the special commission and the county setting forth the terms and conditions of the special commission's inclusion in the county's retirement system with the approval of the board of supervisors and the board of retirement.

(*l*) (1) "District" also includes the retirement system established under this chapter in Orange County.

(2) "District" also includes the retirement system established under this chapter in San Bernardino County at such time as the board of retirement, by resolution, makes this section applicable in that county.

SEC. 2. Section 31486.3 of the Government Code is amended to read:

31486.3. (a) An active member governed by the provisions of this article may elect, by written notice filed with the board, to make contributions and receive credit under this plan for service for which he or she would not otherwise be entitled to receive credit pursuant to this article.

(b) A member who elects to receive service credit pursuant to this section shall have the same purchase rights and shall contribute to the retirement fund the amount that a member in the contributory plan wishing to purchase the same service would have to contribute, based on the rates applicable to a member of the contributory plan with the same date of entry into membership. Payment shall be made by lump-sum payment or by installment payments over a period not to exceed 10 years, prior to the effective date of his or her retirement or, if applicable, prior to the date provided in Section 31485.7.

(c) No member may receive any service credit under this section for which he or she has not completed payment pursuant to subdivision (b) before the effective date of his or her retirement or, if applicable, before the date provided in Section 31485.7. Subject to the limitations of federal law, a member who has elected to make payments in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

(d) Any sums paid by a member pursuant to this section shall be considered to be and administered as contributions by the member.

(e) As used in this section, the "contributory plan" means that contributory plan otherwise available to new members of the system on the election date.

(f) This section is not operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 3. Section 31490.5 of the Government Code is amended to read:

31490.5. (a) An active member governed by the provisions of this article may elect, by written notice filed with the board, to make contributions and receive credit under this plan for service for which he or she would not otherwise be entitled to receive credit pursuant to this article.

(b) Any member who elects to receive service credit pursuant to this section shall have the same purchase rights and shall contribute to the

retirement fund the amount that a member in the contributory plan wishing to purchase the same service would have to contribute, based on the rates applicable to a member of the contributory plan with the same date of entry into membership. Payment shall be made by lump-sum payment or by installment payments over a period not to exceed 10 years, prior to the effective date of his or her retirement or, if applicable, prior to the date provided in Section 31485.8.

(c) No member may receive any service credit under this section for which he or she has not completed payment pursuant to subdivision (b) before the effective date of his or her retirement or, if applicable, before the date provided in Section 31485.8. Subject to the limitations of federal law, a member who has elected to make payments in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

(d) Any sums paid by a member pursuant to this section shall be considered to be and administered as contributions by the member.

(e) As used in this section, the "contributory plan" means that contributory plan otherwise available to new members of the system on the election date.

(f) This section is not operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 4. Section 31494.3 of the Government Code is amended to read:

31494.3. (a) Members who have elected to transfer under Section 31494.1 shall be provided within 90 days of the election date the cost of contributions required for that period of all creditable service with the employer prior to the month for which monthly contributions are to commence, as prescribed in subdivision (f) of Section 31494.1, and shall deposit in the retirement fund, the amount hereinafter provided in this subdivision, by lump sum, or regular monthly installments, or both, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, but in any event prior to the date of application for retirement or, if applicable, the date provided in Section 31485.8, the date of termination, or the date of death. The amount shall equal the sum of the contributions a member would have made to the retirement fund for that length of time as that for which the member shall receive credit as service, computed in accordance with the rate of contribution applicable to the member under the contributory plan, based upon entry age, and in the same manner as prescribed under the plan as if the plan had been in effect during the entire period of all creditable service, together with regular interest thereon.

(b) All service previously purchased by the member pursuant to Section 31490.5, if any, shall be recalculated in accordance with the rate of contribution applicable to the member under the contributory plan, based upon the entry age, and in the same manner as prescribed under the plan as if the contributory plan had been in effect during the entire period of all creditable service, together with regular interest thereon. All contributions paid by the member pursuant to Section 31490.5, if any, shall be credited toward the amount owed under subdivision (a) and all periods of service credited under the plan created by this article shall be transferred to the contributory plan upon completion of payment of that amount.

(c) Any member who applies for service credit under subdivision (e) of Section 31494.1 relating to federal and military service, shall be provided within 90 days of the election date the cost of contribution required for that service, and shall deposit in the retirement fund the amount hereinafter provided in this subdivision by lump sum, or regular monthly installments, or both, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, but in any event prior to the date of application for retirement, date of termination, or death. The amount shall equal the sum of twice the contributions the member would have made to the retirement fund for the length of time as that for which the member has elected to receive credit as service, computed by applying the rate of contribution applicable to the member under the contributory plan, based upon entry age, to the monthly compensation first earnable by the member as of the most recent date of entry into the retirement system, multiplied by the number of months for which the member has elected to receive credit, together with regular interest thereon.

(d) Any member who applies for service credit under subdivision (e) of Section 31494.1, relating to prior service as defined in the bylaws of the board, other than qualifying service under Section 31490.5, and public service other than military and federal service, shall be provided within 90 days of the election date the cost of contribution required for that service, and shall deposit in the retirement fund the amount hereinafter provided in this subdivision, by lump sum or regular monthly installments, or both, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, but in any event prior to the date of application for retirement or, if applicable, prior to the date provided in Section 31485.8, the date of termination, or the date of death. The amount shall equal that sum of contributions the member would have made to the retirement fund for the length of time as that for which the member has elected to receive credit as service, calculated in the same manner as prescribed in the bylaws of the board relating to

credit for prior service, except that such contribution shall be computed by applying the rate of contribution applicable to the member under the contributory plan, based upon entry age.

(e) This section shall be operative in a county at such time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative in the county.

SEC. 5. Section 31522.5 of the Government Code is amended to read:

31522.5. (a) In a county in which the board of retirement has appointed personnel pursuant to Section 31522.1, the board of retirement may appoint an administrator, an assistant administrator, a chief investment officer, senior management employees next in line of authority to the chief investment officer, subordinate administrators, senior management employees next in line of authority to subordinate administrators, and legal counsel.

(b) Notwithstanding any other provision of law, the personnel appointed pursuant to this section may not be county employees but shall be employees of the retirement system, subject to terms and conditions of employment established by the board of retirement. Except as specifically provided in this subdivision, all other personnel shall be county employees for purposes of the county's employee relations resolution, or equivalent local rules, and the terms and conditions of employment established by the board of supervisors for county employees, including those set forth in a memorandum of understanding.

(c) The compensation of personnel appointed pursuant to this section shall be an expense of administration of the retirement system, pursuant to Section 31580.2.

(d) The board of retirement and board of supervisors may enter into any agreements as may be necessary and appropriate to carry out the provisions of this section.

(e) Section 31522.2 is not applicable to any retirement system that elects to appoint personnel pursuant to this section.

(f) This section shall apply only in Orange County.

(g) This section shall apply to the retirement system established under this chapter in San Bernardino County at such time as the board of retirement, by resolution, makes this section applicable in that county.

SEC. 6. Section 31678.4 is added to the Government Code, to read:

31678.4. The governing body of a district as defined in subdivision (*l*) of Section 31468 shall not elect to make a formula for the calculation of retirement benefits applicable to the personnel of the district appointed pursuant to Section 31522.5 who are employees of the retirement system

unless the board of supervisors has made that formula applicable to personnel of that retirement system who are employees of the county.

CHAPTER 370

An act to repeal Section 21080.08 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 21080.08 of the Public Resources Code is repealed.

CHAPTER 371

An act to amend Sections 41508, 41532, 41542, 41573, 52379, and 54026 of the Education Code, to amend Item 6110-198-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005, and to amend Sections 35 and 43 of Chapter 79 of the Statutes of 2006, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 41508 of the Education Code is amended to read:

41508. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by the regular average daily attendance used to calculate the second principal apportionment for kindergarten and grades 1 to 12, inclusive, unless otherwise provided in the annual Budget Act.

SEC. 2. Section 41532 of the Education Code is amended to read:

41532. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted

for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by the regular average daily attendance used to calculate the second principal apportionment for kindergarten and grades 1 to 12, inclusive, unless otherwise provided in the annual Budget Act.

SEC. 3. Section 41542 of the Education Code is amended to read:

41542. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by the regular average daily attendance used to calculate the second principal apportionment for kindergarten and grades 1 to 12, inclusive, unless otherwise provided in the annual Budget Act.

SEC. 4. Section 41573 of the Education Code is amended to read:

41573. Commencing with the 2006–07 fiscal year, the amount of funding a school district receives pursuant to this article shall be adjusted annually for inflation by the amount calculated pursuant to Section 42238.1 and for growth as measured by enrollment in kindergarten and grades 1 to 12, inclusive, as reported in the CBEDS report, unless otherwise provided in the annual Budget Act. For purposes of this subdivision, "CBEDS report" means the report submitted by the school district to the department for purposes of the California Basic Education Data System.

SEC. 5. Section 52379 of the Education Code is amended to read:

52379. (a) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be allocated to school districts based on an equal amount per pupil enrolled in the district in the prior fiscal year, based on the fall California Basic Educational Data System (CBEDS) enrollment data, in grades 7 to 12, inclusive, with the following minimum-grant exceptions:

(1) Five thousand dollars ($5,000) for each schoolsite that has 100 or fewer pupils enrolled in any of grades 7 to 12, inclusive.

(2) Ten thousand dollars ($10,000) for each schoolsite that has between 101 and 200 pupils enrolled in any of grades 7 to 12, inclusive.

(3) Thirty thousand dollars ($30,000) or an amount per pupil enrolled, whichever is greater, for each schoolsite with more than 200 pupils enrolled in any of grades 7 to 12, inclusive.

(b) Funds allocated pursuant to this section shall supplement, and not supplant, expenditures made by a school district for school counseling programs.

(c) For purposes of this section, a charter school is not eligible to receive a minimum grant but instead shall receive an amount per pupil enrolled in grades 7 to 12, inclusive.

(d) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be used to provide supplemental counseling services

delivered by personnel who hold a valid pupil personnel services credential.

SEC. 6. Section 54026 of the Education Code is amended to read:

54026. For purposes of this article, the following definitions apply:

(a) "Economically disadvantaged pupils" means either of the following, whichever is applicable:

(1) Pupils described in Section 101 of Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6333(c)(1)(A)(B)).

(2) (A) Notwithstanding paragraph (1), for a small school district, the product of the number of pupils eligible for participation in the free meals program for the prior fiscal year, as defined in subdivision (d), and the free meals adjustment factor. The free meals adjustment factor is the quotient, rounded to two decimal places, resulting from dividing the statewide total of economically disadvantaged pupils as defined in paragraph (1) by the statewide total of pupils eligible for participation in the free meals program for the prior fiscal year, as defined in subdivision (d).

(B) Notwithstanding paragraph (1) or subparagraph (A), for charter schools that are funded through the block grant funding model pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 in the 2006–07 fiscal year, the department shall use counts as of October 2006 of pupils ages 5 to 17 years, inclusive, who are living in families whose income is at or below the federal poverty level, as collected through the first principal apportionment data collection process, as defined in Section 41601, without revision. Commencing in the 2007–08 fiscal year, the Superintendent shall use counts as of October of the prior year of pupils ages 5 to 17 years, inclusive, who are living in families whose income is at or below the federal poverty level, as collected through the first principal apportionment data collection process, as defined in Section 41601, without revision. For purposes of this subdivision, the department may use in the first year of operation of a charter school that is established on or after July 1, 2007, the current year counts of pupils ages 5 to 17 years, inclusive, who are living in families whose income is at or below the federal poverty level.

(C) The Superintendent may expand upon an existing process of collecting free or reduced price meal data in order to collect from small districts, as defined in subdivision (c), counts of pupils living in families whose income is at or below the federal poverty level.

(b) "English learner" means a pupil described in subdivision (a) of Section 306 or identified as a pupil of limited English proficiency, as that term is defined in subdivision (m) of Section 52163.

(c) "Small school district" means a school district that has an annual enrollment of less than 600 pupils based on prior school year CBEDS

data and is, for the purposes of this section, designated a rural school by the Superintendent based on the appropriate school locale codes, as used by the National Center for Education Statistics of the United State Department of Education.

(d) "Free meals" means the aggregate number of pupils meeting the income eligibility guidelines established by the federal government for free meals as reported for all schools for which the district is the authorizing agency.

SEC. 7. Item 6110-198-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-198-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation to school districts and county offices of education, in lieu of the amount that otherwise would be appropriated pursuant to statute..... 52,996,000

Schedule:

(1) 20.60.220-CalSAFE Academic and Supportive Services..... 15,385,140

(2) 30.10.020-CalSAFE Child Care..... 24,509,250

(3) 20.60.221-All Services for Non-converting Pregnant Minors Programs..... 13,101,610

Provisions:

1. Notwithstanding any other provision of law, a school district or county superintendent of schools operating, by October 1, 1999, a School Age Parent and Infant Development Program pursuant to Article 17 (commencing with Section 8390) of Chapter 2 of Part 6 of, a Pregnant Minors Program pursuant to Chapter 6 (commencing with Section 8900) of Part 6 of, and Section 2551.3 of, or a Pregnant and Lactating Students Program pursuant to Sections 49553 and 49559 of, the Education Code, or any combination thereof, that chooses to participate in the CalSAFE program shall have priority for CalSAFE program funding for an amount up to the dollar amount provided under those provisions in the fiscal year prior to participation in the CalSAFE program, provided an application is submitted and approved.
2. The amounts appropriated in Schedules (1), (2), and (3) of this item are based on estimates of the amounts required by existing programs for operation of CalSAFE programs in 2005–06. By October 31, 2005,

the Department of Education shall submit to the Department of Finance current expenditure data for 2004–05 and 2005–06 showing each agency's allocation and supporting detail including average daily attendance and child care attendance and enrollment data. The State Department of Education shall also provide estimates of average daily attendance and child care to be provided in the 2006–07 fiscal year.

3. Funds appropriated in Schedule (3) are available to provide funding for all child care, as well as both academic and supportive services for programs choosing to retain their Pregnant Minors Program revenue limit. Notwithstanding any other provision of law, the State Department of Education shall compute allocations to these agencies using the respective agencies' 1998–99 Pregnant Minors Program revenue limits. Further, notwithstanding any other provision of law, programs which choose to retain their Pregnant Minors Program revenue limit rather than convert to the CalSAFE revenue limit must provide child care within the revenue limit funding for children of students comprising base year average daily attendance. To the extent additional units of average daily attendance are authorized by the department for growth for these agencies, academic and supportive services reimbursement for such growth shall be computed using the new CalSAFE revenue limit. Growth funding for the child care component shall be equal to the proportionate share of total child care costs for the specific agency's program as determined by dividing the authorized growth in student average daily attendance by the total authorized average daily attendance.
4. Of the funds appropriated in this item, $348,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 0.69 percent, and $2,151,000 is for the purpose of providing a cost-of-living adjustment at a rate of 4.23 percent.

SEC. 8. Section 35 of Chapter 79 of the Statutes of 2006 is amended to read:

Sec. 35. (a) For the 2006–07 fiscal year, the Superintendent shall add to the amount determined pursuant to Section 54022 of the Education

Code for each school district a supplemental adjustment calculated as follows:

(1) Calculate the difference between the number six hundred (600) and the number that is equal to the per pupil economic impact aid amount for the school district calculated pursuant to subdivision (a) of Section 54022.

(2) If the difference pursuant to paragraph (1) is greater than zero, multiply that difference by the economic impact aid eligible pupil count for the school district for the current school year.

(3) Calculate the available funds factor by dividing the funds available for supplemental adjustments pursuant to this section, as specified in paragraph (5), by the product pursuant to paragraph (2) for all school districts.

(4) Multiply the amount calculated pursuant to paragraph (2), if applicable, by the available funds factor calculated in paragraph (3). The result is the adjustment a school district shall receive for the 2006–07 fiscal year pursuant to this section.

(5) Determine the funds available for the supplemental adjustment according to the following calculation:

(A) Calculate the total statewide economic impact aid allocation amount for the 2006–07 fiscal year as the sum of each school districts allocation determined pursuant to Section 54022 of the Education Code.

(B) From the total of funds appropriated for the purposes of this article in the 2006–07 fiscal year, subtract the amount determined in subparagraph (A). This remainder is the amount of funds available for the economic impact aid adjustment allocated pursuant to this section.

(b) For the 2007–08 fiscal year, the Superintendent shall add to the economic impact aid per pupil amount calculated pursuant to subdivision (a) of Section 54022 of the Education Code the quotient that is equal to the adjustment received by each school district pursuant to this section in the 2006–07 fiscal year divided by the economic impact aid eligible pupil count for the 2006–07 fiscal year.

SEC. 9. Section 43 of Chapter 79 of the Statutes of 2006 is amended to read:

Sec. 43. (a) Two billion three hundred five million six hundred ninety-five thousand dollars ($2,305,695,000) is hereby appropriated from the General Funds for the 2005–06 fiscal year in accordance with the following schedule:

(1) Six hundred fifty million sixty-two thousand dollars ($650,062,000) to the Controller for allocation as appropriate for the reimbursement of state-mandated local cost claims submitted by local education agencies for the 1995–96 to 2005–06 fiscal years, inclusive.

(A) The Controller shall use the funds described in this paragraph to pay claims submitted by school districts and county offices of education pursuant to Chapter 4 (commencing with Section 17550) of Part 7 of Division 4 of Title 2 of the Government Code for the 1995–96 to 2005–06 fiscal years, inclusive. The Controller shall pay the claims according to the following order of priority:

(i) First, the oldest claims no longer subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest.

(ii) Second, claims still subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest. The Controller may adjust the amounts paid for these claims on the basis of the final audits. Any repayment resulting from an audit may be counted towards future claims submitted by the local educational agency.

(B) No payments shall be made for any claims for the Standardized Testing and Reporting (STAR) or National Norm-Referenced Achievement Test programs, Schoolsite Councils, Brown Act and Open Meetings Act, School Bus Safety II, grand jury proceedings, or the removal of chemicals.

(2) Four hundred million one hundred twenty-five thousand dollars ($400,125,000) to the Superintendent of Public Instruction for allocation to school districts according to the following provisions:

(A) The funds appropriated pursuant to this paragraph shall be allocated to school districts on the basis of an equal amount per pupil enrolled in the district in the 2006–07 fiscal year, including pupils enrolled in adult education programs and pupils enrolled in regional occupational centers and programs based on the fall California Basic Educational Data System (CBEDS) enrollment data, except that pupil enrollment in adult education programs and regional occupational centers and programs shall be determined based on their calculated average daily attendance (ADA) for base funding allocations. The ADA for this purpose shall be considered final as of the second principal apportionment for fiscal year 2006–07. The governing board of each school district shall allocate the funds on an equal per-pupil basis to the schools within its jurisdiction for expenditure pursuant to this section. The Superintendent of Public Instruction shall make an initial apportionment of up to 75 percent of the funds on the basis of the enrollment in the 2005–06 fiscal year and shall make a final apportionment of the remaining funds in a manner that ensures that the total funds apportioned pursuant to this section are distributed on the basis of 2006–07 enrollment or ADA, as applicable.

(B) For the purposes of this paragraph, "school" shall include locally funded charter schools that have pupils who are currently enrolled and

that have a current county-district-school (CDS) code, as maintained by the Superintendent of Public Instruction. The use of the funds allocated to charter schools pursuant to this section shall further the program specified in the school's charter and shall not be allocated to parents, pupils, or staff of the charter school.

(C) The use of funds allocated pursuant to this paragraph for schools under the jurisdiction of a school district shall be proposed by each school's schoolsite council of each school, or, if the school does not have a schoolsite council pursuant to Section 52852 of the Education Code, by schoolwide advisory groups or school support groups. Funds shall be allocated to all schoolsites including adult education schools and regional occupational centers. For adult schools, the school shall develop an adult school advisory committee which shall consist of the school principal or director, teachers representing a variety of academic disciplines, adult education students, and community business leaders.

(D) The funds apportioned pursuant to this paragraph may be expended for any one-time educational purpose including, but not limited to, instructional materials, classroom and laboratory supplies and materials, school and classroom library materials, educational technology, deferred maintenance, one-time expenditures designed to close the achievement gap, or professional development. Before funds allocated pursuant this section may be encumbered or expended, the governing board of the school district shall approve the proposed use. If the governing board of a school district does not approve the use proposed pursuant to this paragraph, no expenditures of the specified funds may be made and the governing board of the school district shall inform the schoolsite council, schoolwide advisory group, or school support group, as applicable, of the reasons why the proposal was disapproved. If the schoolsite council, schoolwide advisory group, or school support group, as applicable, and the governing board of the school district are unable to agree on the use of the funds by May 1, 2007, the dispute shall be immediately submitted to the county board of education. The county board of education shall resolve the dispute within 30 days of submission. The decision of the county board of education shall be final.

(E) The use of funds allocated pursuant to this paragraph for schools under the jurisdiction of a county office of education shall be proposed by each school's schoolwide advisory group or school support group. The proposals shall be approved by the county board of education prior to expenditure of the funds allocated pursuant to paragraph (1).

(F) For purposes of this paragraph, "school district" means a school district, county office of education, state special school, or direct-funded charter school, as described in paragraph (1) of subdivision (a) of Section 47651 of the Education Code.

(G) The funds apportioned under this paragraph shall be allocated with a minimum of five thousand dollars ($5,000) for schoolsites of 25 or fewer pupils and ten thousand dollars ($10,000) for schoolsites of more than 25 pupils.

(3) One hundred thirty-three million three hundred seventy-five thousand dollars ($133,375,000) to the Superintendent for allocation to school districts according to the following provisions:

(A) The funds appropriated pursuant to this paragraph shall be apportioned to school districts on the basis of an equal amount per pupil enrolled in the district in the 2006–07 fiscal year, including pupils enrolled in adult education programs and pupils enrolled in regional occupational centers and programs based on the fall California Basic Educational Data System (CBEDS) enrollment data, except that pupil enrollment in adult education programs and regional occupational centers and programs shall be determined based on their calculated average daily attendance (ADA) for base funding allocations. The ADA for this purpose shall be considered final as of the second principal apportionment for the 2006–07 fiscal year. The Superintendent of Public Instruction shall make an initial apportionment of up to 75 percent of the funds on the basis of the enrollment in the 2005–06 fiscal year and shall make a final apportionment of the remaining funds in a manner that assures that the total funds apportioned pursuant to this section are distributed on the basis of 2006–07 enrollment, or ADA, as applicable.

(B) The funds apportioned pursuant to this paragraph may be expended for instructional materials, classroom and laboratory supplies and materials, school and classroom library materials, educational technology, deferred maintenance, professional development, home-to-school transportation, one-time expenditures designed to close the achievement gap, or outstanding one-time fiscal obligations of school districts.

(C) It is the intent of the Legislature that to the extent a school district allocates funds appropriated pursuant to this paragraph for the benefit of schoolsites, the district shall expend funds for the benefit of charter schools, including direct-funded charter schools, on an equitable basis.

(D) The funds apportioned under this paragraph shall be allocated with a minimum of ten thousand dollars ($10,000) per school district.

(4) One hundred million dollars ($100,000,000) from the General Fund on a one-time basis for allocation by the Superintendent of Public Instruction to school districts, charter schools, and county offices of education on the basis of enrollment in the 2005–06 fiscal year according to the fall CBEDS enrollment data. That allocation shall be used solely for any of the following:

(A) Instructional materials.

(B) School and classroom library materials.

(C) One-time educational technology costs, as provided in this section.

(5) Eleven million five hundred thirty-three thousand dollars ($11,533,000) on a one-time basis to be available for expenditure by June 30, 2009, as follows:

(A) Nine million five hundred thousand dollars ($9,500,000) for allocation to school districts, charter schools, and county office of education to provide funds to local educational agencies that have not previously received funding pursuant to the California School Information Services. These funds may be combined with the funds appropriated for this purpose in Item 6110-101-0349 of the annual Budget Act for the 2006–07 fiscal year. Funds shall be allocated pursuant to Section 49084 of the Education Code for activities consistent with an implementation plan developed by the California School Information Services, to be jointly approved by the Department of Finance, the Office of the Secretary for Education, and the State Department of Education, in consultation with the Legislative Analyst's Office.

(B) One million five hundred thousand dollars ($1,500,000) is available to the State Department of Education for transfer of five hundred thousand dollars ($500,000) per year over three fiscal years to the California School Information Services to be used to support staffing and for administrative costs associated with an increased workload pursuant to subparagraph (A).

(C) Five hundred thirty-three thousand dollars ($533,000) is available to the State Department of Education to the California School Information Services for use to purchase one-time equipment, hardware, and software consistent with an implementation plan developed by the California School Information Services, to be jointly approved by the Department of Finance, the Office of the Secretary for Education, and the State Department of Education, in consultation with the Legislative Analyst's Office.

(6) Ten million dollars ($10,000,000) on a one-time basis for transfer to Section A of the State School Fund for allocation by the Superintendent of Public Instruction to school districts, charter schools, and county offices of education for the following purposes:

(A) School districts and charter schools with outstanding long-term fiscal obligations concerning retired employee nonpension benefits may apply for funding upon completing a plan, as specified by the Superintendent of Public Instruction, for meeting those obligations. As a requirement of receipt of funding, districts must submit these plans to the county superintendent of education as part of the budget review process, and charter schools shall submit their plans to their authorizing entity. School districts, and charter schools may not receive an amount

greater than fifteen thousand dollars ($15,000) for activities related to this purpose.

(B) County superintendents of education may apply for funding for consideration of district plans submitted pursuant to this section during the course of reviewing the budget of a school district. The total amount provided for this purpose shall not exceed one million dollars ($1,000,000).

(7) Ten million dollars ($10,000,000) on a one-time basis to the Superintendent of Public Instruction for the purpose of providing Healthy Start grants to school districts, charter schools, or county offices of education, for allocation to schools that have not previously received a Healthy Start operational grant. The grant shall be provided on a competitive basis and shall provide full funding for both collaborative planning and operational grants in the 2006–07 fiscal year. Collaborative planning grants and operational grants may be expended over a seven-year period.

(8) Three million dollars ($3,000,000) to the State Department of Education for allocation to school districts, charter schools, and county offices of education to fund grants during the 2006–07 school year for startup school breakfast and summer food service programs under Section 49550.3 of the Education Code.

(9) Fifteen million dollars ($15,000,000) to the Superintendent of Public Instruction for allocation to school districts and charter schools on a one-time basis for purposes of parental involvement activities pursuant to Article 2 (commencing with Section 51120) of Chapter 1.5 of Part 28 of the Education Code.

(10) Thirty million dollars ($30,000,000) on a one-time basis to provide supplemental instructional materials specifically for English learners in kindergarten and grades 1 to 12, inclusive. The purpose of these materials will be to accelerate pupils as rapidly as possible towards grade level proficiency. The funds shall be used to purchase supplemental materials that are designed to help English learners become proficient in reading, writing, and speaking English. These materials may only be used in addition to the standards-aligned materials adopted by the State Board of Education pursuant to Section 60605 of the Education Code.

(A) Local educational agencies shall be eligible for apportionment funding of up to twenty-five dollars ($25) per pupil, based on the most recently certified language census number of English learners in kindergarten and grades 1 to 12, inclusive, to purchase any materials that the State Department of Education verifies and the State Board of Education approves are substantially correlated to identified state standards adopted pursuant to Section 60811 of the Education Code, as applied in the standards adopted pursuant to Section 60605 of the

Education Code. Funding may be provided only for the number of pupils that the local educational agency certifies it will purchase materials for pursuant to subparagraph (D). Local educational agencies may expend no more than thirty dollars ($30) per pupil from these funds for these materials. Local educational agencies shall return to the state any funds allocated under this subparagraph that are not expended for purchase of materials pursuant to this provision.

(B) The State Department of Education shall use the existing correlation matrices pursuant to Item 6110-189-0001 of Section 2.00 of Chapter 208 of the Statutes of 2004 to determine if the instructional materials correlate to the English-language arts and English language development standards adopted by the State Board of Education.

(C) Prior to submission of materials to the department for review to ensure that the materials correlate to identified standards, publishers shall be required to submit standards maps to the department and any requesting local education agency so that the department and the local educational agency can determine the extent to which each item, if purchased separately, or set of instructional materials for English learners are correlated to the standards adopted by the State Board of Education. The standards maps shall be filled out using the most recent format approved by the State Board of Education. The contents for the standards map will be the correlation matrix as described in subparagraph (B).

(D) As a condition of receipt of funds, local educational agencies that elect to participate shall do one, or both, of the following:

(i) No later than March 30, 2007, submit a request for review, specifying the title, ISBN number, grade levels, type, and publisher of the materials they intend to purchase, and the number of pupils for which materials may be purchased.

(ii) Identify materials from the existing list of materials approved by the State Board of Education specifying the information described in clause (i).

(E) After a local educational agency notifies the State Department of Education of its request for review of materials, the department may select and train panels of teachers and educators to verify the standards maps provided by the publishers and examine the materials for legal and social compliance. The department will also provide an appeals process to allow due process review of discrepancies of findings in the verification process. The verification shall not constitute a state adoption of instructional materials pursuant to Section 60200 of the Education Code. The department shall give first priority in verifying correlation to identified state standards to those materials that are most commonly cited in the intent of school districts to purchase provided under subparagraph (D). The department shall submit its verification results

to the State Board of Education for approval and the State Board of Education shall approve or disapprove the materials at the next regularly scheduled meeting after receipt of the verification of the department, in accordance with public notification requirements.

(11) Nine million dollars ($9,000,000) to the Superintendent of Public Instruction for allocation to charter schools for the Charter School Facility Grant Program pursuant to Section 47614.5 of the Education Code.

(12) Five million dollars ($5,000,000) to the State Department of Mental Health for the purpose of funding the full costs of the operational grants for a new cohort of grants over a multiyear period for the School-Based Early Mental Health Intervention and Prevention Services Matching Grant Program pursuant to Chapter 2 (commencing with Section 4380) of Part 4 of Division 4 of the Welfare and Institutions Code.

(13) Twenty million dollars ($20,000,000) to the Superintendent of Public Instruction for local assistance costs of a multiyear research pilot project to identify best practices for improving the academic achievement and English language development of English learners pursuant to legislation enacted during the 2005–06 Regular Session of the Legislature.

(14) Forty million dollars ($40,000,000) for transfer to Section A of the State School Fund for allocation to school districts, regional occupational centers and programs, adult education providers, charter schools and county offices of education that offer career technical education programs for the purchase of equipment and supplies, and minor facility reconfigurations for career technical education courses. Funds appropriated in this paragraph shall be allocated in accordance with, and are subject to, all of the following conditions:

(A) Funds shall be allocated on the basis of an equal amount per student enrolled in career technical education courses based on 2004–05 enrollment for grades 7 to 12, inclusive, as determined by the Superintendent of Public Instruction. In no event shall an eligible local educational agency receive less than three thousand two hundred and fifty dollars ($3,250), provided all other conditions of this paragraph are satisfied.

(B) This allocation shall be used solely for purchases of equipment and supplies for career technical education courses and any necessary minor facility configurations or improvements to remove old equipment or to utilize the new equipment.

(C) Prior to the allocation of funds to any local educational agency, the receiving agency shall do all of the following:

(i) Provide to the State Department of Education an expenditure plan for approval by the department that has been developed in consultation

with the career technical education advisory committee established pursuant to Section 8070 of the Education Code.

(ii) Agree to notify the career technical education advisory committee prior to disposing of any existing equipment or purchasing any new equipment used for career technical education.

(iii) Provide any other information determined by the Superintendent of Public Instruction deemed necessary to ensure this funding is effectively utilized to sustain and expand attendance in high quality career technical education programs.

(D) Of the funds appropriated in this paragraph, two million five hundred thousand dollars ($2,500,000) shall be used for capacity building incentive grants for grades 7 to 12, inclusive, to enhance existing, or establish new, health-related career pathway programs in grades 7 to 12, inclusive. Funds shall be used for standards-based curriculum development, development of a sequence of courses, and materials and equipment. The State Department of Education shall report to the Legislature and the Governor on the use of the funds described in this subparagraph on or before January 1, 2008.

(15) Four million dollars ($4,000,000) to the Superintendent of Public Instruction as local assistance funds for support of the K-12 High-Speed Network.

(16) Five hundred million dollars ($500,000,000) for transfer to Section A of the State School Fund for allocation by the Superintendent of Public Instruction to school districts, charter schools, and county offices of education on the basis of an equal amount per unit of average daily attendance, as defined in Section 42238.5 of, and subdivision (b) of Section 41601 of, the Education Code, plus any average daily attendance credited to the county superintendent of schools for the purposes of Sections 42238, 47633, 47605.5, 47613.1, and 47634.2 of the Education Code, and including average daily attendance used to compute funding for small school districts pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24 of the Education Code, reported for the second principal apportionment for the 2005–06 fiscal year pursuant to Section 41601 of the Education Code. However, the Superintendent of Public Instruction shall not allocate to a district, and the district shall not expend, less than two thousand five hundred dollars ($2,500) per schoolsite. That allocation shall be used solely for the following:

(A) Art and music supplies and equipment.

(B) Physical education supplies and equipment.

(C) Professional development in arts, music, or physical fitness.

(17) Fifty million dollars ($50,000,000) for transfer to the Child Care Facilities Revolving Fund to address facilities needs for the expansion

of the State Preschool Program, pursuant to legislation enacted during the 2005–06 Regular Session of the Legislature. Funding shall be available for the renovation, repair, or improvement of an existing building and for the purchase of new relocatable child care facilities, in accordance with Education Code Section 8278.3.

(18) Five million five hundred thousand dollars ($5,500,000) to the Superintendent of Public Instruction for allocation to local educational agencies for the purpose of funding the purchase of state-approved individual intervention materials for students who have failed the California High School Exit Examination.

(A) Local educational agencies shall be eligible for apportionment funding of twenty dollars ($20) per pupil based on the number of pupils in grades 11 through 12, inclusive, who have failed to pass one or both portions of the California High School Exit Examination. Funds shall be used to purchase any materials recommended by the State Department of Education and approved by the State Board of Education for these purposes.

(B) Individual intervention materials approved pursuant to this section shall meet the following criteria:

(i) Assist students in mastering standards necessary to successfully pass the California High School Exit Examination.

(ii) Include a computer-based component that adapts to each student's specific remediation needs.

(iii) Include appropriate professional development support for teachers.

(C) The State Department of Education shall issue a request for proposals to vendors to develop, produce, and make available workbooks meeting the specifications described in subparagraph (B) at a cost no greater than twenty dollars ($20) per workbook. Based on this request for proposal process, the department shall recommend a vendor or vendors to the State Board of Education for approval.

(19) The sum of one million eight hundred thousand dollars ($1,800,000) to the Superintendent of Public Instruction for implementation of the Mathematics Teacher Partnership Pilot Program.

(A) The Superintendent of Public Instruction shall select, on a competitive basis, a county office of education or consortia of county offices of education to provide one-time funding for the establishment of the Mathematics Teacher Pilot Program. The funding shall be allocated no later than August 1, 2006, or 30 days following enactment of the Budget Act of 2006, whichever date is later, and shall be available for expenditure to the successful bidder for the 2006–07 and 2007–08 fiscal years.

(B) The successful bidder shall use the funds provided to implement a regional Math Teacher Pilot Project in at least three counties to accomplish the following objectives:

(i) Increase the number of qualified secondary level math teachers and increase the likelihood that such teachers will remain in the teaching profession. These activities shall build upon current state efforts to increase the number of new secondary level math teachers.

(ii) Improve and raise the capacity of secondary-level teachers who teach mathematics.

(iii) Provide professional development to teachers aimed at improving their ability to convey rigorous content and motivate students toward careers in teaching mathematics.

(iv) Provide professional development for teachers in how to assist students who are struggling to meet proficiencies required to pass the mathematics portion of the California High School Exit Examination.

(C) (i) The county office of education receiving the funding shall monitor and report on the results of the pilot programs to identify models for replication in other service areas throughout the state.

(ii) The county office of education receiving the funding shall submit annual progress reports to the Legislature, the Department of Finance, the Superintendent of Public Instruction, the Office of the Secretary of Education, the State Board of Education, the Governor, and the Legislative Analyst's Office. These reports shall include, but not be limited to, information on outcomes related to the number, quality and capacity of secondary level math teachers in pilot schools; statistics regarding unmet demand for secondary level math teachers in pilot schools; types of incentives and support provided to teachers; passage rates of students on the mathematics portion of the California High School Exit Examination; and lessons learned about effective or ineffective activities and strategies. These reports shall be submitted on or before August 1, 2007, and August 1, 2008.

(20) Fifty million dollars ($50,000,000) to the Superintendent of Public Instruction for teacher recruitment and retention for allocation to the governing board of a school district that has a school or schools that are ranked in deciles 1 to 3, inclusive, of the 2005 base Academic Performance Index, as defined in Section 52052 of the Education Code, for one or more such qualifying schools in accordance with the following:

(A) As a condition of receipt of funds, the district governing board shall adopt a plan for use of the funds within the qualifying schools. The plan shall be discussed and adopted at a regularly scheduled governing board meeting.

(B) Each applicant district shall receive fifty dollars ($50) per pupil based upon the number of pupils in qualifying schools within the district.

(C) The funds shall be used for the purposes of improving the educational culture and environment at those schools, which may include, but are not limited to, the following specific purposes:

(i) Assuring a safe, clean school environment for teaching and learning.

(ii) Providing support services for students, and teachers.

(iii) Activities, including differential compensation, focused on the recruitment and retention at those schools of teachers who meet the definition of a highly qualified teacher under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(iv) Activities, including differential compensation, focused on the recruitment and retention at those schools of highly skilled principals.

(v) Small group instruction.

(vi) Providing time for teachers and principals to collaborate regarding improving academic outcomes for students.

(D) To the extent that funding is insufficient to fund all eligible applicants, the amount provided shall be prorated to conform to available funds.

(21) Ninety-four million one hundred forty-four thousand dollars ($94,144,000) for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time block grants to community college districts for physical plant and instructional support, for the 2005–06 fiscal year subject to the following provisions:

(A) Forty-seven million seventy-two thousand dollars ($47,072,000) shall be available for scheduled maintenance and special repairs of facilities and forty-seven million seventy-two thousand dollars ($47,072,000) shall be available for the replacement of instructional equipment and library materials.

(B) Community college districts shall expend the allocations made pursuant to this paragraph for the purpose of one-time expenditures, including high priority instructional equipment and library material replacement; technology infrastructure; scheduled maintenance and special repairs; hazardous substances abatement, cleanup and repairs; and architectural barrier removal and seismic retrofit projects limited to $400,000.

(C) The Chancellor of the Community Colleges shall allocate the amount appropriated for the one-time block grants in subparagraph (A) to community college districts on an equal amount per actual full-time equivalent student attendance reported for the 2005–06 fiscal year, except that each community college district shall be allocated an amount not less than one hundred thousand dollars ($100,000), and the equal amount per unit of full-time attendance shall be computed accordingly.

(D) These funds shall supplement and not supplant existing expenditures and may not be counted as the district match for physical plant projects and instructional material purchases funded in Item 6870-101-0001 of Section 2.00 of the Budget Act of 2006.

(22) Seventy-seven million seven hundred thousand dollars ($77,700,000) for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time general purpose block grants to community college districts, for the 2005–06 fiscal year. The Chancellor of the Community Colleges shall allocate the amount appropriated for the one-time block grants in this paragraph to community college districts in an equal amount per actual full-time equivalent student attendance reported for the 2005–06 fiscal year, except that each community college district shall be allocated an amount not less than one hundred thousand dollars ($100,000), and the equal amount per unit of full-time attendance shall be computed accordingly. Community college districts may expend the allocations made pursuant to this section for the purpose of any appropriate one-time expenditure. However, these funds may not be counted as the required local contribution for physical plant projects or instructional material purchases funded in Item 6870-101-0001 of Section 2.00 of the Budget Act of 2006.

(23) Forty million dollars ($40,000,000) for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time grants to community college districts, for career technical education equipment, materials and minor facility remodeling. The Chancellor of the Community Colleges shall allocate the amount appropriated for the one-time grants in this paragraph to community college districts on an equal amount per actual full-time equivalent student attendance reported for the 2005–06 fiscal year, except that each community college district shall be allocated an amount not less than one hundred thousand dollars ($100,000), and the equal amount per unit of full-time attendance shall be computed accordingly. Community college districts shall expend the allocations made pursuant to this section for the purpose of one-time expenditures for career technical education equipment, materials, and facility reconfigurations or improvements necessary to remove old or install new equipment. Any equipment that has been replaced with funds provided in this subdivision shall be made available to high schools in the region served by the district to the extent it may benefit career technical education in the high schools.

(24) Nineteen million seven hundred ten thousand dollars ($19,710,000) for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time grants to community college districts, for purposes specified in legislation enacted during the 2005–06 Regular Session.

(25) Fifteen million dollars ($15,000,000) to the Controller for allocation to community college districts for the reimbursement of state-mandated local cost claims submitted by community college districts for the 1995–96 to 2005–06 fiscal years, inclusive. The Controller shall use the funds appropriated in this paragraph to pay for claims submitted by community college districts for the 1995–96 to 2005–06 fiscal years, inclusive. The Controller shall pay claims according to the following order of priority:

(A) First, the oldest claims no longer subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest.

(B) Second, claims still subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest. The Controller may adjust the amounts paid for these claims on the basis of the final audits. Any repayment resulting from an audit may be counted towards future claims submitted by the local educational agency.

(26) Five hundred thousand dollars ($500,000) from the General Fund for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time grants to community college districts, for the following purposes:

(A) The establishment or expansion of nursing student clinical placement registries in all regions of the state for the benefit of nursing students and programs serving community college students and students from the University of California and the California State University.

(B) To establish an online community college nursing faculty registry.

(C) It is the intent of the Legislature that the one-time projects funded pursuant to this paragraph will be self-sustaining through annual user fees from participating colleges and universities.

(27) One million four hundred forty-six thousand dollars ($1,446,000) from the General Fund for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time grants to community college districts for sites to complete connection to the California Research and Education Network. To the extent that there are insufficient moneys to fund all applications, the funding shall be allocated on a first-come first-serve basis. These funds shall only be given to districts with college sites that do not currently have the ability to connect to the California Research and Education Network.

(28) Five hundred thousand dollars ($500,000) for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time funding to the community colleges for research and statewide leadership activities related to the implementation of a community college system strategic plan adopted by the Board of Governors in January 2006. The funds shall be used for reimbursement

of expenditures incurred by community college representatives assisting in the shared governance implementation of the strategic plan. At least ninety percent of the appropriated funds shall be expended for short-term applied research necessary to guide the implementation of strategic initiatives identified in the plan, including removal of barriers for student access and success, innovative programs and outreach, improved assessment and placement, improved articulation with elementary and secondary schools and four-year institutions, teaching and learning effectiveness, innovative practices in workforce education and accountability research for the community colleges. No more than ten percent of the appropriated funds shall be available for reimbursement of release time and transportation expenses of community college representatives assisting in the shared governance advice and implementation of the strategic plan.

(29) Seven hundred thousand dollars ($700,000) for transfer by the Controller to Section B of the State School Fund for the purpose of providing one-time funding to the community colleges to develop and implement an Electronic Transcript Exchange.

(30) Two million five hundred thousand dollars ($2,500,000) for transfer by the Controller to Section B of the State School Fund to fund a pilot grant program designed to recruit and retain existing full-time nursing faculty. Funds shall be available for three years, through the 2008–09 fiscal year. The Board of Governors shall adopt criteria to allocate these funds to districts on a competitive basis to maximize their effectiveness. The chancellor shall submit the grant criteria to the Department of Finance and the Legislature for review not less than 30 days prior to releasing a request for proposals. On or before January 10, 2009, the chancellor shall submit to the Legislature and the Department of Finance a report listing the grant recipients, describing how the grant funds were used, and assessing the effectiveness of the grant funds in retaining and recruiting nursing faculty. It is the intent of the Legislature to use the information contained in the report to help decide whether to extend or expand the pilot program beyond the 2008–09 fiscal year.

(31) Five million dollars ($5,000,000) for transfer by the Controller to Section B of the State School Fund for one-time expenditure by the community colleges in support of faculty and staff professional development programs established by Article 5 Chapter 1 of Part 51 of the Education Code, beginning with Section 87150 of the Education Code. The chancellor shall allocate funds to each community college district that complies with the requirements of Section 87151 of the Education Code on an equal basis per full-time equivalent student.

(32) One hundred thousand dollars ($100,000) for transfer by the Controller to Section B of the State School Fund for allocation to the

Amador County Office of Education for distance education equipment for purposes of broadcasting community college courses in Amador County.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, and "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 2005–06 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2005–06 fiscal year.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide sufficient funding for public education programs in an expeditious manner prior to commencement of the 2006–07 school year, it is necessary for this act to take effect immediately.

CHAPTER 372

An act to amend Sections 10703 and 15101 of the Elections Code, relating to elections.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 10703 of the Elections Code is amended to read:

10703. (a) A special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of Assembly shall be conducted on a Tuesday at least 112 days, but not more than 126 days, following the issuance of an election proclamation by the Governor pursuant to Section 1773 of the Government Code, except that any special election may be conducted within 180 days following the proclamation in order that the election or the primary election may be consolidated with the next regularly scheduled statewide election or local election

occurring wholly or partially within the same territory in which the vacancy exists, provided that the voters eligible to vote in the local election comprise at least 50 percent of all the voters eligible to vote on the vacancy.

(b) Except as provided in Chapter 3 (commencing with Section 10730), a special election or a primary election may not be conducted on the day after a state holiday.

SEC. 2. Section 15101 of the Elections Code is amended to read:

15101. (a) Any jurisdiction in which absentee ballots are cast may begin to process absentee ballot return envelopes beginning 29 days before the election. Processing absentee ballot return envelopes may include verifying the voter's signature on the absentee ballot return envelope and updating voter history records.

(b) Any jurisdiction having the necessary computer capability may start to process absentee ballots on the seventh business day prior to the election. Processing absentee ballots includes opening absentee ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, but under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election. All other jurisdictions shall start to process absentee ballots at 5 p.m. on the day before the election.

(c) Results of any absentee ballot tabulation or count shall not be released prior to the close of the polls on the day of the election.

CHAPTER 373

An act to amend Section 6363.3 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 6363.3 of the Revenue and Taxation Code is amended to read:

6363.3. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, used pieces of clothing, household items, or other retail items sold by thrift stores operated by a nonprofit organization if the purpose of that thrift store is to obtain revenue for the funding of medical, hospice, or social services to chronically ill

individuals, and at least 75 percent of the net income derived from operations of the thrift store are actually expended for the purpose of providing medical, hospice, or social services to the chronically ill.

(b) For purposes of this section, "nonprofit organization" means an organization that provides medical, hospice, or social services to individuals with a chronic, life-threatening illness, as defined in subdivision (c) of Section 1568.01 of the Health and Safety Code, and is exempt from taxation under Section 23701d.

(c) This section shall cease to be operative on January 1, 2012, and as of that date is repealed.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

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

CHAPTER 374

An act to amend Section 5009 of the Water Code, relating to water.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 5009 of the Water Code is amended to read:

5009. (a) (1) Notwithstanding any other provision of this part, on and after January 1, 2005, each person who extracts groundwater in a board-designated local area, and who is otherwise subject to this part, shall file the required notice with the appropriate local agency designated pursuant to subdivision (e), instead of the board, in accordance with this part. The notice shall be on a form provided by the local agency and the content of the form shall be determined by the local agency in accordance with Section 5002. To the extent possible, the form shall consolidate the notice required under this section with other reports required by the local agency relating to the extraction of groundwater.

(2) A person who is subject to this section is subject to this part in the same manner and to the same extent as a person who files his or her notice with the board.

(b) Each notice filed with the local agency may include a filing fee determined by the local agency. If the local agency chooses to impose

a filing fee, the local agency shall calculate the amount of the fee to pay for administrative expenses incurred in connection with the processing, compiling, and retaining of the notices, but in no event shall the fee amount exceed that amount charged by the board pursuant to Section 5006.

(c) The local agency shall make available to governmental agencies the information collected pursuant to this section.

(d) For the purposes of this section:

(1) "Board-designated local area" means the area entirely within the jurisdiction of the local agency that the board has determined shall be subject to this section, and any area for which the local agency has formally agreed to accept the required notice.

(2) "Local agency" means the local public agency or court appointed watermaster that has been designated by the board in accordance with subdivision (e).

(e) The board shall designate an entity as a local agency for the purposes of this section, if the board determines that all of the following apply:

(1) The entity has volunteered to be designated.

(2) The entity has responsibilities relating to the extraction or use of groundwater.

(3) The entity has made satisfactory arrangements with the board to identify which groundwater extractors are within the designated local area and to avoid the submission of notices to both the board and one or more local agencies.

(4) The entity has made satisfactory arrangements with the board to maintain records filed under this part for extractions within the designated local area, and to make those records available to governmental agencies.

CHAPTER 375

An act to add Section 21706.5 to, to amend, repeal, and add Section 25253 of, and to add and repeal Section 21809 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 21706.5 is added to the Vehicle Code, to read:

21706.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Emergency incident zone" means an area on a freeway that is within 500 feet of, and in the direction of travel of, a stationary authorized emergency vehicle that has its emergency lights activated. Traffic in the opposite lanes of the freeway is not in an "emergency incident zone."

(2) "Operate a vehicle in an unsafe manner" means operating a motor vehicle in violation of an act made unlawful under this division, except a violation of Section 21809.

(b) A person shall not operate a vehicle in an unsafe manner within an emergency incident zone.

SEC. 2. Section 21809 is added to the Vehicle Code, to read:

21809. (a) A person driving a vehicle on a freeway approaching a stationary authorized emergency vehicle that is displaying emergency lights, or a stationary tow truck that is displaying flashing amber warning lights, shall approach with due caution and, before passing in a lane immediately adjacent to the authorized emergency vehicle or tow truck, absent any other direction by a peace officer, proceed to do one of the following:

(1) Make a lane change into an available lane not immediately adjacent to the authorized emergency vehicle or tow truck with due regard for safety and traffic conditions, if practicable and not prohibited by law.

(2) If the maneuver described in paragraph (1) would be unsafe or impracticable, slow to a reasonable and prudent speed that is safe for existing weather, road, and vehicular or pedestrian traffic conditions.

(b) A violation of subdivision (a) is an infraction, punishable by a fine of not more than fifty dollars ($50).

(c) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. Section 25253 of the Vehicle Code is amended to read:

25253. (a) Tow trucks used to tow disabled vehicles shall be equipped with flashing amber warning lamps. This subdivision does not apply to a tractor-trailer combination.

(b) Tow trucks may display flashing amber warning lamps while providing service to a disabled vehicle. A flashing amber warning lamp upon a tow truck may be displayed to the rear when the tow truck is towing a vehicle and moving at a speed slower than the normal flow of traffic.

(c) A tow truck shall not display flashing amber warning lamps on a freeway except when an unusual traffic hazard or extreme hazard exists.

(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. 4. Section 25253 is added to the Vehicle Code, to read:

25253. (a) Tow trucks used to tow disabled vehicles shall be equipped with flashing amber warning lamps. This subdivision does not apply to a tractor-trailer combination.

(b) Tow trucks may display flashing amber warning lamps while providing service to a disabled vehicle. A flashing amber warning lamp upon a tow truck may be displayed to the rear when the tow truck is towing a vehicle and moving at a speed slower than the normal flow of traffic.

(c) This section shall become operative on January 1, 2010.

SEC. 5. Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2009, the Department of the California Highway Patrol shall submit a report to the Legislature regarding the effect of the statutory changes made by the act that added this section on the safety of emergency responders and the motoring public.

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 376

An act to amend Sections 17310, 17314.1, 17331.2, and 17419 of the Financial Code, relating to escrow agents.

[Approved by Governor September 20, 2006. Filed with Secretary of State September 20, 2006.]

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

SECTION 1. Section 17310 of the Financial Code is amended to read:

17310. (a) It shall be the purpose of Fidelity Corporation to indemnify a member within the State of California against loss, subject to the limitations set forth in this chapter.

(b) Fidelity Corporation shall not be liable for any consequential damages sustained by a member, or by any other person, nor for any punitive damages whatsoever.

(c) The indemnification shall be provided by any of the following:

(1) A fund established by Fidelity Corporation pursuant to Section 17320.

(2) A fidelity bond or insurance policy to be approved by the commissioner.

(3) A combination of paragraphs (1) and (2) subject, however, to the maximum coverage specified in subdivision (b) of Section 17314.

(d) Fidelity Corporation shall provide a copy to all of its members and the commissioner of the fidelity bond or insurance policy as it is acquired or renewed, and Fidelity Corporation shall promptly provide a copy to any member or successor in interest, upon request.

SEC. 2. Section 17314.1 of the Financial Code is amended to read:

17314.1. (a) Notwithstanding any other provision of this article, Fidelity Corporation shall not be obligated to pay any claim made by a member unless (1) the claim would, except for the dollar amount thereof, be a valid claim under the bond as prescribed by Section 17203.1 and (2) the claim is made within the time prescribed by Section 17205. The protection to members provided by Fidelity Corporation and by the fidelity bond or insurance policy, if any, shall therefore be deemed to be coextensive except as to the dollar amounts as set forth in Section 17314. All defenses available to the insurer under the fidelity bond or insurance policy, if any, on any claim shall also be a defense to Fidelity Corporation, as either an indemnitor or surety, on any claim brought against the corporation.

(b) No person other than a member, or the member's successor in interest, who shall be the commissioner, a conservator, receiver, or trustee as designated by a court of competent jurisdiction, is entitled to assert a claim against Fidelity Corporation for losses covered under this article.

SEC. 3. Section 17331.2 of the Financial Code is amended to read:

17331.2. (a) Fidelity Corporation shall deny the application for a certificate or revoke the certificate of any person, upon any of the following grounds:

(1) The application contains a material misrepresentation of fact or fails to disclose a material fact so as to render the application false or misleading, or if any fact or condition exists which, if it had existed at the time of the original application for a certificate, reasonably would have warranted Fidelity Corporation to refuse originally to issue that certificate.

(2) That the person has been convicted of a crime or offense, whether a felony, an offense punishable as a felony, or a misdemeanor, that

involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, misappropriation of property, or any other crime reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division. A conviction within the meaning of this section is a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction also includes an order granting probation and suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 or 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. If, however, the conviction is more than 10 years old, or the conviction has been expunged, or the person has obtained a certificate of rehabilitation or relief under Section 1203.4 or 1203.4a of the Penal Code, or if the conviction was an infraction, then the person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty that the conviction is no longer reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division or that person's employment with a member.

(3) That the person has been held liable in a civil action by final judgment of any court if the judgment involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property or the person has been ordered to make restitution to a victim in any criminal case involving a crime or offense set forth in paragraph (2). The person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty that the judgment or restitution order is no longer reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division or that person's employment with a member.

(4) That the person has (A) committed or caused to be committed an act which caused any member to suffer a loss; (B) committed or caused to be committed or colluded with any other person committing any act which caused a loss, for which Fidelity Corporation or the insurer on any insurance policy or fidelity bond purchased by Fidelity Corporation, or both, to become liable to indemnify any member; or (C) committed or caused to be committed an act of dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, to the material damage of a member or for which the member has been held liable to any third party, by final judgment.

(5) That the person has been barred from employment by final order of the commissioner pursuant to Section 17423.

(6) That the person has been deemed not qualified to serve in any capacity as a director or officer or in any other position involving management duties with a financial institution, pursuant to Division 1.8 (commencing with Section 4990).

(7) That the person has been denied coverage or reinstatement by any insurer under any fidelity bond or crime policy, unless a decision of reinstatement of coverage has been made after that denial. A person who obtained a decision of reinstatement of coverage prior to the effective date of this section may have a Fidelity Corporation certificate notwithstanding paragraphs (2) and (3) of this subdivision, unless any other ground for denial or revocation applies to that person.

(b) Fidelity Corporation shall suspend the certificate of any person upon either of the following grounds:

(1) That the person has been censured or suspended from any position of employment by final order of the commissioner. The certificate suspension shall be for a term concurrent with the final order of the commissioner.

(2) That the person has been barred from any position of employment or management or control of any escrow agent, for a term of less than permanent, by final order of the commissioner. The certificate suspension shall be for a term concurrent with the final order of the commissioner.

(c) Fidelity Corporation may suspend the certificate of any person under either of the following grounds:

(1) That there is an action commenced by the commissioner to either suspend or bar that person, under Section 17423.

(2) That any member with whom the person was employed has given a proof of loss or a notice of an occurrence which may give rise to a claim for a loss of trust obligations either of which identifies the person as the person responsible for the loss or as a person acting in collusion with the person causing the loss.

(d) Upon denial of an application for, or upon suspension or revocation of the certificate of any person, Fidelity Corporation shall provide written notice to the member with whom that person is employed of the decision, pending any appeal therefrom which might be made. Thereafter, the member shall not allow that person to have access to money or negotiable instruments or securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent, but that person may otherwise continue in the performance and discharge of other duties of an employee. Fidelity Corporation shall notify the person in writing of the decision to deny, suspend, or revoke the certificate and of the person's right of appeal, together with the notice of appeal. The grounds and basis for the decision shall be stated in the notice thereof. All notices may be served either

personally or by mail, properly addressed to the address of record for the member and the person.

(e) Any person whose application for a certificate has been denied, or whose certificate has been suspended or revoked, may appeal the decision, as provided in Section 17331.3. While that appeal is pending, the person may not have access to money or negotiable instruments or securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent, but that person may otherwise continue in the performance and discharge of other duties of an employee pending final decision of that person's appeal. Failure to remove the person whose application has been denied, or whose certificate has been suspended or revoked, as a signer on the trust accounts may be subject to action by the commissioner as provided for in this division and shall be subject to penalties as set forth in Section 17331.1.

(f) Upon expiration of the time for an appeal, or upon conclusion of the appeal, the decision to deny an application for or to suspend or revoke the certificate of any person shall become final. Fidelity Corporation shall give written notice to the member and to the person of the final decision within 10 days. Thereafter, Fidelity Corporation shall disclose in writing to all members the identity of persons whose application has been denied or whose certificate has been revoked.

SEC. 4. Section 17419 of the Financial Code is amended to read:

17419. On and after January 1, 1992, any person seeking employment with an escrow agent shall complete an employment application on or before the first day of employment which includes, at least, the following information. A copy of the employment application shall be forwarded to the commissioner on or before the first day of the applicant's employment. Persons required to file a statement of identity and questionnaire pursuant to subdivision (f) of Section 17209 or Section 17212.1 are not required to file the employment application set forth in this section. Each person completing the employment application shall be given the notice required by the Information Practices Act (Section 1798.17 of the Civil Code), copies of which may be obtained from the commissioner. Nothing in this section shall limit an escrow agent from requesting additional information from an applicant.

STATEMENT OF IDENTITY
AND EMPLOYMENT APPLICATION

Name of Escrow Company:_____

Escrow Agent License Number:_____

1. Exact Full Name:

_____

(Please Print or Type) First Name Middle Name Last Name
(Do not use initials or nicknames)

Title of position to be filled in connection with the preparation of this employment application.

_____

2. Employment for the last 10 years:

From	To	Employer Name and Address	Occupation and Duties
	Present		

NOTE: Attach separate schedule if space is not adequate.

3. Residence addresses for the last 10 years:

From	To	Street	City	State
	Present			

NOTE: Attach separate schedule if space is not adequate.

4. Have you ever been named in any order, judgment or decree of any court or any governmental agency or administrator, temporarily or permanently restraining or enjoining you from engaging in or continuing any conduct, practice or employment?

( ) Yes ( ) No

If the answer is "Yes", please complete the following:

Date of Suit:_____
Location of Court (City, County, State):_____

Nature of Suit:_____
Note: Attach a certified copy of any order, judgment, or decree.

5. Have you ever been refused a license to engage in any business in this state or any other state, or has any such license ever been suspended or revoked?

( ) Yes ( ) No

If the answer is "Yes," please complete the following:

State: _____ Title of State Department:_____
Nature of License and Number:_____

Note: Attach a certified copy of any order, judgment, or decree.

6. Have you ever been convicted of or pleaded nolo contendere to a crime other than minor traffic citations that do not constitute a misdemeanor or felony offense?
NOTE: A conviction is a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction also includes an order granting probation and suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 or 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty, or dismissing the accusation, information, or indictment.

( ) Yes ( ) No

If the answer is "Yes" please complete the following:

Date of Case:_____
Location of Court (City, County, State):_____
Nature of Case:_____
Note: Attach a certified copy of any order, judgment, or decree.

7. Have you ever been a defendant in a civil court action other than divorce, condemnation or personal injury?

( ) Yes ( ) No

If the answer is "Yes" please complete the following:

Date of Suit:_____
Location of Court (City, County, State):_____
Nature of Suit:_____
Note: Attach a certified copy of any order, judgment, or decree.

8. Have you ever changed your name or ever been known by any name other than that herein listed?
(**Including a woman's maiden name**)

( ) Yes ( ) No

If so, explain. Change in name through marriage or court order should also be listed.

EXACT DATE OF EACH NAME CHANGE MUST BE LISTED.

_____

_____

9. Have you ever done business under a fictitious firm name either as an individual or in the partnership or corporate form?

( ) Yes ( ) No

If the answer is "Yes" set forth particulars:

_____

_____

10. Have you ever been a subject of a bankruptcy or a petition in bankruptcy?

( ) Yes ( ) No

If the answer is "Yes" give date, title of case, location of bankruptcy filing:

_____

_____

_____

11. Have you ever been refused a bond, or have you ever had a bond revoked or canceled?

( ) Yes ( ) No

If the answer is "Yes" give details:

_____

_____

12. In what capacity will you be employed? _____
(e.g., Clerk, Escrow Officer, Receptionist, etc.)

13. Do you expect to be a party to, or broker or salesman in connection with escrows conducted by the escrow company which is employing you?

( ) Yes ( ) No

If the answer is "Yes" please explain:

_____

_____

_____

NOTE: Attach separate schedule if space is not adequate.

VERIFICATION

I, the undersigned, state that I am the person named in the foregoing Statement of Identity and Employment Application; that I have read and signed said Statement of Identity and Employment Application and know the contents thereof, including all exhibits attached thereto, and that the statements made therein, including any exhibits attached thereto, are true.

Any person who knows or should have known of a violation of this section shall immediately report the violation in writing to the commissioner.

I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at_____
(City)

_____
(County) (State)

this_____day of_____, 20 __.

_____
(Signature of Declarant)

CHAPTER 377

An act to amend Sections 2159 and 2159.5 of, and to add Section 18108.1 to, the Elections Code, relating to voter registration.

[Approved by Governor September 21, 2006. Filed with Secretary of State September 21, 2006.]

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

SECTION 1. Section 2159 of the Elections Code is amended to read:

2159. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 2158, any person who, in exchange for money or other valuable consideration, assists another to register to vote by receiving the completed affidavit of registration from the elector, shall sign in his or

her handwriting and affix directly on the affidavit of registration his or her full name, telephone number, and address, and the name and telephone number of the person, company, or organization, if any, that agrees to pay money or other valuable consideration for the completed affidavit of registration. Failure to comply with this section shall not cause the invalidation of the registration of the voter.

(b) Any person who in exchange for money or other valuable consideration assists another to register to vote by receiving the completed affidavit of registration from the elector, and knowingly misrepresents himself or herself as having helped register another to vote on a registration form is guilty of a misdemeanor, pursuant to Section 18108.1.

SEC. 2. Section 2159.5 of the Elections Code is amended to read:

2159.5. Any person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to any person who assists another person to register to vote by receiving the completed affidavit of registration, shall do all of the following:

(a) Maintain a list of the names, addresses, and telephone numbers of all individuals that the person, company, or other organization has agreed to compensate for assisting others to register to vote, and shall provide to each person receiving that consideration a written statement of that person's personal responsibilities and liabilities under Sections 2138, 2139, 2150, 2158, 2159, 18100, 18101, 18103, 18106, 18108, 18108.1, and 18108.5. Receipt of the written statement shall be acknowledged, in writing, by the person receiving the consideration, and the acknowledgment shall be kept by the person, company, or organization that agrees to compensate that person. All records required by this subdivision shall be maintained for a minimum of three years, and shall be made available to the elections official, the Secretary of State, or an appropriate prosecuting agency, upon demand. As an alternate to maintaining the records required by this subdivision, the records may be filed with the county elections official, who shall retain those records for a minimum of three years. The county elections official may charge a fee, not to exceed actual costs, for storing records pursuant to this subdivision.

(b) Not render any payment or promised consideration unless the information specified in Section 2159 has been affixed personally on the affidavit in the handwriting of the person with whom the agreement for payment was made.

(c) At the time of submission of affidavits to elections officials, identify and separate those affidavits into groups that do and that do not comply with the requirements of Sections 2150 and 2159. A signed

acknowledgment shall be attached to each group of affidavits identifying a group as in compliance with Sections 2150 and 2159, and a group as not in compliance with either Section 2150 or 2159, or both.

(d) Failure to comply with this section shall not cause the invalidation of the registration of the voter.

SEC. 3. Section 18108.1 is added to the Elections Code, to read:

18108.1. (a) Except as provided in subdivision (c), any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, and knowingly misrepresents himself or herself as having helped register another to vote on a registration form, pursuant to Section 2159, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars ($1,000), by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

(b) Any person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, upon a third or subsequent conviction, on charges brought and separately tried, for misrepresenting himself or herself as having helped register another to vote on a registration form, pursuant to Section 2159, shall be punished by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail not to exceed one year, or by both the fine and imprisonment.

(c) This section shall not apply to any public agency or its employees that is designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), when an elector asks for assistance to register to vote during the course and scope of the agency's normal business.

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 378

An act to add Section 9054 to the Elections Code, relating to ballot measures.

[Approved by Governor September 21, 2006. Filed with
Secretary of State September 21, 2006.]

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

SECTION 1. Section 9054 is added to the Elections Code, to read:

9054. (a) Whenever a city, county, or city and county is required by Section 203 (42 U.S.C. Sec. 1973aa-1a) or Section 4(f)(4) (42 U.S.C. Sec. 1973b(f)(4)) of the federal Voting Rights Act of 1965 to provide a translation of ballot materials in a language other than English, the Secretary of State shall provide a translation of the ballot title prepared pursuant to Section 9050 and of the condensed statement of the ballot title prepared pursuant to Section 13247 in that language to the city, county, or city and county for each state measure submitted to the voters in a statewide election not later than 68 days prior to that election.

(b) When preparing a translation in a language other than English pursuant to subdivision (a), the Secretary of State shall consult with an advisory body consisting of language experts and nonpartisan organizations that advocate on behalf of, or provide services to, individuals that speak that language.

(c) All translations prepared pursuant to this section shall be made available for public examination in the same time and manner as the ballot pamphlet is made available for public examination in accordance with Section 88006 of the Government Code and Section 9092 of this code.

(d) The local elections official shall use that translation of the condensed statement of the ballot title on the sample ballot and the official ballot and may not select or contract with another person to provide translations of the same text.

CHAPTER 379

An act to amend Section 2185 of the Elections Code, relating to elections.

[Approved by Governor September 21, 2006. Filed with
Secretary of State September 21, 2006.]

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

SECTION 1. Section 2185 of the Elections Code is amended to read:

2185. Upon written demand of the chair or vice chair of a party state central committee or of the chair of a party county central committee, the county elections official shall furnish to each committee, without charge therefor, the index of registration for the primary and general elections, for any special election at which a partisan office is to be filled, or for any statewide special election. The index of registration shall be furnished to the committee demanding the index not less than 25 days prior to the day of the primary, general, or special election for which they are provided. Upon written demand, the county elections official shall also furnish to the committee the index of registration of voters who registered after the 54th day before the election, which shall be compiled and prepared by Assembly districts. The county elections official shall furnish either two printed copies or, if available, one copy in an electronic form of the indexes specified in this section.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 380

An act to amend Sections 8421, 8422, 8423, 8425, 8426, 8427, 8428, 8482.3, 8482.55, 8483, 8483.1, 8483.2, 8483.3, 8483.55, 8483.75, 8484, 8484.8, and 8484.9 of, to add Sections 8421.5 and 8482.4 to, and to repeal and amend Sections 8482.5 and 8483.7 of, the Education Code, relating to before and after school programs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 2006. Filed with Secretary of State September 21, 2006.]

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

SECTION 1. Section 8421 of the Education Code is amended to read:

8421. There is hereby established the 21st Century High School After School Safety and Enrichment for Teens program. The purpose of the program is to create incentives for establishing locally driven after school enrichment programs that partner schools and communities to provide academic support and safe, constructive alternatives for high school pupils in the hours after the regular schoolday, and that may assist pupils

in passing the high school exit examination required for high school graduation pursuant to Chapter 9 (commencing with Section 60850) of Part 33 for public school programs.

(a) High school after school programs shall serve pupils in grades 9 to 12, inclusive.

(b) A high school after school program established pursuant to this article shall consist of the following two elements:

(1) An academic assistance element that shall include, but need not be limited to, at least one of the following: preparation for the high school exit examination, tutoring, homework assistance, or college preparation, including information about the Cal Grant Program established pursuant to Article 3 (commencing with Section 69530) of Chapter 2 of Part 42. The assistance shall be aligned with the regular academic programs of the pupils.

(2) An enrichment element that may include, but need not be limited to, community service, career and technical education, job readiness, opportunities for mentoring and tutoring younger pupils, service learning, arts, computer and technology training, physical fitness, and recreation activities.

(c) A program shall operate for a minimum of 15 hours per week.

(d) An entity may operate programs on one or multiple sites. If an entity plans to operate programs at multiple sites, only one application is required.

(e) A program may operate on a schoolsite or on another site approved by the department during the grant application process. A program located off school grounds shall not be approved unless both of the following criteria are met:

(1) Safe transportation is available to transport participating pupils if necessary.

(2) The program is at least as available and accessible as similar programs conducted on schoolsites.

(f) Applicants for grants pursuant to this article shall ensure that all of the following requirements are fulfilled, if applicable:

(1) The application includes a description of the activities that will be available for pupils and lists the program hours.

(2) The application includes an estimate of the following:

(A) The number of pupils expected to attend the program on a regular basis.

(B) The average hours of attendance per pupil.

(C) The percentage of pupils expected to attend the program less than three days a week, three days a week, and more than three days a week, for each quarter or semester during the grant period.

(3) The application documents the commitments of each partner to operate a program at a location or locations that are safe and accessible to participating pupils.

(4) The application certifies that pupils were involved in the design of the program and describes the extent of that involvement.

(5) The application identifies federal, state, and local programs that will be combined or coordinated with the high school after school program for the most effective use of public resources, and describes a plan for implementing the high school after school program beyond federal grant funding.

(6) The application has been approved by the school district, or the charter school governing board, and the principal of each participating school for each schoolsite or other site.

(7) The application includes a certification that the applicant has complied with the requirement in subdivision (b) of Section 8422.

(8) The application includes a certification that each applicant or partner in the application agrees to do all of the following:

(A) Assume responsibility for the quality of the program.

(B) Follow all fiscal reporting and auditing standards required by the department.

(C) Provide the following information on participating pupils to the department:

(i) Schoolday attendance rates.

(ii) Pupil test scores from the Standardized Testing and Reporting Program established under Section 60640, reflecting achievement in the areas addressed by required program elements, if assessments have been established in that area.

(iii) Pupil achievement on the high school exit exam as applicable.

(iv) Program attendance.

(D) Acknowledge that program evaluations will be based upon the criteria in Section 8427.

(9) Certify that the applicant has complied with all federal requirements in preparing and submitting the application.

(g) The department shall not establish minimum attendance requirements for individual pupils.

(h) It is the intent of the Legislature, that to the extent possible, the department require applicants to submit the information required by this section in a short and concise manner.

SEC. 2. Section 8421.5 is added to the Education Code, to read:

8421.5. (a) (1) The department shall provide notice to all schools eligible for grants under this article of the availability of those grants as well as the application process.

(2) The department shall make the application available through its Internet Web site. The department shall periodically review the applications on a competitive basis for funding on dates determined by the department.

(b) The department shall review all applications for their inclusion of the requirements of subdivision (f) of Section 8421 and Section 8423.

(c) (1) The department shall review those recommendations made by the Advisory Committee on Before and After School Programs pursuant to subparagraph (A) of paragraph (4) of subdivision (h) of Section 8484.9 and present them to the state board on or before May 30, 2007.

(2) The state board shall adopt requirements for program evaluation and review on or before August 1, 2007.

SEC. 3. Section 8422 of the Education Code is amended to read:

8422. (a) Priority for funding pursuant to this article shall be given to programs that:

(1) Serve pupils attending a school whose most recent score on the Academic Performance Index ranks the school in the lowest 3 deciles.

(2) Previously received funding pursuant to Section 8421, for expansion of existing grants up to the per site maximum established under paragraph (1) of subdivision (a) of Section 8426, or to replace expiring grants that have satisfactorily met their projected attendance goals and demonstrated other positive outcomes regarding, but not limited to, performance on the high school exit examination, graduation rates, schoolday attendance, and positive behavioral changes.

(b) A program established pursuant to this article shall be planned through a collaborative process that includes parents, pupils, representatives of participating schools, governmental agencies, including city and county parks and recreation departments, community organizations, law enforcement, and, if appropriate, the private sector.

(c) A program established pursuant to this article is not required to charge family fees or to conduct individual eligibility determination based on need or income.

(d) A program established pursuant to this article shall have the option of operating under either of the following modes:

(1) After school only.

(2) After school and during any combination of before school, weekends, summer, intersession, and vacation.

SEC. 4. Section 8423 of the Education Code is amended to read:

8423. (a) The department shall select grantees to participate in the 21st Century High School After School Safety and Enrichment for Teens program from among applicants that apply on forms and in a manner prescribed by the department. To the extent possible, the selection of

applicants by the department shall result in an equitable distribution of grant awards to applicants in northern, southern, and central California, and in urban, suburban, and rural areas of the state.

(b) The department shall consider the following criteria in awarding grants:

(1) Strength of the educational element and alignment with state academic standards, preparation for the high school exit examination, and other academic interventions.

(2) Strength of the enrichment element.

(3) Evidence of community collaboration, including demonstrated support of the principal and staff from participating schools.

(4) A description of the manner in which programs will provide a safe physical and emotional environment and opportunities for relationship building, and promote active pupil engagement.

(5) A description of the manner in which the program design will be periodically reexamined in order to maintain strong pupil interest.

(6) A description of plans to attract pupils, particularly pupils considered at risk or in need of academic support, on a regular basis.

(c) The application shall certify all of the following:

(1) Completion of an assessment of pupils' preferences for program activities.

(2) Access to, and availability of, computers and technology.

(3) Inclusion of a nutritional snack and a physical activity element.

(4) That the program will meet all of the evaluation requirements.

(5) Fiscal accountability.

SEC. 5. Section 8425 of the Education Code is amended to read:

8425. The department shall implement this program only to the extent that federal funds are appropriated by the Legislature for purposes of the program. It is the intent of the Legislature that available federal funds be appropriated annually for the program established pursuant to this article, through the annual Budget Act.

(a) Of the funds appropriated for the program in the first year, two hundred fifty thousand dollars ($250,000) shall be allocated to the department to conduct a three-year evaluation of the programs established pursuant to this article and to make recommendations for future program expansion. The recommendations shall be provided to the state board and the Legislature on or before July 1, 2007.

(b) The department may spend up to 3 percent of the funds appropriated for purposes of this article to provide training by qualified and experienced personnel, to convene regular meetings among grantees, and to ensure quality program implementation and sustainability, including unscheduled site visits.

SEC. 6. Section 8426 of the Education Code is amended to read:

8426. (a) (1) A grantee that establishes a program pursuant to this chapter is eligible to receive a five-year grant of up to two hundred fifty thousand dollars ($250,000) per year per site in a program, subject to semiannual attendance reporting. Funding for a grant shall be allocated in annual increments for a period of not more than five years, contingent upon the availability and appropriation of federal funds by the Legislature for those grants.

(2) The department shall notify new grantees of their award status and dollar amount of the award, if any, in writing on or before May 15 of each year in which new grants are awarded. The grantee shall notify the department in writing of its acceptance of the grant.

(3) A first-year grant award shall be made no later than 60 days after enactment of the annual Budget Act and any authorizing legislation. A grant award for the second and subsequent fiscal years shall be made no later than 30 days after enactment of the annual Budget Act and any authorizing legislation.

(b) The department shall allocate 25 percent of the grant amount each year no later than 30 days after the grant award acceptance letter is received by the department.

(c) (1) Not more than 15 percent of each annual grant amount may be used by a grantee for administrative costs. For purposes of this article, administrative costs shall include indirect costs. Indirect costs shall not exceed the lesser of the following:

(A) The grantee's indirect cost rate, as approved by the department for the appropriate fiscal year.

(B) Five percent of the state program funding received pursuant to this article.

(2) In addition to the funding allowed for administrative costs pursuant to paragraph (1), up to 15 percent of the first year's annual grant award for each core grant recipient may be utilized for startup costs.

(3) Funding made available pursuant to this subdivision shall not result in an increase in the total funding of a grantee above the approved grant amount.

(d) Grantees are subject to semiannual attendance reporting during each year of the grant.

(1) The department shall provide technical support for development of a program improvement plan for grantees under the following conditions:

(A) If actual pupil attendance falls below 75 percent of the proposed levels in any year of the grant.

(B) If the grantee fails, in any year of the grant, to demonstrate measurable outcomes pursuant to Section 8427.

(C) If the grantee fails in three consecutive years to demonstrate improved academic achievement among participating pupils as measured by data collected under paragraph (8) of subdivision (f) of Section 8421.

(2) If the actual pupil attendance falls below 75 percent of the proposed attendance level at the end of the second year of the grant, the department may reduce funding for the grantee.

(3) The department shall adjust the grant level of any school in the program that is under its proposed attendance level by more than 15 percent in each of two consecutive years.

(4) In any year, after the first grant-year period, that the actual attendance level of a school within the program falls below 75 percent of the proposed attendance level, the department shall perform a review of the program and may adjust the grant level as the department deems appropriate.

(e) Notwithstanding any other provision of this section or any other provision of law, the department may at any time terminate the grant of a school in a public school program that fails in three consecutive years to meet either of the following requirements:

(1) Demonstrate program outcomes pursuant to Section 8427.

(2) Attain 75 percent of its proposed attendance levels after having its program reviews and grant level adjusted by the department.

(f) The department shall create a process to allow a grantee to voluntarily lower its annual grant amount if one or more sites are unable to meet the proposed pupil attendance levels by the end of the second year of the grant.

(g) (1) The administrator of a program may supplement, but not supplant, existing funding for after school programs with grant funds awarded pursuant to this article.

(2) In addition to administrative costs, a program participant may expend up to the greater of 6 percent of its state funding or seven thousand five hundred dollars ($7,500) to collect outcome data for evaluation and for reports to the department.

(3) All state funding awarded to a program pursuant to this article that remains after subtracting the administrative costs, startup costs, and outcome data costs authorized by subdivisions (c) and (d) shall be allocated to the program site for direct services to pupils.

(h) When determining grant award amounts after each grant year, the department may consider whether a program is operating consistent with the terms of its application, including whether the number of pupils served on a regular basis is consistent with the number estimated, and may consider the strength of any justifications or future plans offered by the program to address inconsistencies with the terms of the application. If the department finds that a program is not operating

consistent with the terms of its application, the department may take appropriate action, including denying grant awards or reducing the level of grant funding.

SEC. 7. Section 8427 of the Education Code is amended to read:

8427. (a) A high school after school program established pursuant to this article shall submit to the department annual outcome-based data for evaluation, including research-based indicators and measurable pupil outcomes including, but not limited to, academic performance, school attendance, positive behavioral changes, and, to the extent possible, performance on the high school exit examination and graduation rates.

(1) To demonstrate program effectiveness, grantees shall submit all of the following:

(A) Participating pupil schoolday attendance on an annual basis.

(B) Program attendance on a semi-annual basis.

(2) To demonstrate program effectiveness based upon individual program focus, programs shall select one or more of the following measures to be used for at least three consecutive years and submitted annually:

(A) Positive behavioral changes, as reported by schoolday or after school teachers.

(B) Pupil performance on the high school exit examination and graduation rates.

(C) Pupil performance on the Standardized Testing and Reporting (STAR) Program test.

(D) Homework completion rates.

(E) Skill development consistent with the program elements, as reported by schoolday or after school teachers.

(F) The department may develop additional measures to demonstrate program effectiveness. Any additions shall be developed in consultation with the advisory committee pursuant to Section 8484.9.

(3) Programs shall submit information adopted through the process outlined in subdivision (b) of Section 8421.5.

(b) (1) If a program consistently fails to demonstrate measurable program outcomes for three consecutive years, the department may terminate the program pursuant to the process in subdivision (e) of Section 8426. The department shall consider multiple outcomes and not rely on one outcome in isolation.

(2) For purposes of this subdivision, "consistently fails to demonstrate measurable program outcomes" means failure to meet program effectiveness requirements pursuant to the criteria in paragraphs (1) and (2) of subdivision (a).

(3) Measurable program outcomes may be demonstrated by, but are not limited to, the following methods:

(A) Comparing pupils participating in the program to nonparticipating pupils at the same schoolsite.

(B) Pupils participating in the program demonstrate improvement on one or more indicators collected by the program pursuant to this section.

(c) The department shall identify or develop standardized procedures and tools to collect the indicators in paragraphs (1) and (2) of subdivision (a) in accordance with the process outlined in paragraph (4) of subdivision (h) of Section 8484.9.

SEC. 8. Section 8428 of the Education Code is amended to read:

8428. (a) The department shall order an independent statewide evaluation of the effectiveness of programs funded pursuant to this article to be prepared and submitted to the Legislature. The evaluation shall include a comparison of outcomes for participating pupils and similarly situated pupils who did not participate in a program.

(b) A report shall be submitted to the Governor and the Legislature on or before October 1, 2011, providing data that includes, but is not limited to, all of the following:

(1) Data collected pursuant to Section 8427.

(2) Data adopted through the process outlined in subdivision (c) of Section 8421.5 and subdivision (e) of Section 8484.

(3) Number and type of sites and grantees participating in the program.

(4) Pupil program attendance, as reported semiannually, and pupil schoolday attendance, as reported annually.

(5) Pupil program participation rates including, but not limited to, all of the following:

(A) The average hours of attendance per pupil.

(B) The percentage of pupils that attend the program less than three days a week, three days a week, and more than three days a week.

(C) The extent to which the program attracts pupils considered at risk or in need of academic support.

(6) Quality of the program, drawing on the research of the Academy of Sciences on critical features of programs that support healthy youth development.

SEC. 9. Section 8482.3 of the Education Code is amended to read:

8482.3. (a) The After School Education and Safety Program shall be established to serve pupils in kindergarten and grades 1 to 9, inclusive, at participating public elementary, middle, junior high, and charter schools.

(b) A program may operate a before school component of a program, an after school component, or both the before and after school components of a program, on one or multiple schoolsites. If a program operates at multiple schoolsites, only one application shall be required for its establishment.

(c) Each component of a program established pursuant to this article shall consist of the following two elements:

(1) An educational and literacy element in which tutoring or homework assistance is provided in one or more of the following areas: language arts, mathematics, history and social science, computer training, or science.

(2) An educational enrichment element, that may include, but need not be limited to, fine arts, career technical education, recreation, physical fitness, and prevention activities.

(3) Notwithstanding any other provision of this article, the majority of the time spent by a pupil who is in kindergarten or any of grades 1 to 9, inclusive, and who is participating in a career technical education element of a program established pursuant to this article shall be at a site that complies with Section 8484.6.

(d) Applicants shall agree that snacks made available through a program shall conform to the nutrition standards in Article 2.5 (commencing with Section 49430) of Chapter 9 of Part 27.

(e) Applicants for programs established pursuant to this article may include any of the following:

(1) A local educational agency, including, but not limited to, a charter school, the California School for the Deaf (northern California), the California School for the Deaf (southern California), and the California School for the Blind.

(2) A city, county, or nonprofit organization in partnership with, and with the approval of, a local educational agency or agencies.

(f) Applicants for grants pursuant to this article shall ensure that each of the following requirements is fulfilled, if applicable:

(1) The application documents the commitments of each partner to operate a program on that site or sites.

(2) The application has been approved by the school district, or the charter school governing board, and the principal of each participating school for each schoolsite or other site.

(3) Each partner in the application agrees to share responsibility for the quality of the program.

(4) The application designates the public agency or local educational agency partner to act as the fiscal agent. For purposes of this section, "public agency" means only a county board of supervisors or if the city is incorporated or has a charter, a city council.

(5) Applicants agree to follow all fiscal reporting and auditing standards required by the department.

(6) Applicants agree to incorporate into the program both of the elements required pursuant to subdivision (c).

(7) Applicants agree to provide information to the department for the purpose of program evaluation pursuant to Section 8483.55.

(8) Applicants shall certify that program evaluations will be based upon Section 8484 and upon any requirements recommended by the Advisory Committee on Before and After School Programs and adopted by the state board, in compliance with subdivision (g) of Section 8482.4.

(9) The application states the targeted number of pupils to be served by the program.

(10) Applicants agree to provide the following information on participating pupils to the department:

(A) Schoolday attendance rates.

(B) Pupil test scores from the Standardized Testing and Reporting Program established under Section 60640, reflecting achievement in the areas addressed by required program elements, if assessments have been established in that area.

(C) Program attendance.

(g) (1) Grantees shall review their after school program plans every three years including, but not limited to, all of the following:

(A) Program goals. A grantee may specify any new program goals that will apply to the following three years during the grant renewal process.

(B) Program content, including the elements identified in subdivision (c).

(C) Outcome measures selected from those identified in subdivision (a) of Section 8484 that the grantee will use for the next three years.

(D) Any other information requested by the department.

(E) If the program goals or outcome measures change as a result of this review, the grantee shall notify the department in a manner prescribed by the department.

(F) The grantee shall maintain documentation of the after school program plan for a minimum of five years.

(2) The department shall monitor this review as part of its onsite monitoring process.

SEC. 10. Section 8482.4 is added to the Education Code, to read:

8482.4. (a) The department shall review applications submitted under this article to determine whether the applicable requirements in subdivision (f) of Section 8482.3 have been fulfilled.

(b) The department shall use the per-pupil formulas established pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 8483.7 and the targeted number of pupils to be served, as established pursuant to paragraph (9) of subdivision (f) of Section 8482.3, to determine the appropriate grant amount.

(c) A grantee that establishes a program pursuant to this chapter is eligible to receive a three-year renewable grant subject to semi-annual reporting. Funding for a grant shall be allocated in annual increments for a period of not more than three years, contingent upon the availability of funds for those grants pursuant to Section 8483.5.

(d) The department shall notify new grantees of their award status and dollar amount of the award, if any, in writing on or before May 15 of each year in which new grants are awarded.

(e) A first-year grant award shall be made no later than 60 days after enactment of the annual Budget Act and any authorizing legislation. A grant award for the second and subsequent fiscal years shall be made no later than 30 days after enactment of the annual Budget Act and any authorizing legislation.

(f) The department shall allocate 65 percent of the first-year grant amount no later than 30 days after the grantee submits the grant award acceptance letter to the department. Of the remaining 35 percent of the grant, the department shall allocate 25 percent or more of the funds within the operational period of the program and may retain up to 10 percent of the total grant until all administrative requirements of the grant have been met. For the second and subsequent years of the grant, the department shall allocate 65 percent of the annual grant amount for that year no later than 30 days after the annual Budget Act becomes effective. Of the remaining 35 percent of the grant, the department shall allocate 25 percent or more of the funds within the operational period of the program and may retain up to 10 percent of the total grant until all administrative requirements of the grant have been met.

(g) The Advisory Committee on Before and After School Programs shall make recommendations on reporting requirements for program evaluation and review consistent with subdivision (b) of Section 8483.55 to the department on or before June 30, 2007. The department shall review the committee's recommendations and present them, along with the department's recommendations, to the state board on or before September 30, 2007. The state board shall adopt requirements for program evaluation and review on or before November 30, 2007.

(h) (1) The department shall provide notice to all schools eligible for grants pursuant to this article regarding the availability of those grants and the application process.

(2) The department shall make the application available through its Internet Web site. The department shall determine the dates by which applications will be periodically considered for funding.

SEC. 11. Section 8482.5 of the Education Code, as amended by Section 2.6 of Chapter 320 of the Statutes of 1998, is repealed.

SEC. 12. Section 8482.5 of the Education Code, as amended by Section 2.5 of Chapter 320 of the Statutes of 1998, is repealed.

SEC. 13. Section 8482.5 of the Education Code, as amended November 5, 2002, by Section 7 of Proposition 49, is amended to read:

8482.5. (a) Priority for funding programs established pursuant to this article shall be given to schools where a minimum of 50 percent of the pupils in elementary schools and 50 percent of the pupils in middle and junior high schools are eligible for free or reduced cost meals through the school lunch program of the United States Department of Agriculture.

(b) Every program established pursuant to this article shall be planned through a collaborative process that includes parents, youth, and representatives of participating public schools, governmental agencies, such as city and county parks and recreation departments, local law enforcement, community organizations, and the private sector.

SEC. 14. Section 8482.55 of the Education Code is amended to read:

8482.55. (a) To accomplish the purposes of the After School Education and Safety Program, commencing with the fiscal year beginning July 1, 2004, and for each fiscal year thereafter, all grants made pursuant to this article shall be awarded as set forth in this section.

(b) (1) Grants made to public schools pursuant to this article for the 2005–06 fiscal year shall continue to be funded in each subsequent fiscal year at the 2005–06 fiscal year level, after the adjustments provided in paragraphs (1) and (2) of subdivision (a) of Section 8483.7 have been made, before any other grants are funded under this article, provided those schools continue to make application for the grants and are otherwise qualified pursuant to this article. Receipt of a grant at the 2005–06 fiscal year level made pursuant to this subdivision shall not affect a school's eligibility for additional grant funding as permitted in subdivisions (c) and (d) up to the maximum grants permitted in Sections 8483.7 and 8483.75.

(2) (A) An elementary or middle school program grantee funded pursuant to Section 8484.8 shall apply to receive a new grant under this article in the 2006–07 fiscal year. These programs shall receive priority for funding before any new grant is funded pursuant to this article, if the program is otherwise qualified pursuant to this article. Notwithstanding the maximum grant amounts permitted in Sections 8483.7 and 8483.75, the grantee shall receive the same amount of grant funding that it was awarded pursuant to Section 8484.8 in the fiscal year prior to the year for which the grantee requests funding pursuant to this article. The grantee shall apply to the department, and elect to receive funding under this article, on or before a date established by the department that is prior to the date by which the department awards new grants pursuant to this article.

(B) Grantees funded pursuant to Section 8484.8 in the 2005–06 fiscal year may elect to receive funding pursuant to this article after the 2006–07 fiscal year and shall be funded under the conditions outlined in subparagraph (A), if funds are available.

(c) Each public elementary, middle, and junior high school in the state shall be eligible to receive a three year renewable direct grant for after school programs to be operated during the regular school year, as provided in subparagraph (A) of paragraph (1) of subdivision (a) of Section 8483.7. In the case of schools serving a combination of elementary, middle, and junior high school pupils, the applicant may apply for a grant with funding based on the middle school grant maximum. The program shall comply with the elementary program and attendance requirements for pupils in the elementary grades. For purposes of this article, a school serving a combination of middle and junior high school and high school pupils shall be eligible to apply for a grant to serve pupils through grade 9. Except as provided in this subdivision, grants for after school programs made pursuant to this subdivision shall be subject to all other sections of this article. Grants for after school programs made pursuant to this subdivision shall not exceed one hundred twelve thousand five hundred dollars ($112,500) for each regular school year for each elementary school or one hundred fifty thousand dollars ($150,000) for each regular school year for each middle or junior high school. Except as provided in subdivision (f) of this section and subdivision (a) of Section 8482.5, each public elementary, middle, and junior high school in the state shall have equal priority of funding for grants for after school programs made pursuant to this subdivision. Receipt of a grant for an after school program made pursuant to this subdivision shall not affect a school's eligibility for additional grant funding as permitted in subdivision (d) up to the maximum grants permitted in Sections 8483.7 and 8483.75. Grants made pursuant to this subdivision shall be funded after grants made pursuant to subdivision (b) and before any grants made pursuant to subdivision (d). Grants made pursuant to this subdivision shall be referred to as "After School Education and Safety Universal Grants."

(d) All funds remaining from the appropriation provided in Section 8483.5 after award of grants pursuant to subdivisions (b) and (c) shall be distributed pursuant to Sections 8483.7 and 8483.75. Grants for programs made pursuant to this subdivision shall be subject to all other sections of this article. Priority for grants for programs made pursuant to this subdivision shall be established pursuant to subdivision (a) of Section 8482.5 and Section 8483.3.

(e) With the exception of schools previously funded under both this article and Section 8484.8, a school shall not receive grants in excess of the amounts provided in Sections 8483.7 and 8483.75.

(f) If in any fiscal year the appropriation made pursuant to Section 8483.5 is insufficient to fund all eligible schools who submit an eligible application for After School Education and Safety Universal Grants pursuant to subdivision (c), priority for After School Education and Safety Universal Grants shall be established pursuant to subdivision (a) of Sections 8482.5 and 8483.3.

SEC. 15. Section 8483 of the Education Code is amended to read:

8483. (a) (1) Every after school component of a program established pursuant to this article shall commence immediately upon the conclusion of the regular schoolday, and operate a minimum of 15 hours per week, and at least until 6 p.m. on every regular schoolday. Every after school component of the program shall establish a policy regarding reasonable early daily release of pupils from the program. For those programs or schoolsites operating in a community where the early release policy does not meet the unique needs of that community or school, or both, documented evidence may be submitted to the department for an exception and a request for approval of an alternative plan.

(2) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils participate and that pupils in middle school or junior high school attend a minimum of nine hours a week and three days a week to accomplish program goals.

(3) In order to develop an age-appropriate after school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a program established pursuant to this article have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of three hours per day for the regular school year pursuant to Section 8483.7.

SEC. 16. Section 8483.1 of the Education Code is amended to read:

8483.1. (a) (1) Every before school program component established pursuant to this article shall in no instance operate for less than one and one-half hours per regular schoolday. Every program shall establish a policy regarding reasonable late daily arrival of pupils to the program.

(2) (A) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils participate and that pupils in middle school or junior high school attend a minimum of six hours a week or three days a week to accomplish

program goals, except when arriving late in accordance with the late arrival policy described in paragraph (1) or as reasonably necessary.

(B) A pupil who attends less than one-half of the daily program hours shall not be counted for the purposes of attendance.

(3) In order to develop an age-appropriate before school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a before school program established pursuant to this article shall have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of two hours per day for the regular school year pursuant to Section 8483.75.

(c) Every before school program component established pursuant to this article shall offer a breakfast meal as described by Section 49553 for all program participants.

SEC. 17. Section 8483.2 of the Education Code is amended to read:

8483.2. Notwithstanding any other provision of this article, any program electing to operate both a before and after school component for the same pupils during summer, intersession, or vacation periods must operate these programs a minimum of four and one-half hours per day.

SEC. 18. Section 8483.3 of the Education Code, as amended by Section 2 of Chapter 353 of the Statutes of 2005, is amended to read:

8483.3. (a) The department shall select applicants to participate in the program established pursuant to this article from among applicants that apply on forms and in a manner prescribed by the department. It is the intent of the Legislature that the manner prescribed by the department, to the extent possible, allow for short and concise applicant responses. To the extent possible, the selection of applicants by the department shall result in an equitable distribution of grant awards pursuant to Section 8483.7 to applicants in northern, southern, and central California, and in urban, suburban, and rural areas of California.

(b) The department shall consider the following in selecting schools to participate in the program established pursuant to this article:

(1) Percentage of pupils eligible for free and reduced lunch.

(2) Other indicators of need for the program, including, but not limited to, socioeconomic status of the neighborhoods in which participating pupils reside, the percentage of English language learners at the school, and the availability of programs in the community in which participating pupils reside.

(c) The application shall certify all of the following:

(1) Inclusion of an educational element.

(2) Inclusion of an enrichment element. These opportunities may include arts, career technical education, recreation, technology, and other activities to support positive youth development.

(3) That the program will provide a safe physical and emotional environment and opportunities for relationship building, and promote active pupil engagement.

(4) Staff training and development will be provided.

(5) Integration with the regular schoolday and other extended learning opportunities.

(6) Community collaboration, including, but not limited to, demonstrated support of the schoolsite principal and staff.

(7) Opportunities for physical activity.

(8) Inclusion of a nutritional snack.

(9) Fiscal accountability.

(10) Availability of required local matching funds.

(11) That the program will meet all of the evaluation requirements.

(d) Subdivision (b) does not apply to an applicant school that meets the priority criteria described in subdivision (a) of Section 8482.5.

SEC. 19. Section 8483.55 of the Education Code is amended to read:

8483.55. (a) From the funds appropriated pursuant to subdivision (b) of Section 8483.5, the department may spend 1.5 percent to cover evaluation costs and to provide training and support to ensure quality program implementation, development, and sustainability and may pay its costs of awarding and monitoring grants.

(b) Beginning with the 2006–07 fiscal year, 1.5 percent of the funds appropriated pursuant to this article shall be available to the department for purposes of providing technical assistance, evaluation, and training services, and for providing local assistance funds to support program improvement and technical assistance.

(1) The department shall provide directly, or contract for, technical assistance for new programs and any program that is not meeting attendance or performance goals, or both, and requests that assistance. The department shall allocate an appropriate level of technical assistance funds to the regional system of support to support program startup within 45 days after grant awards to programs.

(2) (A) Training and support shall include, but is not limited to, the development and distribution of voluntary guidelines for physical activity programs established pursuant to paragraph (2) of subdivision (c) of Section 8482.3, that expand the learning opportunities of the schoolday.

(B) The department shall distribute these voluntary guidelines for physical activity programs on or before July 1, 2009.

(c) The department shall contract for an independent statewide evaluation of the effectiveness of programs funded pursuant to this article

to be prepared and submitted to the Legislature. The evaluation shall include a comparison of outcomes for participating pupils and similarly situated pupils who did not participate in the program. A report shall be submitted to the Governor and the Legislature on or before October 1, 2011, providing data that includes, but is not limited to, all of the following:

(1) Data collected pursuant to Section 8484.

(2) Data adopted through the process outlined in subdivision (b) of Section 8421.5 and subdivision (g) of Section 8482.4.

(3) Number and type of sites and grantees participating in the program.

(4) Pupil program attendance, as reported semiannually, and pupil schoolday attendance, as reported annually.

(5) Pupil program participation rates.

(6) Quality of program drawing on the research of the Academy of Sciences on critical features of programs that support healthy youth development.

(7) The participation rates of local educational agencies.

(8) Local partnerships.

(9) The academic performance of participating pupils in English language arts and mathematics, as measured by the results of the Standardized Testing and Reporting (STAR) Program established pursuant to Section 60640.

(d) A final report shall be submitted to the Governor and the Legislature on or before December 1, 2011. The final report shall include, but not be limited to, all of the following:

(1) Updated data on the measures specified in subdivision (b), including, but not limited to, changes in those measures.

(2) The prevalence and frequency of activities included in funded programs.

SEC. 20. Section 8483.7 of the Education Code, as added by Section 2 of Chapter 318 of the Statutes of 1998, is repealed.

SEC. 21. Section 8483.7 of the Education Code, as added by Section 2 of Chapter 319 of the Statutes of 1998, is repealed.

SEC. 22. Section 8483.7 of the Education Code, as amended by Section 4 of Chapter 553 of the Statutes of 2005, is amended to read:

8483.7. (a) (1) (A) Each school that establishes a program pursuant to this article is eligible to receive a three-year direct grant, that shall be awarded in three one-year increments and is subject to semiannual attendance reporting and requirements as described in Section 8482.3 once every three years.

(i) The department shall provide technical support for development of a program improvement plan for grantees under the following conditions:

(I) If actual pupil attendance falls below 75 percent of the target attendance level in any year of the grant.

(II) If the grantee fails, in any year of the grant, to demonstrate measurable outcomes pursuant to Section 8484.

(ii) The department shall adjust the grant level of any school within the program that is under its targeted attendance level by more than 15 percent in each of two consecutive years.

(iii) In any year after the initial grant year, if the actual attendance level of a school within the program falls below 75 percent of the target attendance level, the department shall perform a review of the program and adjust the grant level as the department deems appropriate.

(iv) The department shall create a process to allow a grantee to voluntarily lower its annual grant amount if one or more sites are unable to meet the proposed pupil attendance levels by the end of the second year of the grant.

(v) A grantee who has had its grant amount reduced may subsequently request an increase in funding up to the maximum grant amounts provided under this subdivision.

(vi) The department may terminate the grant of any site or program that does not comply with fiscal reporting, attendance reporting, or outcomes reporting requirements established by the department and pursuant to Section 8484. The department may withhold the grant allocation for a program or site if the prior grant year's fiscal or attendance reporting remain outstanding, until the reports have been filed with the department.

(vii) Notwithstanding any other provision of this subdivision or any other provision of law, after the technical assistance required under clause (i) has been provided, the department may at any time terminate the grant of any school in a program that fails for three consecutive years to meet either of the following requirements:

(I) Demonstrate measurable program outcomes pursuant to Section 8484.

(II) Attain 75 percent of its proposed attendance level after having had its program reviewed and grant level adjusted by the department.

(B) Direct grants may be awarded to applicants that have demonstrated readiness to begin operation of a program or to expand existing programs.

(C) The maximum total direct grant amount awarded annually pursuant to this paragraph shall be one hundred twelve thousand five hundred dollars ($112,500) for each regular school year for each elementary school and one hundred fifty thousand dollars ($150,000) for each regular school year for each middle or junior high school. The superintendent shall determine the total annual direct grant amount for which a site is eligible based on a formula of seven dollars and fifty cents

($7.50) per pupil per day of pupil attendance that the program plans to serve, with a maximum total grant of thirty-seven dollars and fifty cents ($37.50) per projected pupil per week, and a formula of seven dollars and fifty cents ($7.50) per projected pupil per day of staff development, with a maximum of three staff development days per year. A program may provide the three days of staff development during regular program hours using funds from the total grant award.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply one hundred thirteen dollars ($113) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply one hundred thirteen dollars ($113) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) The maximum total grant amounts set forth in subparagraph (C) of paragraph (1) may be increased from any funds made available for this purpose in the annual Budget Act for participating schools that have pupils on waiting lists for the program. Grants may be increased by the lesser of an amount that is either 25 percent of the current maximum total grant amount or equal to the proportion of pupils unserved by the program as measured by documented waiting lists as of January 1 of the previous grant year, compared to the actual after school enrollment on the same date. The amount of the required cash or in-kind matching funds shall be increased accordingly. First priority for an increased maximum grant pursuant to this paragraph shall be given to schools that qualify for funding pursuant to subdivision (b) of Section 8482.55. Second priority shall be given to schools that receive funding priority pursuant to subdivision (f) of Section 8482.55.

(4) A school that establishes a program pursuant to this section is eligible to receive a supplemental grant to operate the program in excess of 180 regular schooldays or during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Seven dollars and fifty cents ($7.50) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to subparagraph (C) of paragraph (1).

(5) Each program shall provide an amount of cash or in-kind local funds equal to not less than one-third of the total grant from the school district, governmental agencies, community organizations, or the private

sector. Facilities or space usage may fulfill not more than 25 percent of the required local contribution.

(6) (A) A grantee may allocate, with departmental approval, up to 125 percent of the maximum total grant amount for an individual school, so long as the maximum total grant amount for all school programs administered by the program grantee is not exceeded.

(B) A program grantee that transfers funds for purposes of administering a program pursuant to subparagraph (A) shall have an established waiting list for enrollment, and may transfer only from another school program that has met a minimum of 70 percent of its attendance goal.

(b) The administrator of a program established pursuant to this article may supplement, but not supplant, existing funding for after school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be used to make the required contribution of local funds for those after school programs.

(c) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

(d) For each year of the grant, the department shall award the total grant amount for that year not later than 30 days after the date the grantee accepts the grant.

(e) The department may adjust the amount of a direct grant, awarded to a new applicant pursuant to this section, on the basis of the program start date, as determined by the department.

SEC. 23. Section 8483.75 of the Education Code is amended to read:

8483.75. (a) (1) (A) Each school that establishes a before school program component pursuant to Section 8483.1 is eligible to receive a three year renewable direct grant, that shall be awarded in three one-year increments and is subject to semiannual attendance reporting and renewal as required by the department. Before school programs established pursuant to this section shall be subject to the same reporting and accountability provisions described in subparagraph (A) of paragraph (1) of subdivision (a) of Section 8483.7.

(B) The maximum total grant amount awarded annually pursuant to this paragraph shall be thirty-seven thousand five hundred dollars ($37,500) for each regular school year for each elementary school and forty-nine thousand dollars ($49,000) for each regular school year for each middle or junior high school.

(C) The Superintendent shall determine the total annual direct grant amount for which a site is eligible based on a formula of five dollars

($5) per pupil per day that the program plans to serve, with a maximum total grant of twenty-five dollars ($25) per projected pupil per week.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply seventy-five dollars ($75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply seventy-five dollars ($75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) A school that establishes a program pursuant to this article is eligible to receive a supplemental grant to operate the program in excess of 180 schooldays during any combination of summer, intersession, or vacation periods for a maximum of 30 percent of the total grant amount awarded to the school per school year under this subdivision.

(4) Each program shall provide an amount of cash or in-kind local funds equal to not less than one-third of the total grant from the school district, governmental agencies, community organizations, or the private sector. Facilities or space usage may fulfill not more than 25 percent of the required local contribution.

(5) (A) The department may award up to 125 percent of the maximum total grant amount for an individual school, so long as the maximum total grant amount for all school programs administered by the program grantee is not exceeded.

(B) A program grantee that is awarded funds pursuant to subparagraph (A) shall have an established waiting list for enrollment, and may receive funds only from another school program that has met a minimum of 70 percent of its attendance goal.

(b) The administrator of a program established pursuant to this article may supplement, but not supplant, existing funding for before school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be used to make the required contribution of local funds for those before school programs.

(c) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

(d) For each year of the grant, the department shall award the total grant amount for that year not later than 30 days after the date the grantee accepts the grant.

SEC. 24. Section 8484 of the Education Code is amended to read:

8484. (a) As required by the department, programs established pursuant to this article shall submit annual outcome based data for evaluation, including research-based indicators and measurable student outcomes for academic performance, attendance, and positive behavioral changes. The department may consider these outcomes when determining eligibility for grant renewal.

(1) To demonstrate program effectiveness, grantees shall submit both of the following:

(A) Schoolday attendance on an annual basis.

(B) Program attendance.

(2) To demonstrate program effectiveness based upon individual program focus, programs shall submit one or more of the following measures annually:

(A) Positive behavioral changes, as reported by schoolday or after school teachers.

(B) Pupil Standardized Testing and Reporting (STAR) Program test scores.

(C) Homework completion rates as reported by schoolday or after school teachers.

(D) Skill development as reported by schoolday or after school teachers.

(E) The department may develop additional measures for this paragraph. Any additions shall be developed in consultation with the evaluation committee of the advisory committee.

(3) Programs shall submit information adopted through the process outlined in subdivision (c).

(b) (1) If a program consistently fails to demonstrate measurable program outcomes for three consecutive years, the department may terminate the program as described in subdivision (a) of Section 8483.7. The department shall consider multiple outcomes and not rely on one outcome in isolation.

(2) For the purposes of this section, "consistently fails to demonstrate measurable program outcomes" means failure to meet program effectiveness requirements pursuant to the criteria in paragraphs (1) and (2) of subdivision (a).

(3) Measurable program outcomes may be demonstrated by, but are not limited to, the following methods:

(A) Comparing pupils participating in the program to nonparticipating pupils at the same schoolsite.

(B) Pupils participating in the program demonstrate improvement on one or more indicators collected by the program pursuant to this paragraph.

(4) For the purposes of subparagraph (B) of paragraph (2) of subdivision (a), program effectiveness may be demonstrated using performance levels from the STAR Program by any of the following:

(A) The grantee documents the percentage of pupils performing at the far below basic level declined.

(B) The grantee documents the percentage of pupils performing above the far below basic and below basic levels increased.

(C) The grantee documents the percentage of pupils who performed at or above the basic level increased.

(D) The grantee documents pupils participating in the program performed better in a year-to-year comparison of the results of the STAR Program than their peers who were not participating in the program.

(c) The department shall develop standardized procedures and tools to collect the indicators in paragraphs (1) and (2) of subdivision (a). The department shall consult with the evaluation committee of the Advisory Committee on Before and After School Programs pursuant to Section 8484.9.

SEC. 25. Section 8484.8 of the Education Code is amended to read:

8484.8. In accordance with Part B of Title IV of the federal No Child Left Behind Act of 2001 (P.L. 107-110), funds appropriated in Item 6110-197-0890 of Section 2.00 of the Budget Act of 2002 are available for expenditure as follows, with any subsequent allocations for these purposes to be determined in the annual Budget Act:

(a) Beginning with the 2006–07 fiscal year, 5 percent of the federal funds appropriated through this article shall be available to the department for purposes of providing technical assistance, evaluation, and training services, and for contracting for local technical assistance, for carrying out programs related to 21st Century Community Learning Centers programs.

(1) The department shall provide directly, or contract for, technical assistance for new programs and any program that is not meeting attendance or performance goals, or both, and requests that assistance.

(2) (A) Training and support shall include, but is not limited to, the development and distribution of voluntary guidelines for physical activity programs established pursuant to paragraph (2) of subdivision (c) of Section 8482.3, that expand the learning opportunities of the schoolday.

(B) The department shall distribute these voluntary guidelines for physical activity programs on or before July 1, 2009.

(b) (1) At least 10 percent of the total amount appropriated pursuant to this article, after funds have been allocated pursuant to subdivision (a), shall be available for direct grants for either of the following purposes:

(A) Grants to provide equitable access and participation in community learning center programs, in an amount not to exceed twenty-five thousand dollars ($25,000) per site, per year, according to needs determined by the local community.

(B) Grants to provide family literacy services, in an amount not to exceed twenty thousand dollars ($20,000) per site, per year, for schoolsites that identify such a need for families of 21st Century Community Learning Centers program pupils, and that demonstrate a fiscal hardship by certifying that existing resources, including, but not limited to, funding for Title III of the federal No Child Left Behind Act of 2001, Chapter 3 (commencing with Section 300) of Part 1, adult education, community college, and the federal Even Start Program are not available or are insufficient to serve these families. An assurance that the funds received pursuant to this subdivision are expended only for those services and supports for which they were granted shall be required.

(2) For the purposes of subparagraph (A) of paragraph (1), the department shall determine the requirements for eligibility for a grant, consistent with the following:

(A) Consistent with the local partnership approach inherent in Article 22.5 (commencing with Section 8482), grants awarded under this subdivision shall provide supplemental assistance to programs. It is not intended that a grant fund the full anticipated costs of the services provided by a community learning center program.

(B) In determining the need for a grant pursuant to this subdivision, the department shall base its determination on a needs assessment and a determination that existing resources are not available to meet these needs, including, but not limited to, a description of how the needs, strengths, and resources of the community have been assessed, currently available resources, and the justification for additional resources for that purpose.

(C) The department shall award grants for a specific purpose, as justified by the applicant.

(3) To be eligible to receive a grant under this subdivision, the designated public agency representative for the applicant shall certify that an annual fiscal audit will be conducted and that adequate, accurate records will be kept. In addition, each applicant shall provide the department with the assurance that funds received under this subdivision are expended only for those services and supports for which they are granted. The department shall require grant recipients to submit annual budget reports, and the department may withhold funds in subsequent years if direct grant funds are expended for purposes other than as awarded.

(4) The department shall require grant recipients to submit quarterly expenditure reports, and the department may withhold funds in subsequent years if access or literacy grant funds are expended for purposes other than as granted.

(c) At least 50 percent of the total amount appropriated pursuant to this article, after funds have been allocated pursuant to subdivision (a), shall be allocated on a priority basis for direct grants to community learning centers serving high school pupils funded pursuant to Section 8421.

(d) Grant awards under this section shall be restricted to those applications that propose primarily to serve pupils that attend schoolwide programs, as described in Title I of the federal No Child Left Behind Act of 2001. Competitive priority shall be given to applications that propose to serve children and youth in schools designated as being in need of improvement under subsection (b) of Section 6316 of Title 20 of the United States Code, and that are jointly submitted by school districts and community-based organizations.

(e) (1) At least 40 percent of the total amount appropriated pursuant to this article, after funds have been allocated pursuant to subdivision (a), shall be allocated to programs serving elementary and middle school pupils. The administrators of a program established pursuant to this article may operate during regular school days for a minimum of 15 hours per week and any combination of summer, intersession, or vacation periods for a minimum of three hours per day for the regular school year pursuant to Section 8483.7. Grantees administering comprehensive programs established pursuant to Section 8482.3 are also eligible for funding for summer, intersession, or vacation periods pursuant to this section.

(2) Core funding grants for programs serving middle and elementary school pupils in before and after school programs shall be allocated according to the same funding provisions, and subject to the same reporting and accountability provisions, as described in Sections 8483.7 and 8483.75.

(3) (A) Funding for a grant shall be allocated in annual increments for a period not to exceed five years, subject to annual reporting and recertification as required by the department. The department shall establish a payment system to accommodate upfront payments. The department shall notify new grantees, whose grant awards are contingent upon the appropriation of funds for those grants, in writing no later than May 15 of each year in which new grants are awarded. A first-year grant award shall be made no later than 60 days after enactment of the annual Budget Act and any authorizing legislation. A grant award for the second and subsequent fiscal years shall be made no later than 30 days after

enactment of the annual Budget Act and any authorizing legislation. The grantee shall notify the department in writing of its acceptance of the grant.

(B) For the first year of a grant, the department shall allocate 25 percent of the grant for that year no later than 30 days after the grantee accepts the grant. For the second and subsequent years of the grant, the department shall allocate 25 percent of the grant for that year no later than 30 days after the annual Budget Act becomes effective. The grantee shall not use more than 15 percent of an annual grant award for administrative costs.

(C) In addition to the funding allowed for administrative costs under subparagraph (B), up to 15 percent of the initial annual grant award for each core grant recipient may be utilized for startup costs.

(D) Under no circumstance shall funding made available pursuant to subparagraphs (B) and (C) result in an increase in the total funding of a grantee above the approved grant amount.

(4) A grantee shall identify the federal, state, and local programs that will be combined or coordinated with the proposed program for the most effective use of public resources, and shall prepare a plan for continuing the program beyond federal grant funding.

(5) A grantee shall submit semiannual attendance data and results to facilitate evaluation and compliance in accordance with provisions established by the department.

(6) A program receiving a grant under this subdivision is not assured of grant renewal from future state or federal funding at the conclusion of the grant period.

(f) A total annual grant award for core funding and direct grants for a site serving elementary or middle school pupils shall be fifty thousand dollars ($50,000) per year or more, consistent with federal requirements.

(g) Notwithstanding any other provision of law, and contingent upon the availability of funding, the department may adjust the core grant cap of any grantee based upon one or both of the following:

(1) Amendments made to this section by Chapter 555 of the Statutes of 2005.

(2) The demonstrated pupil attendance pattern of the grantee. The department may adjust grant awards pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 8483.7.

(h) Funds received but unexpended under this article may be carried forward to subsequent years consistent with federal requirements. In year one, the full grant may be retained.

(i) If funds remain after all of the priority allocations required pursuant to subdivisions (a), (b), (c), and (e) have been made, the department may use that money to fund additional qualified grant applications under

subdivision (c), in order to ensure that all federal funds received for these purposes are expended for these purposes. If funds remain after additional qualified grant applications are approved for funding pursuant to subdivision (c), the department may award the remaining funds for additional qualified grant applications pursuant to subdivisions (b) and (e).

(j) This article shall be operative only to the extent that federal funds are made available for the purposes of this article. It is the intent of the Legislature that this article not be considered a precedent for general fund augmentation of either the state administered, federally funded program of this article, or any other state funded before or after school program.

SEC. 26. Section 8484.9 of the Education Code is amended to read:

8484.9. (a) There is hereby established in the department an Advisory Committee on Before and After School Programs for the purpose of providing information and advice to the Superintendent, the Secretary for Education, and the State Board of Education regarding state and federal policy and funding issues affecting before and after school programs, based on regular and systematic input from providers.

(b) The membership of the advisory committee shall consist of all of the following persons, the majority of whom shall be operators of before or after school programs:

(1) Six persons appointed by the Governor as follows:

(A) Two persons who operate an urban before or after school program.

(B) Two persons who operate a rural before or after school program.

(C) One person from a private foundation or a postsecondary academic institution.

(D) One person representing a unified school district.

(2) Two persons appointed by the Superintendent as follows:

(A) One person who operates a high school after school program.

(B) One person from a private foundation or a postsecondary academic institution.

(3) Two persons appointed by the Senate Committee on Rules as follows:

(A) One person who operates a small elementary after school program.

(B) One person who operates a large middle school after school program.

(4) Two persons appointed by the Speaker of the Assembly as follows:

(A) One person who operates a large elementary school after school program.

(B) One person who operates a small middle school after school program.

(5) The Secretary for Education, or his or her designee.

(c) The advisory committee membership shall be representative of the diversity of before and after school programs, regarding geography, size, and public or nonpublic operation.

(d) The advisory committee members shall select one of its members to be the chair of the committee. It is the responsibility of the chair to act as the conduit between the advisory committee and the Superintendent, the state board, and appropriate staff.

(e) The advisory committee shall nominate, and the state board shall confirm, a staff member to serve as consultant to the advisory committee.

(f) The advisory committee shall meet as frequently as necessary but at least three times each year. The meetings of the committee may be conducted by teleconference.

(g) The members of the advisory committee shall serve without compensation, including for travel and per diem expenses.

(h) The advisory committee shall do all of the following:

(1) Provide information on the status of funding provided for before and after school programs in each fiscal year, including the number of applications received, the number of applications funded, and the amount and timing of committed funding.

(2) Provide recommendations on legislative and administrative action needed to ensure that funding for before and after school programs is allocated promptly to qualified providers of before and after school programs.

(3) Provide information on the quality of services and accountability measures.

(4) Provide information regarding challenges faced by before and after school programs that impede the provision of best possible services.

(5) Make recommendations to the department on reporting requirements for high school programs operating pursuant to Section 8421 and for program evaluation and review pursuant to Sections 8427 and 8484. The advisory committee shall provide initial recommendations to the department, and shall provide a copy to the Legislature, on or before March 1, 2007.

(6) Provide recommendations on the statewide evaluation design and outcome measures.

SEC. 27. The Legislature finds and declares that this act furthers the purposes of the After School Education and Safety Program Act of 2002.

SEC. 28. The costs incurred as a result of the amendments to the After School Education and Safety Program Act of 2002 made by this act shall be funded only from appropriations made pursuant to Section 8483.5 of the Education Code.

SEC. 29. The provisions of this act are severable. If any provision of this act or its application is held invalid by a court of law, that

invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 30. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the Budget Act of 2006–07 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 381

An act to add Section 7403.2 to the Business and Professions Code, relating to barbering and cosmetology, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 7403.2 is added to the Business and Professions Code, to read:

7403.2. (a) Notwithstanding any other provision of law, the executive officer or his or her designee, pursuant to an inspection of an establishment where health and safety laws and regulations related to manicure and pedicure equipment have been violated and a citation issued, may, without advance hearing, suspend temporarily a license issued under this chapter if, in the opinion of the executive officer or his or her designee, the action is necessary to protect the public's health and safety. The suspension shall be effective upon the executive officer or his or her designee providing written notice of the suspension to the licensee.

(b) The suspension of a license pursuant to this section shall be immediately stayed. The license shall be placed on probation for one year from the date of the suspension and be subject to the following terms and conditions:

(1) The licensee shall undertake board-approved remedial training related to the health and safety laws and regulations applicable to the establishment.

(2) The licensee shall be subject to reinspection by the board. The owner of the establishment shall pay all costs of inspection.

(3) The licensee shall pay all citation fines to the board. In cases of economic hardship, the licensee may enter into an agreement with the board to make periodic payments to pay the citation fine amount.

(c) The licensee whose license was suspended under this section may appeal in writing to the disciplinary review committee to determine if the suspension and the probationary terms and conditions should be modified or set aside. The appeal shall be submitted to the committee within 30 days of the effective date of the license suspension. An appeal not submitted within that timeframe shall be rejected by the committee. The appeal shall be conducted pursuant to the process described in Section 7410. The licensee may appeal the decision of the committee to the program administrator pursuant to the process described in Section 7411.

(d) If the licensee fails to comply with the probationary terms and conditions imposed under this section, the board may petition to revoke the licensee's probation. 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.

(e) Upon the licensee's successful completion of the probationary terms and conditions, the board shall reinstate the license.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide authority to the State Board of Barbering and Cosmetology at the earliest possible time to take immediate action to protect the public's health and safety, it is necessary that this act take effect immediately.

CHAPTER 382

An act to add Section 1522.06 to the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 1522.06 is added to the Health and Safety Code, to read:

1522.06. (a) Individuals who are volunteer candidates for mentoring children in foster care settings, as defined by the department, shall be subject to a criminal background investigation prior to having unsupervised contact with the children. The criminal background check shall be initiated and conducted pursuant to either Sections 1522 and 1522.1 or Section 1596.603, as applicable. Sections 1522 and 1522.1 may be utilized by a county social services agency in cooperation with, or as a component of, a licensed foster family agency.

(b) (1) The Department of Justice shall not charge a processing fee with respect to any individual to whom subdivision (a) applies for a state-level criminal offender record information search pursuant to Section 1522.

(2) The State Department of Social Services shall not charge a fee for the cost of a criminal background investigation under Section 1522 with respect to any individual to whom subdivision (a) applies.

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 383

An act to add Section 361.45 to the Welfare and Institutions Code, relating to dependent children, and making an appropriation therefor.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 361.45 is added to the Welfare and Institutions Code, to read:

361.45. (a) Notwithstanding any other provision of law, when the sudden unavailability of a foster caregiver requires a change in placement on an emergency basis for a child who is under the jurisdiction of the juvenile court pursuant to Section 300, if an able and willing relative, as defined in Section 319, or an able and willing nonrelative extended family member, as defined in Section 362.7, is available and requests

temporary placement of the child pending resolution of the emergency situation, the county welfare department shall initiate an assessment of the relative's or nonrelative extended family member's suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative or nonrelative extended family member to care for the child's needs, and a consideration of the results of a criminal records check conducted pursuant to Section 16504.5 and a check of allegations of prior child abuse or neglect concerning the relative or nonrelative extended family member and other adults in the home. Upon completion of this assessment, the child may be placed in the assessed home. For purposes of this paragraph, and except for the criminal records check conducted pursuant to Section 16504.5, the standards used to determine suitability shall be the same standards set forth in the regulations for the licensing of foster family homes.

(b) Immediately following the placement of a child in the home of a relative or a nonrelative extended family member, the county welfare department shall evaluate and approve or deny the home for purposes of AFDC-FC eligibility pursuant to Section 11402. The standards used to evaluate and grant or deny approval of the home of the relative and of the home of a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.

(c) If a relative or nonrelative extended family member, and other adults in the home, as indicated, meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigation's criminal history information for the relative or nonrelative extended family member, the county welfare department may approve the home and document that approval, if the relative or nonrelative extended family member, and each adult in the home, has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or nonrelative extended family member or other adult in the home has a criminal record, the approval may be terminated.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7

(commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 384

An act to add Chapter 5.5 (commencing with Section 16540) to Part 4 of Division 9 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

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

(a) The State of California undertakes the responsibility of providing a safe environment and developmental opportunities for over 85,000 children and youth who have been removed from their homes and placed in foster care because of instances of abuse and neglect.

(b) According to the California Performance Review report, although the state is responsible for ensuring that foster children and youth receive mandated services through several different departments, California's services to support its foster children's basic needs is not nearly sufficient to meet all of their needs. Even though the incidence of emotional, behavioral, and developmental problems among foster children and youth is three to six times greater than among nonfoster children, 25 percent of foster children and youth are not receiving timely medical care, one-half are not receiving needed mental health services and one-half are not receiving dental care. Similarly, 75 percent of foster youth are working below grade level, nearly one-half do not complete high school, and as few as 15 percent attend college. Statewide leadership and coordination between departments and agencies is essential to addressing these dismal outcomes and providing foster children and youth with critically needed support and services at the local level.

(c) Even if the state successfully decreases the number of foster children and youth entering the system, the state must ensure that current foster youth are self-sufficient at the time they emancipate from the system. The state is currently failing in this measure. Unemployment rates for emancipated youth are estimated at 50 percent, nearly one-third of foster children and youth will become homeless within one year of emancipating, fewer than 15 percent of foster youth enroll in college,

and approximately one-third of foster youth will be on public assistance shortly after emancipating.

(d) A recent report from the State Department of Social Services found the indirect costs of child mistreatment and foster care, such as juvenile delinquency, adult criminality, and lost productivity to society, total $95 billion annually. Fiscally sound, long-term investment in the state's children now should reap future savings for the state that can be reinvested to keep at-risk children and families self-sufficient and out of the child welfare system. Moreover, advocating for more flexible federal funding of our state's child welfare system will enable resources to be used to better support families in need and keep more families intact.

(e) In 2001, the Legislature passed the Child Welfare System Improvement and Accountability Act of 2001 (Chapter 678 of the Statutes of 2001), which was an important first step toward improving outcomes for California's foster children and youth. The legislation provided the legal framework for monitoring the county-run child welfare service programs through data collection and review of that data, the ultimate goal being to use the data to improve outcomes for the children and youth in foster care. The first county reviews and improvement plans were implemented in 2004.

(f) In addition to providing services to foster youth, the state's Child Welfare Redesign final report stressed the importance of providing preventative supports to those families who come in contact with child welfare services but whose children are not removed from the home. The goal of these supports is to provide families the tools to prevent a child's removal. This effort results in stronger families and decreased foster care placements. However, successful implementation of preventative services, like foster care, requires a coordinated oversight among many agencies, programs, and services.

(g) Despite this improved oversight and vision for improvement, the child welfare system, including the state, the counties, and the courts, suffers from the lack of a cohesive structure, state leadership, and communication between agencies serving foster children and youth. In 2003, the Little Hoover Commission found that clear leadership and oversight is lacking in California's foster care program and recommended the designation of a new program leader that has the authority to reform the foster care system. Most recently, the California Performance Review report decried this lack of cohesion and similarly concluded that state leadership is needed to repair a foster care system in crisis. The bipartisan national Pew Commission on Foster Care in a report issued last year recommended states establish broad-based commissions on children in foster care to demonstrate effective collaboration on behalf of children.

(h) Creating a comprehensive structure for statewide leadership to address the needs of children in the child welfare system will support and improve the important reform work enacted through the Child Welfare System Improvement and Accountability Act of 2001 by providing clarity about the roles and responsibilities of the state, improving quality assurance and accountability, and facilitating communication between the many stakeholders involved in the child welfare system. Most importantly, these changes will help ensure that California is able to meet the needs of the children and youth in its care.

(i) An independent and impartial ombudsperson that is readily available to the public is essential to protecting the well-being of children, youth, and families.

SEC. 2. This act shall be known and may be cited as the Child Welfare Leadership and Performance Accountability Act of 2006.

SEC. 3. Chapter 5.5 (commencing with Section 16540) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

Chapter 5.5. Child Welfare Leadership and Performance Accountability

16540. The California Child Welfare Council is hereby established, which shall serve as an advisory body responsible for improving the collaboration and processes of the multiple agencies and the courts that serve the children and youth in the child welfare and foster care systems. The council shall monitor and report the extent to which child welfare and foster care programs and the courts are responsive to the needs of children in their joint care. The council shall issue advisory reports whenever it deems appropriate, but in any event, no less frequently than annually, to the Governor, the Legislature, the Judicial Council and the public. A report of the Child Welfare Council shall, at a minimum, include recommendations for all of the following:

(a) Ensuring that all state child welfare, foster care and judicial funding and services for children, youth, and families is, to the greatest extent possible, coordinated to eliminate fragmentation and duplication of services provided to children or families who would benefit from integrated multiagency services.

(b) Increasing the quality, appropriateness, and effectiveness of program services and judicial processes delivered to children, youth, and families who would benefit from integrated multiagency services to achieve better outcomes for these children, youth, and families.

(c) Promoting consistent program and judicial excellence across counties to the greatest extent possible while recognizing the demographic, geographic, and financial differences among the counties.

(d) Increasing collaboration and coordination between county agencies, state agencies, federal agencies, and the courts.

(e) Ensuring that all state Title IV-E plans, program improvement plans, and court improvement plans demonstrate effective collaboration between public agencies and the courts.

(f) Assisting the Secretary of California Health and Human Services and the chief justice in formulating policies for the effective administration of the child welfare and foster care programs and judicial processes.

(g) Modifying program practices and court processes, rate structures, and other system changes needed to promote and support relative caregivers, family foster parents, therapeutic placements, and other placements for children who cannot remain in the family home.

(h) Developing data and information sharing agreements and protocols for the exchange of aggregate data across program and court systems that are providing services to children and families in the child welfare system. These data-sharing agreements shall allow child welfare agencies and the courts to access data concerning the health, mental health, special education, and educational status and progress of children served by county child welfare systems subject to state and federal confidentiality laws and regulations. They shall be developed in tandem with the establishment of judicial case management systems as well as additional or enhanced performance measures described in subdivision (b) of Section 16544.

(i) Developing systematic methods for obtaining policy recommendations from foster youth about the effectiveness and quality of program services and judicial processes, and ensuring that the interests of foster youth are adequately addressed in all policy development.

(j) Implementing legislative enactments in the child welfare and foster care programs and the courts, and reporting to the Legislature on the timeliness and consistency of the implementation.

(k) Monitoring the adequacy of resources necessary for the implementation of existing programs and court processes, and the prioritization of program and judicial responsibilities.

(*l*) Strengthening and increasing the independence and authority of the foster care ombudsperson.

(m) Coordinating available services for former foster youth and improving outreach efforts to those youth and their families.

16541. The council shall be comprised of the following members:

(a) The Secretary of California Health and Human Services, who shall serve as cochair.

(b) The Chief Justice of the California Supreme Court, or his or her designee, who shall serve as cochair.

(c) The Superintendent of Public Instruction, or his or her designee.

(d) The Chancellor of the California Community Colleges, or his or her designee.

(e) The executive director of the State Board of Education.

(f) The Director of Social Services.

(g) The Director of Health Services.

(h) The Director of Mental Health.

(i) The Director of Alcohol and Drug Programs.

(j) The Director of Developmental Services.

(k) The Director of the Youth Authority.

(*l*) The Administrative Director of the Courts.

(m) The State Foster Care Ombudsperson.

(n) Four foster youth or former foster youth.

(o) The chairpersons of the Assembly Human Services Committee and the Assembly Judiciary Committee, or two other Members of the Assembly as appointed by the Speaker of the Assembly.

(p) The chairpersons of the Senate Human Services Committee and the Senate Judiciary Committee, or two other members appointed by the President pro Tempore of the Senate.

(q) Leaders and representatives of county child welfare, foster care, health, education, probation, and mental health agencies and departments, child advocacy organizations; labor organizations, recognized professional associations that represent child welfare and foster care social workers, tribal representatives, and other groups and stakeholders that provide benefits, services, and advocacy to families and children in the child welfare and foster care systems, as recommended by representatives of these groups and as designated by the cochairs.

16541.5. The council shall meet no less frequently than each quarter of the state fiscal year and at the call of the cochairs at a time and location convenient to the public as it may deem appropriate. All meetings of the council shall be open to the public. Members shall serve without compensation, with the exception of foster youth members who shall be entitled to reimbursement for all actual and necessary expenses incurred in the performance of their duties.

16542. The cochairs may appoint committees composed of council members, experts in specialized fields, foster youth, program stakeholders, state and county child welfare and foster care staff, child advocacy organizations, members of the judiciary, foster care public health nurses, or any combination thereof, to advise the council on any functions of the council and the services provided through the child welfare and foster care programs and the courts. Members of these committees shall receive no compensation from the state for their services with the exception of foster youth members, who shall be entitled to

reimbursement for all actual and necessary expenses incurred in the performance of their duties. The committees may assemble information and make recommendations to the council, but shall not exercise any of the powers vested in the council. The council may seek input from groups and individuals as it deems appropriate including, but not limited to, advisory committees, the judiciary and child welfare and foster care program stakeholders.

16543. Consistent with state and federal law, the council shall have access to aggregate data and information concerning the child welfare and foster care systems held by any state or local department, agency, or court that serves children, youth, and families receiving child welfare and foster care services subject to state and federal confidentiality laws and regulations.

16543.5. It is the intent of the Legislature to inspect other state child welfare and foster care systems over the course of the 2007–08 Legislative Session, for the purpose of examining effective administrative structures of leadership. It is further the intent of the Legislature to conduct legislative hearings through the Assembly Select Committee on Foster Care, and other standing committees, and to review reports and recommendations of other commissions and bodies, including the California Blue Ribbon Commission on Foster Care and the Little Hoover Commission, to determine if a reconfigured administrative structure would provide statewide leadership and coordination between departments and agencies, which are essential to improving outcomes for current and former foster children and youth throughout the state.

16544. The secretary shall ensure that all of the federal Child and Family Services Review outcome measures and all of the California Child and Family Service Review System outcome indicators, along with any performance goals and federal outcome standards, are clearly posted on the State Department of Social Service's Internet Web site. Before any of the federal goals or any of the California Child and Family Service Review System outcome indicators are added, deleted, or amended, the secretary shall consult with the Child Welfare Council and ensure that there has been a public process for the submission of comments and recommendations.

16545. By April 1, 2008, the Judicial Council shall adopt, through rules of court, performance measures designed to complement and promote those measures specified in subdivision (a) of Section 16544 so that courts are able to measure their performance and track their own progress in improving safety, permanency, timeliness, and well-being of children and to inform decisions about the allocation of court resources. In adopting performance measures, the Judicial Council shall consult with the council, and the secretary. The performance measures

shall be based on data that is available from current or planned data collection processes and to the greatest extent possible, shall ensure uniformity of data reporting.

CHAPTER 385

An act to amend Sections 317 and 395 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) When it appears to the court that a parent or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(b) When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) If a child is not represented by counsel, the court shall appoint counsel for the child 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. A primary responsibility of any counsel appointed to represent a child pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child. Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's interests. The fact that the district attorney represents the child in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. The court may fix the compensation for the services of appointed counsel. The appointed

counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

(d) The counsel appointed by the court shall represent the parent, guardian, or child at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent or child unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship.

(e) The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition, counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child.

(f) Either the child or, if the child is represented by counsel, the counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to so consent, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergy-penitent privilege; and if the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Subject to rebuttal by clear and convincing

evidence, a child over 12 years of age shall be presumed to be of sufficient age and maturity to consent. Counsel shall be holder of these privileges if the child is found by the court not to be of sufficient age and maturity to so consent. For the sole purpose of fulfilling his or her obligation to provide legal representation of the child, counsel for a child shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a child care custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

(g) In a county of the third class, if counsel is to be provided to a child at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed for a parent or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

SEC. 1.5. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) (1) When it appears to the court that a parent or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(2) When it appears to the court that a parent or Indian custodian in an Indian child custody proceeding desires counsel but is presently unable to afford and cannot for that reason employ counsel, the provisions of subsection (b) of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section 23.13 of Title 25 of the Code of Federal Regulations are applicable.

(b) When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) If a child is not represented by counsel, the court shall appoint counsel for the child 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. A primary responsibility of any counsel appointed to represent a child pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child. Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's interests. The fact that the district attorney represents the child in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. The court may fix the compensation for the services of appointed counsel. The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

(d) The counsel appointed by the court shall represent the parent, guardian, or child at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent, guardian, or child unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent, guardian, or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship.

(e) The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make

or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child.

(f) Either the child or, if the child is represented by the counsel, the counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to so consent, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergy-penitent privilege; and if the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Subject to rebuttal by clear and convincing evidence, a child over 12 years of age shall be presumed to be of sufficient age and maturity to consent. Counsel shall be holder of these privileges if the child is found by the court not to be of sufficient age and maturity to so consent. For the sole purpose of fulfilling his or her obligation to provide legal representation of the child, counsel for a child shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a child care custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency

regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

(g) In a county of the third class, if counsel is to be provided to a child at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed for a parent or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

SEC. 2. Section 395 of the Welfare and Institutions Code is amended to read:

395. (a) (1) A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment. However, that order or judgment shall be stayed by the appeal, unless, pending the appeal, suitable provision is made for the maintenance, care, and custody of the person alleged or found to come within the provisions of Section 300, and unless the provision is approved by an order of the juvenile court. The appeal shall have precedence over all other cases in the court to which the appeal is taken.

(2) A judgment or subsequent order entered by a referee shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

(3) An appellant unable to afford counsel, shall be provided a free copy of the transcript in any appeal.

(4) The record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees. If the appellant is able to afford counsel, the county may seek reimbursement for the cost of the transcripts under subdivision (d) of Section 68511.3

of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

(b) (1) In any appellate proceeding in which the child is an appellant, the court of appeal shall appoint separate counsel for the child. If the child is not an appellant, the court of appeal shall appoint separate counsel for the child if the court of appeal determines, after considering the recommendation of the trial counsel or guardian ad litem appointed for the child pursuant to subdivision (e) of Section 317, Section 326.5, and California Rule of Court 1448, that appointment of counsel would benefit the child. In order to assist the court of appeal in making its determination under this subdivision, the trial counsel or guardian ad litem shall make a recommendation to the court of appeal that separate counsel be appointed in any case in which the trial counsel or guardian ad litem determines that, for the purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel, and shall set forth the reasons why the appointment is in the child's best interests. The court of appeal shall consider that recommendation when determining whether the child would benefit from the appointment of counsel. The Judicial Council shall implement this provision by adopting a rule of court on or before July 1, 2007, to set forth the procedures by which the trial counsel or guardian ad litem may participate in an appeal, as well as the factors to be considered by the trial counsel or guardian ad litem in making a recommendation to the court of appeal, including, but not limited to, the extent to which there exists a potential conflict between the interests of the child and the interests of any respondent.

(2) The Judicial Council shall report to the Legislature on or before July 1, 2008, information regarding the status of appellate representation of dependent children, the results of implementing this subdivision, any recommendations regarding the representation of dependent children in appellate proceedings made by the California Judicial Council's Blue Ribbon Commission on Children in Foster Care, any actions taken, including rules of court proposed or adopted, in response to those recommendations or taken in order to comply with the Child Abuse Prevention and Treatment Act, as well as any recommendations for legislative change that are deemed necessary to protect the best interests of dependent children in appellate proceedings or ensure compliance with the Child Abuse Prevention and Treatment Act.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 317 of the Welfare and Institutions Code proposed by this bill and SB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 317 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 678, in which case Section 317 of the Welfare and

Institutions Code, as amended by SB 678, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 386

An act to amend Section 9205 of the Family Code, relating to adoption.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 9205 of the Family Code is amended to read:

9205. (a) Notwithstanding any other law, the department or adoption agency that joined in the adoption petition shall release the names and addresses of siblings to one another if both of the siblings have attained 18 years of age and have filed the following with the department or agency:

(1) A current address.

(2) A written request for contact with any sibling whose existence is known to the person making the request.

(3) A written waiver of the person's rights with respect to the disclosure of the person's name and address to the sibling, if the person is an adoptee.

(b) Upon inquiry and proof that a person is the sibling of an adoptee who has filed a waiver pursuant to this section, the department or agency may advise the sibling that a waiver has been filed by the adoptee. The department or agency may charge a reasonable fee, not to exceed fifty dollars ($50), for providing the service required by this section.

(c) An adoptee may revoke a waiver filed pursuant to this section by giving written notice of revocation to the department or agency.

(d) The department shall adopt a form for the request authorized by this section. The form shall provide for an affidavit to be executed by a person seeking to employ the procedure provided by this section that, to the best of the person's knowledge, the person is an adoptee or sibling of an adoptee. The form also shall contain a notice of an adoptee's rights pursuant to subdivision (c) and a statement that information will be disclosed only if there is a currently valid waiver on file with the department or agency. The department may adopt regulations requiring

any additional means of identification from a person making a request pursuant to this section as it deems necessary.

(e) The department or agency may not solicit the execution of a waiver authorized by this section. However, the department shall announce the availability of the procedure authorized by this section, utilizing a means of communication appropriate to inform the public effectively.

(f) Notwithstanding the age requirement described in subdivision (a), an adoptee or sibling who is under 18 years of age may file a written waiver of confidentiality for the release of his or her name, address, and phone number pursuant to this section provided that, if an adoptee, the adoptive parent consents, and, if a sibling, the sibling's legal parent or guardian consents. If the sibling is under the jurisdiction of the dependency court and has no legal parent or guardian able or available to provide consent, the dependency court may provide that consent.

(g) Notwithstanding subdivisions (a) and (e), an adoptee or sibling who seeks contact with the other for whom no waiver is on file may petition the court to appoint a confidential intermediary. If the sibling being sought is the adoptee, the intermediary shall be the department or licensed adoption agency that provided adoption services as described in Section 8521 or 8533 of the Family Code. If the sibling being sought was formerly under the jurisdiction of the juvenile court, but is not an adoptee, the intermediary shall be the department, the county child welfare agency that provided services to the dependent child, or the licensed adoption agency that provided adoption services to the sibling seeking contact, as appropriate. If the court finds that the licensed adoption agency that conducted the adoptee's adoption is unable, due to economic hardship, to serve as the intermediary, then the agency shall provide all records related to the adoptee or the sibling to the court and the court shall appoint an alternate confidential intermediary. The court shall grant the petition unless it finds that it would be detrimental to the adoptee or sibling with whom contact is sought. The intermediary shall have access to all records of the adoptee or the sibling and shall make all reasonable efforts to locate and attempt to obtain the consent of the adoptee, sibling, or adoptive or birth parent, as required to make the disclosure authorized by this section. The confidential intermediary shall notify any located adoptee, sibling, or adoptive or birth parent that consent is optional, not required by law, and does not affect the status of the adoption. If that individual denies the request for consent, the confidential intermediary shall not make any further attempts to obtain consent. The confidential intermediary shall use information found in the records of the adoptee or the sibling for authorized purposes only, and may not disclose that information without authorization. If contact is sought with an adoptee or sibling who is under 18 years of age, the

confidential intermediary shall contact and obtain the consent of that child's legal parent before contacting the child. If the sibling is under 18 years of age, under the jurisdiction of the dependency court, and has no legal parent or guardian able or available to provide consent, the intermediary shall obtain that consent from the dependency court. If the adoptee is seeking information regarding a sibling who is known to be a dependent child of the juvenile court, the procedures set forth in subdivision (b) of Section 388 of the Welfare and Institutions Code shall be utilized. If the adoptee is foreign born and was the subject of an intercountry adoption as defined in Section 8527, the adoption agency may fulfill the reasonable efforts requirement by utilizing all information in the agency's case file, and any information received upon request from the foreign adoption agency that conducted the adoption, if any, to locate and attempt to obtain the consent of the adoptee, sibling, or adoptive or birth parent. If that information is neither in the agency's case file, nor received from the foreign adoption agency, or if the attempts to locate are unsuccessful, then the agency shall be relieved of any further obligation to search for the adoptee or the sibling.

(h) For purposes of this section, "sibling" means a biological sibling, half-sibling, or step-sibling of the adoptee.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 387

An act to add Section 10618.6 to the Welfare and Institutions Code, relating to identity theft.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 10618.6 is added to the Welfare and Institutions Code, to read:

10618.6. When a youth in a foster care placement reaches his or her 16th birthday, the county welfare department shall request a consumer disclosure, pursuant to the free annual disclosure provision of the federal Fair Credit Reporting Act, on the youth's behalf, notwithstanding any

other provision of law, to ascertain whether or not identity theft has occurred. If there is a disclosure for the youth and if the consumer disclosure reveals any negative items, or any evidence that some form of identity theft has occurred, the county welfare department shall refer the youth to an approved counseling organization that provides services to victims of identity theft. The State Department of Social Services, in consultation with the County Welfare Directors Association, consumer credit reporting agencies, and other relevant stakeholders, shall develop a list of approved organizations to which youth may be referred for assistance in responding to an instance of suspected identity theft. Nothing in this section shall be construed to require the county welfare department to request more than one consumer disclosure on behalf of a youth in care, or to take steps beyond referring the youth to an approved organization.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 388

An act to amend Section 1536.2 of, and to add Section 1530.3 to, the Health and Safety Code, and to amend Section 361.2 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Many of the state's foster care licensing statutes, regulations, and policies have understandably been developed with the sole objective of protecting the safety of children and youth in foster care, with little regard for the creation of a foster home environment that resembles actual nonfoster care living environments. In many cases these rules serve to stigmatize foster children and youth by subjecting them to conventions dissimilar to other children. These rules are also often viewed as unreasonable by prospective foster parents and therefore serve to discourage them from becoming foster parents. Foster care licensing requirements should be developed and implemented in a manner that is

consistent with current program best practices and the goals and objectives of the Child Welfare System Improvement and Accountability Act of 2001 (Chapter 678 of the Statutes of 2001).

(b) The State Department of Social Services has convened a children's residential regulation review workgroup, which includes representatives of the department and interested stakeholders, to review community care licensing foster care statutes, regulations, and policies, to ensure that they promote the safety and well-being of children and youth in foster care, and who are leaving foster care.

(c) It is therefore the intent of the Legislature to ensure that youth placed in out-of-home foster care be given an opportunity to live in an environment that resembles as closely as possible nonfoster care families. It is the further intent of the Legislature to ensure that all licensing statutes, regulations, and policies serve to promote the well-being of children and youth in foster care and who are leaving foster care and to ensure children and youth are safe and protected in foster care.

SEC. 2. Section 1530.3 is added to the Health and Safety Code, to read:

1530.3. The director shall report to the Legislature during the 2007–08 budget hearings on the progress of the department's children's residential regulation review workgroup. The report shall include all of the following:

(a) A summary of the activities of the workgroup up to the date of the report.

(b) The timeline for completion of the workgroup's activities.

(c) Any recommendations being considered for statutory, regulatory, and policy changes, and any workplan for the implementation of those recommendations.

SEC. 3. Section 1536.2 of the Health and Safety Code is amended to read:

1536.2. (a) When a placement agency has placed a child with a foster family agency for subsequent placement in a certified family home, the foster family agency shall ensure placement of the child in a home that best meets the needs of the child.

(b) A home that best meets the needs of the child shall satisfy all of the following criteria:

(1) The child's caregiver is able to meet the health, safety, and well-being needs of the child.

(2) The child's caregiver is permitted to maintain the least restrictive and most family-like environment that serves the needs of the child.

(3) The child is permitted to engage in reasonable, age-appropriate, day-to-day activities that promote the most family-like environment for the foster child.

(4) The foster child's caregiver shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, to determine activities that are age-appropriate and meet the needs of the child. Nothing in this section shall be construed to permit a child's caregiver to permit the child to engage in activities that carry an unreasonable risk of harm, or subject the child to abuse or neglect.

SEC. 4. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

(b) If the court places the child with that parent it may do any of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months. In determining whether to take the action described in this paragraph, the court shall consider any concerns that have been raised by the child's current caregiver regarding the parent. After the social worker conducts the home visit and files his or her report with the court, the court may then take the action described in paragraph (1), (3), or this paragraph. However, nothing in this paragraph shall be interpreted to imply that the court is required to take the action described in this paragraph as a prerequisite to the court taking the action described in either paragraph (1) or paragraph (3).

(3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at

review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a child pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following:

(1) The home of a noncustodial parent as described in subdivision (a).

(2) The approved home of a relative.

(3) The approved home of a nonrelative extended family member as defined in Section 362.7.

(4) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(5) A suitable licensed community care facility.

(6) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(7) A home or facility in accordance with the federal Indian Child Welfare Act.

(8) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in

meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the child is taken from the physical custody of the child's parent or guardian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a child to be placed in a county other than the child's parent's or guardian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the child's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the child, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a child is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the child, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any

known or suspected dangerous behavior of the child that indicates the child may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the child, shall be made available to the receiving county upon placement of the child in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a child is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the child, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the child, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the child in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern to the receiving county.

(g) Whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county.

(h) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the child will be served by granting visitation rights to the child's grandparents. The court shall clearly specify those rights to the social worker.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall

consider whether there are any siblings under the court's jurisdiction, the nature of the relationship between the child and his or her siblings, the appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002, and the impact of the sibling relationships on the child's placement and planning for legal permanence.

(j) (1) When an agency has placed a child with a relative caregiver, a nonrelative extended family member, a licensed foster family home, or a group home, the agency shall ensure placement of the child in a home that, to the fullest extent possible, best meets the day-to-day needs of the child. A home that best meets the day-to-day needs of the child shall satisfy all of the following criteria:

(A) The child's caregiver is able to meet the day-to-day health, safety, and well-being needs of the child.

(B) The child's caregiver is permitted to maintain the least restrictive and most family-like environment that serves the day-to-day needs of the child.

(C) The child is permitted to engage in reasonable, age-appropriate day-to-day activities that promote the most family-like environment for the foster child.

(2) The foster child's caregiver shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04, to determine day-to-day activities that are age-appropriate to meet the needs of the child. Nothing in this section shall be construed to permit a child's caregiver to permit the child to engage in day-to-day activities that carry an unreasonable risk of harm, or subject the child to abuse or neglect.

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 389

An act to amend Sections 295 and 366.21 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 295 of the Welfare and Institutions Code is amended to read:

295. The social worker or probation officer shall give notice of review hearings held pursuant to Section 366.3 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) The foster parents, Indian custodian, relative caregivers, community care facility, or foster family agency having physical custody of the child if a child is removed from the physical custody of the parents or legal guardian. The person notified may attend all hearings and may submit any information he or she deems relevant to the court in writing.

(7) The attorney of record if that attorney of record was not present at the time that the hearing was set by the court.

(8) The alleged father or fathers, but only if the recommendation is to set a new hearing pursuant to Section 366.26.

(9) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the review hearing shall be served no earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice of the review hearing shall contain a statement regarding the nature of the hearing to be held, any recommended change in the custody or status of the child, and any recommendation that the

court set a new hearing pursuant to Section 366.26 in order to select a more permanent plan.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice. In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

SEC. 1.5. Section 295 of the Welfare and Institutions Code is amended to read:

295. The social worker or probation officer shall give notice of review hearings held pursuant to Section 366.3 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) The foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child if a child is removed from the physical custody of the parents or legal guardian. The person notified may attend all hearings and may submit any information he or she deems relevant to the court in writing.

(7) The attorney of record if that attorney of record was not present at the time that the hearing was set by the court.

(8) The alleged father or fathers, but only if the recommendation is to set a new hearing pursuant to Section 366.26.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the review hearing shall be served no earlier than 30 days, nor later than 15 days, before the hearing.

(d) The notice of the review hearing shall contain a statement regarding the nature of the hearing to be held, any recommended change in the custody or status of the child, and any recommendation that the court set a new hearing pursuant to Section 366.26 in order to select a more permanent plan.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice. In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

(g) If the social worker or probation officer knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

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 paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may

also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child. 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 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, or a Judicial Council Caregiver Information Form (JV-290), containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her

parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling

group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the

physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial

probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child

and may not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program or the Kin-GAP Plus program, as provided for in Article 4.5 (commencing with Section 11360) and Article 4.75 (commencing with Section 11380) 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. 2.5. Section 366.21 of the Welfare and Institutions Code, as amended by Section 26 of Chapter 75 of the Statutes of 2006, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of

the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child. 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, provided that he or she 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.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section

361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine

whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. 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, provided that he or she 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, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and may not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program or the Kin-GAP Plus program, as provided for in Article 4.5 (commencing with Section 11360) and Article 4.75 (commencing with Section 11380) 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. 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. (a) Section 1.5 of this bill incorporates amendments to Section 295 of the Welfare and Institutions Code proposed by this bill and SB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 295 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 678, in which case Section 295 of the Welfare and Institutions Code, as amended by SB 678, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

(b) Section 2.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill and AB 1774. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1774, in which case Section 366.21 of the Welfare and Institutions Code, as amended by AB 1774, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill

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

CHAPTER 390

An act to add Section 6009.5 to the Business and Professions Code, and to amend Section 12011.5 of, and to add Sections 69614 and 77001.5 to, the Government Code, relating to trial court judges and officers.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 6009.5 is added to the Business and Professions Code, to read:

6009.5. The State Bar shall adopt procedures to facilitate reporting of mandatory and voluntary information by providing members with a centralized mechanism for reporting information online at the State Bar Internet Web site, including, but not limited to, data required to be provided pursuant to the State Bar Act, or by other statutes, rules, and case law, and demographic information. Any demographic data collected shall be used only for general purposes and shall not be identified to any individual member or his or her State Bar record.

SEC. 2. Section 12011.5 of the Government Code is amended to read:

12011.5. (a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Sections 6013.4 and 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, sexual, and racial diversity of the

population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report in confidence to the Governor its recommendation whether the candidate is exceptionally well qualified, well qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, other information as the State Bar deems pertinent to the qualifications of the candidate.

(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience.

(e) The State Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that any rule or procedure be adopted that permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process that would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal, or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the State Bar with a candidate or person providing

information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(g) If the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but that notice or disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) If the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision (d) of Section 16 of Article VI of the California Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission its recommendation, and the reasons therefor, but that disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i) No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving any information, making any recommendations, and giving any reasons therefor. As used in this section, the term "State Bar" means its governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

(k) No candidate for judicial office may be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to provide it an opportunity, if time permits, to make an evaluation.

(*l*) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding any additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review, or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in an evaluation, review, or report in his or her individual capacity.

(n) (1) Notwithstanding any other provision of this section, on or before March 1, 2007, and on or before March 1 of each year thereafter, all of the following shall occur:

(A) The Governor shall disclose aggregate statewide demographic data provided by all judicial applicants relative to ethnicity and gender.

(B) The designated agency of the State Bar responsible for evaluation of judicial candidates shall collect and release both of the following on a aggregate statewide basis:

(i) Statewide demographic data provided by judicial applicants reviewed relative to ethnicity and gender.

(ii) The statewide summary of the recommendations of the designated agency of the State Bar by ethnicity and gender.

(C) The Administrative Office of the Courts shall collect and release the demographic data provided by justices and judges described in Article VI of the California Constitution relative to ethnicity and gender, by specific jurisdiction.

(2) Any demographic data disclosed or released pursuant to this subdivision shall disclose only aggregated statistical data and shall not identify any individual applicant, justice, or judge.

(o) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of the provision to any person or circumstances, is held invalid, the remainder of this section to the extent it can be given effect, or the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail.

SEC. 3. Section 69614 is added to the Government Code, to read:

69614. (a) Upon appropriation by the Legislature in the 2006–07 fiscal year, there shall be 50 additional judges allocated to the various

county superior courts pursuant to the uniform criteria described in subdivision (b) for determining the need for additional superior court judges.

(b) The judges shall be allocated, in accordance with the uniform standards for factually determining additional judicial need in each county, as approved by the Judicial Council in August, 2001, and as modified and approved by the Judicial Council in August, 2004, pursuant to the Update of Judicial Needs Study, based on the following criteria:

(1) Court filings data averaged over a period of three years.

(2) Workload standards that represent the average amount of time of bench and nonbench work required to resolve each case type.

(3) A ranking methodology that provides consideration for courts that have the greatest need relative to their current complement of judicial officers.

(c) The Judicial Council shall report to the Legislature and the Governor on or before November 1 of every even-numbered year on the factually determined need for new judgeships in each superior court using the uniform criteria for allocation of judgeships described in subdivision (b), as updated and applied to the average of the prior three calendar years' filings.

SEC. 4. Section 77001.5 is added to the Government Code, to read:

77001.5. On or before November 1, 2007, the Judicial Council shall adopt, and shall report to the Legislature annually thereafter upon, judicial administration standards and measures that promote the fair and efficient administration of justice, including, but not limited to, the following subjects:

(1) Providing equal access to courts and respectful treatment for all court participants.

(2) Case processing, including the efficient use of judicial resources.

(3) General court administration.

CHAPTER 391

An act to amend Section 4015 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 4015 of the Welfare and Institutions Code is amended to read:

4015. (a) The State Department of Mental Health shall, in coordination with the task force described in subdivision (c) and with other state entities, including, but not limited to, the Department of General Services, the State Department of Developmental Services, the Secretary of State, and the California State Library, do all of the following:

(1) Conduct and complete inventories of all of the following:

(A) All materials and records necessary to create the most complete record of persons who died while residing at any state hospital as defined in Section 7200, or any developmental center as defined in Section 4440.

(B) Within existing resources, identify the location of all gravesites at existing state hospitals and developmental center lands and of gravesites not located on state lands but designated by the state for burial of state hospital or developmental center residents. This shall include the location of remains that may have been moved from their original burial site and the location of grave markers that may have been moved from gravesites.

(C) Within existing resources, identify the names of patients whose remains were donated for medical research, the entity to which the remains were donated, and the final disposition of those remains.

(2) Assist and cooperate with the California Memorial Project in conducting research regarding the records of deaths and burials of persons at state hospitals and developmental centers and cemeteries based on the grounds of these facilities. This assistance shall, subject to paragraph (3), include the granting of access to those state records as necessary to perform the inventories described in this section.

(3) Notwithstanding Sections 4514 and 5328 or any other provision of law regarding confidentiality of patient records, the information described in this section shall be limited to the name, date of birth, date of death, and photographic images of any person who died while in residency at any state hospital or developmental center and shall be made available for the purposes of the implementation of this section. The exportation and use of these records or photographic images from state facilities shall be limited to the information delineated within, and the purposes of, this section.

(4) Assist the California Memorial Project in developing a plan for the restoration of gravesites and cemeteries at state hospitals and developmental centers and gravesites not located on state lands but

designated by the state for burial of state hospital or developmental center residents.

(5) Notwithstanding Sections 4514 and 5328 or any other provision of law governing the confidentiality of patient records, with respect to any monument or memorial erected consistent with this section, the department may include, if available, the name, date of birth, and date of death, of any person being memorialized who died while in residency at a state hospital or developmental center and who was buried by the state.

(6) Develop a protocol for the future interment of patients who die while residing at a state hospital or developmental center and are unclaimed by a family member.

(b) The department may develop a protocol to coordinate the efforts of the state entities described in subdivision (a).

(c) (1) The department shall establish a task force to provide leadership and direction in carrying out the activities described in this section. The task force shall consist of representatives selected by each of the following entities:

(A) The Peer Self-Advocacy Unit of Protection and Advocacy, Inc.

(B) California Network of Mental Health Clients.

(C) Capitol People First.

(2) To the extent that funding is available, task force members shall be reimbursed for necessary travel expenses associated with serving on the task force. When requested by a task force member with a disability, the state shall pay the cost of a facilitator chosen by the task force member.

(d) In implementing this section, the state shall make no structural changes to existing gravesites on state hospital or developmental center lands prior to the submission of, and which do not conform with, the restoration plan described in paragraph (4) of subdivision (a).

(e) Pursuant to the plan described in paragraph (4) of subdivision (a), the department shall seek funding for this section from the California Cultural and Historical Endowment, in addition to any other resources that may be available to the department, excluding General Fund moneys, to restore, preserve, and memorialize the gravesite located at Napa State Hospital.

(f) The department shall submit a status update on the implementation of this section, including a description of barriers, if any, to conducting the activities described in this section, to the Legislature by January 31, 2004.

CHAPTER 392

An act to amend Section 22154 of the Public Contract Code, and to amend Section 42701 of the Public Resources Code, relating to public contracts.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 22154 of the Public Contract Code is amended to read:

22154. (a) All businesses shall certify in writing to the contracting officer, or his or her representative, the minimum, if not exact, percentage of postconsumer material in the products, materials, goods, or supplies being offered or sold to any local public entity.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(c) A local public entity may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

SEC. 2. Section 42701 of the Public Resources Code is amended to read:

42701. (a) In purchasing any materials to be used in paving or paving subbase for use by the Department of Transportation and any other state agencies that provide construction and repair services, the State Procurement Officer shall contract for those items that utilize recycled materials in paving materials and base, subbase, and pervious backfill materials, unless the Director of Transportation determines that the use of the materials is not cost effective. In determining the cost-effectiveness of the materials subject to this section, the factors that the director shall consider include both of the following:

(1) The lifespan and durability of the pavement containing the materials.

(2) The maintenance cost of the pavement containing the materials.

(b) This section also applies to any person who contracts with the Department of General Services or with any other state agency to provide these construction and repair services.

(c) The recycled materials shall include, but are not limited to, recycled asphalt, crushed concrete subbase, foundry slag, and paving materials utilizing crumb rubber from automobile tires, ash, and glass and glassy aggregates. The specifications shall be based on the standards of the Department of Transportation for recycled paving materials and for recycled base, subbase, and pervious backfill materials.

CHAPTER 393

An act to add Section 116787 to the Health and Safety Code, relating to sanitation districts.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

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

(a) On May 4, 2005, a Total Maximum Daily Load (TMDL) for chloride, established by the Regional Water Quality Control Board, Los Angeles Region, took effect for Reaches 5 and 6 of the Santa Clara River, located in Los Angeles County.

(b) The Regional Water Quality Control Board, Los Angeles Region, found that, under the federal Clean Water Act (33 U.S.C. Sec. 1313 et seq.), this chloride TMDL was necessary to bring the Santa Clara River into attainment with water quality standards applicable to the Santa Clara River to protect beneficial uses, including salt-sensitive agricultural crops grown downstream in Ventura County such as avocados.

(c) The Regional Water Quality Control Board, Los Angeles Region, further found that the principal source of chloride into Reaches 5 and 6 is discharges from the Saugus Water Reclamation Plant and the Valencia Water Reclamation Plant, which are wastewater treatment plants serving approximately 180,000 residents of the Santa Clarita Valley.

(d) The Santa Clarita Valley Sanitation District, which owns and operates the Saugus and Valencia Water Reclamation Plants, has extensively studied the sources of chloride in local wastewater and has found that about one-third of the chloride comes from the use of residential self-regenerating water softeners that discharge brine to the sewer.

(e) Effective March 27, 2003, in accordance with the requirements of Section 116786 of the Health and Safety Code, originally added by Senate Bill 1006 (Ch. 969, Stats. 1999), the Santa Clarita Valley

Sanitation District adopted an ordinance prohibiting the installation of new residential self-regenerating water softeners in the Santa Clarita Valley.

(f) Senate Bill 1006 prohibited local agencies from adopting ordinances requiring the removal of residential self-regenerating water softeners that were installed prior to the effective date of the ordinance.

(g) Without the removal of the residential self-regenerating water softeners that were installed prior to the effective date of the ordinance in the Santa Clarita Valley, it is improbable that the Saugus and Valencia Water Reclamation Plants can meet the requirements of the TMDL in a timely manner, without the installation of advanced treatment for salt removal and brine disposal at a projected cost to the community of at least $350 million.

SEC. 2. Section 116787 is added to the Health and Safety Code, to read:

116787. (a) Notwithstanding subdivision (d) of Section 116786, the Santa Clarita Valley Sanitation District, or any successor district, may, by ordinance adopted subsequent to an ordinance adopted pursuant to Section 116786, require the removal of all installed residential self-regenerating water softeners, if the district makes all of the following findings and includes those findings in the ordinance:

(1) The removal of residential self-regenerating water softeners is a necessary and cost-effective means of achieving timely compliance with waste discharge requirements, water reclamation requirements, or a Total Maximum Daily Load (TMDL) issued by a California regional water quality control board. In determining what constitutes a necessary and cost-effective means of achieving compliance, the district shall assess all of the following:

(A) Alternatives to the ordinance.

(B) The cost-effectiveness and timeliness of the alternatives as compared to the adoption of the ordinance.

(C) The reduction in chloride levels to date resulting from the voluntary program implemented pursuant to paragraph (1) of subdivision (c).

(D) The potential reduction in chloride levels expected as a result of the program implemented pursuant to paragraph (2) of subdivision (c).

(2) The district has adopted and is enforcing regulatory requirements that limit the volume and concentrations of saline discharges from nonresidential sources to the community sewer system, to the extent that is technologically and economically feasible.

(3) Based on available information, sufficient wastewater treatment capacity exists in Los Angeles County to make portable exchange water softening services available to residents affected by this ordinance.

(4) Based on available information, the adoption and implementation of the ordinance will avoid or significantly reduce the costs associated with advanced treatment for salt removal and brine disposal that otherwise would be necessary to meet the Total Maximum Daily Load (TMDL) for chloride, established by the Regional Water Quality Control Board, Los Angeles Region, for Reaches 5 and 6 of the Santa Clara River, in Los Angeles County that took effect May 4, 2005.

(b) (1) An ordinance adopted pursuant to subdivision (a) shall not be effective until it is approved by a majority vote of the qualified votes cast in a regularly scheduled election, following the adoption of the ordinance, held in the district's service area, in a referendum in accordance with applicable provisions of the Elections Code.

(2) Information regarding the projected cost differences between advanced treatment for salt removal and brine disposal without the removal of installed residential self-regenerating water softeners, alternatives identified in paragraph (1) of subdivision (a), and the removal of installed residential self-regenerating water softeners shall be included in voter information material.

(c) (1) Prior to the effective date of any ordinance adopted pursuant to subdivision (a), the district shall make available to owners of residential self-regenerating water softeners within its service area a voluntary program to compensate the owner of the appliance for 100 percent of the reasonable value of the removed appliance, and the reasonable cost of the removal and disposal of the appliance, both of which shall be determined by the district, with consideration given to information provided by manufacturers of residential self-regenerating water softeners and providers of water softening or conditioning appliances and services in the district's service area regarding purchase price, useful life, and the cost of installation, removal, and disposal.

(2) On and after the effective date of any ordinance adopted pursuant to subdivision (a), the district shall make available to owners of residential self-regenerating water softeners within its service area a program to compensate the owner of the appliance for 75 percent of the reasonable value of the removed appliance, and the reasonable cost of the removal and disposal of the appliance, both of which shall be determined by the district, with consideration given to information provided by manufacturers of residential self-regenerating water softeners and providers of water softening or conditioning appliances and services in the district's service area regarding purchase price, useful life, and the cost of installation, removal, and disposal.

(3) Compensation pursuant to paragraphs (1) and (2) shall only be made available if the owner disposes of the residential self-regenerating water softener and provides written confirmation of the disposal which

may include, but is not limited to, verification in writing provided by the franchise refuse hauler that provides the service of removing the appliance or verification in writing of the appliance's destruction by the party responsible for its recycling or final disposal.

(4) If the owner of a residential self-regenerating water softener is in the business of renting or leasing residential self-regenerating water softeners, the owner may voluntarily waive compensation pursuant to paragraphs (1) and (2), and shall not be required to dispose of the appliance if the owner provides the district with written confirmation that the appliance has been removed from the home within the district's service area for use in a location outside the district's service area.

(5) The terms of compensation included in paragraphs (1) and (2) shall be included in an ordinance adopted pursuant to subdivision (a).

(6) (A) Upon the request of the district, the providers of water softening or conditioning services and appliances to residents of the district's service area shall provide the district, within 60 days, copies of purchase agreements or receipts, or any other specific records of sales of residential self-generating water softeners in the district's service area.

(B) The information in this paragraph shall remain protected and confidential in accordance with applicable provisions of the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(d) Any ordinance adopted pursuant to subdivision (a) and approved in accordance with subdivision (b) shall not take effect until January 1, 2009.

(e) For purposes of this section, "residential self-regenerating water softeners" and "appliances" mean residential water softening or conditioning appliances that discharge brine into the community sewer system.

SEC. 3. Due to the unique circumstances related to the Santa Clara River Chloride Total Maximum Daily Load requirements for substantially reduced chloride levels in wastewater discharged by the Saugus and Valencia Water Reclamation Plants to the Santa Clara River, it is necessary that the affected local agencies be authorized to require removal of residential water softening or conditioning appliances, and thus the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 394

An act to amend Section 1250.8 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 1250.8 of the Health and Safety Code is amended to read:

1250.8. (a) Notwithstanding subdivision (a) of Section 437.10, the state department, upon application of a general acute care hospital which meets all the criteria of subdivision (b), and other applicable requirements of licensure, shall issue a single consolidated license to a general acute care hospital which includes more than one physical plant maintained and operated on separate premises or which has multiple licenses for a single health facility on the same premises. A single consolidated license shall not be issued where the separate freestanding physical plant is a skilled nursing facility or an intermediate care facility, whether or not the location of the skilled nursing facility or intermediate care facility is contiguous to the general acute care hospital unless the hospital is exempt from the requirements of subdivision (b) of Section 1254, or the facility is part of the physical structure licensed to provide acute care.

(b) The issuance of a single consolidated license shall be based on the following criteria:

(1) There is a single governing body for all of the facilities maintained and operated by the licensee.

(2) There is a single administration for all of the facilities maintained and operated by the licensee.

(3) There is a single medical staff for all of the facilities maintained and operated by the licensee, with a single set of bylaws, rules, and regulations, which prescribe a single committee structure.

(4) Except as provided otherwise in this paragraph, the physical plants maintained and operated by the licensee which are to be covered by the single consolidated license are located not more than 15 miles apart. If an applicant provides evidence satisfactory to the department that it can comply with all requirements of licensure and provide quality care and adequate administrative and professional supervision, the director may issue a single consolidated license to a general acute care hospital that operates two or more physical plants located more than 15 miles apart under any of the following circumstances:

(A) One or more of the physical plants is located in a rural area, as defined by regulations of the director.

(B) One or more of the physical plants provides only outpatient services, as defined by the department.

(C) If Section 14105.986 of the Welfare and Institutions Code is implemented and the applicant meets all of the following criteria:

(i) The applicant is a nonprofit corporation.

(ii) The applicant is a children's hospital listed in Section 10727 of the Welfare and Institutions Code.

(iii) The applicant is affiliated with a major university medical school, and located adjacent thereto.

(iv) The applicant operates a regional tertiary care facility.

(v) One of the physical plants is located in a county that has a consolidated and county government structure.

(vi) One of the physical plants is located in a county having a population between 1 million and 2 million.

(vii) The applicant is located in a city with a population between 50,000 and 100,000.

(c) In issuing the single consolidated license, the state department shall specify the location of each supplemental service and the location of the number and category of beds provided by the licensee. The single consolidated license shall be renewed annually.

(d) To the extent required by Part 1.5 (commencing with Section 437) of Division 1, a general acute care hospital which has been issued a single consolidated license:

(1) Shall not transfer from one facility to another a special service described in Section 1255 without first obtaining a certificate of need.

(2) Shall not transfer, in whole or in part, from one facility to another, a supplemental service, as defined in regulations of the director pursuant to this chapter, without first obtaining a certificate of need, unless the licensee, 30 days prior to the relocation, notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state department of the licensee's intent to relocate the supplemental service, and includes with this notice a cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the transfer will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 437.10.

(3) Shall not transfer beds from one facility to another facility, without first obtaining a certificate of need unless, 30 days prior to the relocation, the licensee notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state

department of the licensee's intent to relocate health facility beds, and includes with this notice both of the following:

(A) A cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the relocation will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 437.10.

(B) The identification of the number, classification, and location of the health facility beds in the transferor facility and the proposed number, classification, and location of the health facility beds in the transferee facility.

Except as otherwise permitted in Part 1.5 (commencing with Section 437) of Division 1, or as authorized in an approved certificate of need pursuant to that part, health facility beds transferred pursuant to this section shall be used in the transferee facility in the same bed classification as defined in Section 1250.1, as the beds were classified in the transferor facility.

Health facility beds transferred pursuant to this section shall not be transferred back to the transferor facility for two years from the date of the transfer, regardless of cost, without first obtaining a certificate of need pursuant to Part 1.5 (commencing with Section 437) of Division 1.

(e) All transfers pursuant to subdivision (d) shall satisfy all applicable requirements of licensure and shall be subject to the written approval, if required, of the state department. The state department may adopt regulations which are necessary to implement the provisions of this section. These regulations may include a requirement that each facility of a health facility subject to a single consolidated license have an onsite full-time or part-time administrator.

(f) As used in this section, "facility" means any physical plant operated or maintained by a health facility subject to a single, consolidated license issued pursuant to this section.

(g) For purposes of selective provider contracts negotiated under the Medi-Cal program, the treatment of a health facility with a single consolidated license issued pursuant to this section shall be subject to negotiation between the health facility and the California Medical Assistance Commission. A general acute care hospital which is issued a single consolidated license pursuant to this section may, at its option, receive from the state department a single Medi-Cal program provider number or separate Medi-Cal program provider numbers for one or more of the facilities subject to the single consolidated license. Irrespective of whether the general acute care hospital is issued one or more Medi-Cal provider numbers, the state department may require the hospital to file

separate cost reports for each facility pursuant to Section 14170 of the Welfare and Institutions Code.

(h) For purposes of the Annual Report of Hospitals required by regulations adopted by the state department pursuant to this part, the state department and the Office of Statewide Health Planning and Development may require reporting of bed and service utilization data separately by each facility of a general acute care hospital issued a single consolidated license pursuant to this section.

(i) The amendments made to this section during the 1985–86 Regular Session of the Legislature pertaining to the issuance of a single consolidated license to a general acute care hospital in the case where the separate physical plant is a skilled nursing facility or intermediate care facility shall not apply to the following facilities:

(1) Any facility which obtained a certificate of need after August 1, 1984, and prior to February 14, 1985, as described in this subdivision. The certificate of need shall be for the construction of a skilled nursing facility or intermediate care facility which is the same facility for which the hospital applies for a single consolidated license, pursuant to subdivision (a).

(2) Any facility for which a single consolidated license has been issued pursuant to subdivision (a), as described in this subdivision, prior to the effective date of the amendments made to this section during the 1985–86 Regular Session of the Legislature.

Any facility which has been issued a single consolidated license pursuant to subdivision (a), as described in this subdivision, shall be granted renewal licenses based upon the same criteria used for the initial consolidated license.

(j) If the state department issues a single consolidated license pursuant to this section, the state department may take any action authorized by this chapter, including, but not limited to, any action specified in Article 5 (commencing with Section 1294), with respect to any facility, or any service provided in any facility, which is included in the consolidated license.

(k) The eligibility for participation in the Medi-Cal program (Chapter 7 (commencing with Section 14000), Part 3, Division 9, Welfare and Institutions Code) of any facility that is included in a consolidated license issued pursuant to this section, provides outpatient services, and is located more than 15 miles from the health facility issued the consolidated license shall be subject to a determination of eligibility by the state department. This subdivision shall not apply to any facility that is located in a rural area and is included in a consolidated license issued pursuant to subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b). Regardless of whether a facility has received or not received a

determination of eligibility pursuant to this subdivision, this subdivision shall not affect the ability of a licensed professional, providing services covered by the Medi-Cal program to a person eligible for Medi-Cal in a facility subject to a determination of eligibility pursuant to this subdivision, to bill the Medi-Cal program for those services provided in accordance with applicable regulations.

(*l*) Notwithstanding any other provision of law, the director may issue a single consolidated license for a general acute care hospital to Children's Hospital Oakland and San Ramon Regional Medical Center.

(m) Notwithstanding any other provision of law, the director may issue a single consolidated license for a general acute care hospital to Children's Hospital Oakland and the John Muir Medical Center, Concord campus.

(n) (1) To the extent permitted by federal law, payments made to Children's Hospital Oakland pursuant to Section 14166.11 of the Welfare and Institutions Code shall be adjusted as follows:

(A) The number of Medi-Cal payment days and net revenues calculated for the John Muir Medical Center Concord campus under the consolidated license shall not be used for eligibility purposes for the private hospital disproportionate share hospital replacement funds for Children's Hospital Oakland.

(B) The number of Medi-Cal payment days calculated for hospital beds located at John Muir Medical Center Concord campus that are included in the consolidated license beginning in the 2007–08 fiscal year shall only be used for purposes of calculating disproportionate share hospital payments authorized under Section 14166.11 of the Welfare and Institutions Code at Children's Hospital Oakland to the extent that the inclusion of those days does not exceed the total Medi-Cal payment days used to calculate Children's Hospital Oakland payments for the 2006–07 fiscal year disproportionate share replacement.

(2) This subdivision shall become inoperative in the event that the two facilities covered under the consolidated license described in subdivision (a) are located within a 15-mile radius of each other.

SEC. 2. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the unique circumstances of Children's Hospital Oakland and the John Muir Medical Center, Concord campus. This act is necessary to enable Children's Hospital Oakland to operate a pediatric unit at the John Muir Medical Center, Concord campus to provide pediatric medical services to infants and children in Contra

Costa and southern Solano Counties, where those services are in high demand and are largely unavailable.

CHAPTER 395

An act to amend Section 68120 of the Education Code, relating to public postsecondary education.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 68120 of the Education Code is amended to read:

68120. (a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required of or collected by the Regents of the University of California, the Board of Directors of the Hastings College of the Law, or the Trustees of the California State University from any surviving spouse or surviving child of a deceased person who met all of the following requirements:

(1) He or she was a resident of this state.

(2) He or she was employed by a public agency, or was a contractor, or an employee of a contractor, performing services for a public agency.

(3) His or her principal duties consisted of active law enforcement service or active fire suppression and prevention. This section shall not apply to a person whose principal duties were clerical, even if he or she was subject to occasional call or was occasionally called upon to perform duties within the scope of active law enforcement or active fire suppression and prevention.

(4) He or she was killed in the performance of active law enforcement or active fire suppression and prevention duties, or died as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of his or her active law enforcement or active fire suppression and prevention duties.

(b) Notwithstanding subdivision (a), a person who qualifies for the waiver of mandatory systemwide fees and tuition under this section as a surviving child of a contractor, or of an employee of a contractor, who performed services for a public agency shall, in addition to the requirements set forth in subdivision (a), meet both of the following requirements:

(1) Enrollment as an undergraduate student at a campus of the University of California or the California State University.

(2) Documentation that his or her annual income, including the value of any support received from a parent, does not exceed the maximum household income and asset level for an applicant for a Cal Grant B award, as set forth in Section 69432.7.

(c) As used in this section:

(1) "Contractor" or "employee of a contractor" does not include a security guard or security officer, as defined in Section 7582.1 of the Business and Professions Code.

(2) "Public agency" means the state or any city, city and county, county, district, or other local authority or public body of or within the state.

(3) "Surviving child" means either of the following:

(A) A surviving natural or adopted child of the deceased person.

(B) A surviving stepchild who meets both of the following requirements:

(i) He or she was living or domiciled with the deceased person at the time of his or her death.

(ii) He or she was claimed on the tax form most recently filed by the deceased person prior to that person's death, or he or she received 50 percent or more of his or her support from that deceased person in the tax year immediately preceding the death of the deceased person, or both.

CHAPTER 396

An act to amend Section 3240.5 of, and to add Section 3241 to, the Fish and Game Code, relating to hunting.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 3240.5 of the Fish and Game Code is amended to read:

3240.5. (a) A person, including, but not limited to, a renter or lessee, in possession or control of property on or with respect to which a fee for the privilege of taking birds or mammals is imposed or collected, or on or with respect to which a fee for any type of entry or use permit that includes the privilege of taking birds or mammals on the property is

imposed or collected, is maintaining a commercial hunting club if birds or mammals are taken on the property, and shall procure a "commercial hunting club license."

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

(1) Any hunting club or program licensed under other provisions of this code.

(2) Any person who receives less than fifty dollars ($50) per entrant and receives less than a total of five hundred dollars ($500) between July 1 and the following June 30 for permission, entry access, or use fees that include the privilege of hunting on property in his or her possession or control.

(3) Any landowner who rents or leases his or her property to a commercial hunting club and is not involved in the operation of the club.

SEC. 2. Section 3241 is added to the Fish and Game Code, to read:

3241. The department may permit a commercial hunting club that leases or rents more than one property for hunting purposes to submit one application listing each of the properties for which they are seeking a license. The department shall assess a separate license fee for each property to be licensed, except as otherwise provided under this code.

CHAPTER 397

An act to amend Sections 4677 and 4688 of, and to add Sections 4639.75 and 4678 to, the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

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

(a) It is the intent of the Lanterman Developmental Disabilities Services Act, Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, to provide persons with developmental disabilities the services and supports they require to "approximate the pattern of everyday living available to persons without disabilities of the same age."

(b) The Lanterman Developmental Disabilities Services Act confers upon persons with developmental disabilities "a right to social interaction and participation in community activities" and "a right to make choices in their own lives, including, but not limited to, where and with whom

they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation."

(c) The majority of adult regional center consumers participate in traditionally structured habilitation, work activity, and supported work programs.

(d) Traditionally structured habilitation, work activity, and supported work programs may not provide the flexibility, community integration, and activities or training that meet the needs of some persons with developmental disabilities.

SEC. 2. It is, therefore, the intent of the Legislature to improve options and choices of persons with developmental disabilities in determining their daily activities, and, through the State Council on Developmental Disabilities and the State Department of Developmental Services, in consultation with regional centers, area boards, and other system stakeholders, to explore mechanisms for developing and expanding the methods of providing the services and supports identified in this act.

SEC. 3. Section 4639.75 is added to the Welfare and Institutions Code, to read:

4639.75. (a) On an ongoing basis, and as necessary, the State Department of Developmental Services shall provide to regional centers, and make available on the Internet, up-to-date information about work incentive programs for persons with developmental disabilities and other information relevant to persons with developmental disabilities in making informed choices about employment options. This information may include, but not be limited to, the access and retention of needed benefits, the interactions of earned income, asset building, and other financial changes on benefits, employment resources and protections, taxpayer requirements and responsibilities, training opportunities, and information and services available through other agencies, organizations, or on the Internet.

(b) The department, in consultation with regional centers, shall assess the need for, and develop a plan for, training of regional center staff on employment issues facing persons with a developmental disability. The department shall not be required to implement training pursuant to this section if implementation cannot be achieved within existing resources, unless additional funding for this purpose becomes available.

SEC. 4. Section 4677 of the Welfare and Institutions Code is amended to read:

4677. (a) All parental fees collected by or for regional centers shall be remitted to the State Treasury to be deposited in the Developmental

Disabilities Program Development Fund, which is hereby created and hereinafter called the Program Development Fund. The purpose of the Program Development Fund shall be to provide resources needed to initiate new programs and to expand or convert existing programs. Within the context of, and consistent with, approved priorities for program development in the state plan, program development funds shall promote integrated residential, work, instructional, social, civic, volunteer, and recreational services and supports that increase opportunities for self-determination and maximum independence of persons with developmental disabilities.

In no event shall an allocation from the Program Development Fund be granted for more than 24 months.

(b) The State Council on Developmental Disabilities shall, not less than once every three years, request from all regional centers information on the types and amounts of services and supports needed, but currently unavailable. Based on the information provided by the regional centers and other agencies, the State Council on Developmental Disabilities shall develop an assessment of the level of need for new, expanded, or converted community services and support, and make that assessment available to the public. This needs assessment shall be included in the state plan. The State Council on Developmental Disabilities, in consultation with the State Department of Developmental Services, shall make a recommendation to the Department of Finance as to the level of funding for program development to be included in the Governor's Budget, based upon this needs assessment.

(c) Parental fee schedules shall be evaluated pursuant to Section 4784 and adjusted annually by the department, with the approval of the state council. Fees for out-of-home care shall bear an equitable relationship to the cost of the care and the ability of the family to pay.

(d) In addition to parental fees and General Fund appropriations, the Program Development Fund may be augmented by federal funds available to the state for program development purposes, when these funds are allotted to the Program Development Fund in the state plan. The Program Development Fund is hereby appropriated to the department, and subject to any allocations that may be made in the annual Budget Act. In no event shall any of these funds revert to the General Fund.

(e) The department may allocate funds from the Program Development Fund for any legal purpose, provided that requests for proposals and allocations are approved by the state council in consultation with the department, and are consistent with the priorities for program development in the state plan. Allocations from the Program Development Fund shall take into consideration the following factors:

(1) The future fiscal impact of the allocations on other state supported services and supports for persons with developmental disabilities.

(2) The information on priority services and supports needed, but currently unavailable, submitted by the regional centers.

Consistent with the level of need as determined in the state plan, excess parental fees may be used for purposes other than programs specified in subdivision (a) only when specifically appropriated to the State Department of Developmental Services for those purposes.

(f) Under no circumstances shall the deposit of federal moneys into the Program Development Fund be construed as requiring the State Department of Developmental Services to comply with a definition of "developmental disabilities" and "services for persons with developmental disabilities" other than as specified in subdivisions (a) and (b) of Section 4512 for the purposes of determining eligibility for developmental services or for allocating parental fees and state general funds deposited in the Program Development Fund.

SEC. 4.5. Section 4677 of the Welfare and Institutions Code is amended to read:

4677. (a) All parental fees collected by or for regional centers shall be remitted to the State Treasury to be deposited in the Developmental Disabilities Program Development Fund, which is hereby created and hereinafter called the Program Development Fund. The purpose of the Program Development Fund shall be to provide resources needed to initiate new programs, and to expand or convert existing programs. Within the context of, and consistent with, approved priorities for program development in the state plan, program development funds shall promote integrated residential, work, instructional, social, civic, volunteer, and recreational services and supports that increase opportunities for self-determination and maximum independence of persons with developmental disabilities.

In no event shall an allocation from the Program Development Fund be granted for more than 24 months.

(b) (1) The State Council on Developmental Disabilities shall, at least once every five years, request from all regional centers information on the types and amounts of services and supports needed, but currently unavailable.

(2) The state council shall work collaboratively with the department and the Association of Regional Center Agencies to develop standardized forms and protocols that shall be used by all regional centers and area boards in collecting and reporting this information. In addition to identifying services and supports that are needed, but currently unavailable, the forms and protocols shall also solicit input and

suggestions on alternative and innovative service delivery models that would address consumer needs.

(3) In addition to the information provided pursuant to paragraph (2), the state council may utilize information from other sources, including, but not limited to, public hearings, life quality assessments conducted pursuant to Section 4570, the annual report regarding persons moving from developmental centers produced pursuant to Section 4418.1, the annual report regarding community-based vendor services produced pursuant to Section 4637.5, regional center reports on alternative service delivery submitted to the department pursuant to Section 4669.2, and the annual report on self-directed services produced pursuant to Section 4685.7.

(4) The department shall provide additional information, as requested by the state council.

(5) Based on the information provided by the regional centers and other agencies, the state council shall develop an assessment of the need for new, expanded, or converted community services and support, and make that assessment available to the public. The assessment shall include a discussion of the type and amount of services and supports necessary but currently unavailable including the impact on consumers with common characteristics, including, but not limited to, disability, specified geographic regions, age, and ethnicity, face distinct challenges. The assessment shall highlight alternative and innovative service delivery models identified through their assessment process.

(6) This needs assessment shall be conducted at least once every five years and updated annually. The assessment shall be included in the state plan and shall be provided to the department and to the appropriate committees of the Legislature. The assessment and annual updates shall be made available to the public. The State Council on Developmental Disabilities, in consultation with the department, shall make a recommendation to the Department of Finance as to the level of funding for program development to be included in the Governor's Budget, based upon this needs assessment.

(c) Parental fee schedules shall be evaluated pursuant to Section 4784 and adjusted annually by the department, with the approval of the state council. Fees for out-of-home care shall bear an equitable relationship to the cost of the care and the ability of the family to pay.

(d) In addition to parental fees and General Fund appropriations, the Program Development Fund may be augmented by federal funds available to the state for program development purposes, when these funds are allotted to the Program Development Fund in the state plan. The Program Development Fund is hereby appropriated to the department, and subject to any allocations that may be made in the annual

Budget Act. In no event shall any of these funds revert to the General Fund.

(e) The department may allocate funds from the Program Development Fund for any legal purpose, provided that requests for proposals and allocations are approved by the state council in consultation with the department, and are consistent with the priorities for program development in the state plan. Allocations from the Program Development Fund shall take into consideration the following factors:

(1) The future fiscal impact of the allocations on other state supported services and supports for persons with developmental disabilities.

(2) The information on priority services and supports needed, but currently unavailable, submitted by the regional centers.

Consistent with the level of need as determined in the state plan, excess parental fees may be used for purposes other than programs specified in subdivision (a) only when specifically appropriated to the State Department of Developmental Services for those purposes.

(f) Under no circumstances shall the deposit of federal moneys into the Program Development Fund be construed as requiring the State Department of Developmental Services to comply with a definition of "developmental disabilities" and "services for persons with developmental disabilities" other than as specified in subdivisions (a) and (b) of Section 4512 for the purposes of determining eligibility for developmental services or for allocating parental fees and state general funds deposited in the Program Development Fund.

SEC. 5. Section 4678 is added to the Welfare and Institutions Code, to read:

4678. (a) The State Council on Developmental Disabilities, in implementing subdivision (b) of Section 4677, and with the support of the State Department of Developmental Services, shall convene a stakeholder workgroup on alternative and expanded options for nonresidential services and supports. The workgroup shall include persons with developmental disabilities, family members, providers, and other system stakeholders. The workgroup shall develop recommendations on how to best achieve all of the following:

(1) The development and expansion of community-based models that provide an array of nonresidential options, including, but not limited to, participation in integrated instructive, social, civic, volunteer, and recreational activities.

(2) The development and expansion of community-based work activities, including, but not limited to, customized employment development, integrated job training, and employer-provided job coaching.

(3) The expansion of work opportunities in the public sector.

(4) The increased utilization of existing models, including, but not limited to, self-directed services, vouchers, family teaching models, existing habilitation, and supported work vendors to facilitate access to nontraditional community-based nonresidential activities.

(5) Strategies to promote and duplicate successful and innovative models developed in California and in other states.

(6) The identification of, and strategies to address, statutory, regulatory, licensing, vendor-related, funding and other types of barriers to achieving the goals identified in this act, including strategies to improve individualization of services and supports by increased flexibility in design, staffing, and compensation.

(b) By May 1, 2007, the State Council on Developmental Disabilities shall submit recommendations from the workgroup to the Governor and appropriate committees of the Legislature and may, thereafter, incorporate subsequent recommendations into its state plan developed pursuant to Section 4561.

SEC. 6. Section 4688 of the Welfare and Institutions Code is amended to read:

4688. (a) Consistent with state and federal law, the Legislature places a high priority on providing opportunities for individuals with developmental disabilities to be integrated into the mainstream life of their natural communities. In order to ensure that opportunities for integration are maximized, the procedure described in subdivision (b) shall be adopted.

(b) Regional centers shall be responsible for expanding opportunities for the full and equal participation of persons with developmental disabilities in their local communities through, activities, that may include, but shall not be limited to, the following:

(1) Outreach to, and training and education of, representatives of community service agencies and programs, businesses, and community activity providers regarding the provision and expansion of opportunities for participation by regional center consumers.

(2) Developing a community resources list.

(3) Providing assistance to case managers and family members on expanding community integration options for consumers in the areas of work, recreation, social, community service, education, and public services.

(4) Developing and facilitating the use of innovative methods of contracting with community members to provide support in natural environments to regional center consumers.

(5) Development and facilitating the use of natural supports to enhance community participation.

(6) Providing technical assistance to, and coordinating with, community support facilitators who will be used to provide supports to individual consumers for community participation, as needed.

(7) Providing sources of information relevant to individuals in making informed choices about employment options. This information may include, but need not be limited to, work incentive programs for persons with developmental disabilities, access and retention of needed benefits, interactions of earned income, asset building, or other financial changes on benefits, employment programs and protections, taxpayer requirements and responsibilities, training opportunities, and information and services available through other agencies, organizations, or on the Internet.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 4677 of the Welfare and Institutions Code proposed by both this bill and SB 1283. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 4677 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1283, in which case Section 4 of this bill shall not become operative.

CHAPTER 398

An act to amend Section 16953.3 of the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 16953.3 of the Welfare and Institutions Code is amended to read:

16953.3. (a) Notwithstanding any other restrictions on reimbursement, a county shall adopt a fee schedule to establish a uniform, reasonable level of reimbursement from the Physician Services Account for reimbursable services.

(b) (1) Notwithstanding any other restrictions on reimbursement, the State Department of Health Services shall adopt a single fee schedule to establish a uniform, reasonable level of reimbursement for use in the physician services reimbursement programs operated by the department pursuant to contract, as provided for in subdivision (c) of Section 16952.

(2) The State Department of Health Services may develop, contract for the development of, or adopt by reference, the fee schedule required by paragraph (1).

(3) Pursuant to subdivision (d) of Section 16952, the State Department of Health Services may be reimbursed by the Physician Services Account and the Hospital Services Account based on actual administrative costs to develop or adopt the fee schedule required by paragraph (1), not to exceed 10 percent of the amount of the account.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this subdivision by means of provider bulletins, or similar instruction, without taking formal regulatory action.

CHAPTER 399

An act to amend Sections 4512, 4521, 4551, 4622, 4646.5, 4648, 4677, 4701.6, 4705, 4747, and 4803 of the Welfare and Institutions Code, relating to developmental services.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 4512 of the Welfare and Institutions Code is amended to read:

4512. As used in this division:

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

(b) "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental

disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

(c) Notwithstanding subdivisions (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended "developmental disability" and "services for persons with developmental disabilities" means the terms as defined in the federal act to the extent required by federal law.

(d) "Consumer" means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and

security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

(f) "Circle of support" means a committed group of community members, who may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. A circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) "Facilitation" means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an individual, such as assistance with communications, that will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices that effect his or her life.

(h) "Family support services" means services and supports that are provided to a child with developmental disabilities or his or her family and that contribute to the ability of the family to reside together.

(i) "Voucher" means any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization that enables the consumer or family member to choose his or her own service provider.

(j) "Planning team" means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705.

(k) "Stakeholder organizations" means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

(*l*) "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major

life activity, as determined by a regional center, and as appropriate to the age of the person:

(1) Self-care.

(2) Receptive and expressive language.

(3) Learning.

(4) Mobility.

(5) Self-direction.

(6) Capacity for independent living.

(7) Economic self-sufficiency.

Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

SEC. 1.5. Section 4521 of the Welfare and Institutions Code is amended to read:

4521. (a) All references to "state council" in this part shall be a reference to the State Council on Developmental Disabilities.

(b) There shall be 29 voting members on the state council appointed by the Governor, as follows:

(1) One member from each of the 13 area boards on developmental disabilities described in Article 6 (commencing with Section 4543), nominated by the area board to serve as a council member, who shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, or parents or guardians of minors with developmental disabilities or conservators of adults with developmental disabilities residing in California. Five of these members shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, three shall be parents, immediate relatives, guardians, or conservators of persons with developmental disabilities, and five shall be either a person with a developmental disability or a parent, immediate relatives, guardian, or conservator of a person with a developmental disability. The nominee from each area board shall be an area board member who was appointed by the Governor.

(2) Ten members of the council shall include the following:

(A) The Secretary of the California Health and Human Services Agency, or his or her designee, who shall represent the agency and the state agency that administers funds under Title XIX of the Social Security Act for people with developmental disabilities.

(B) The Director of Developmental Services or his or her chief deputy.

(C) The Director of Rehabilitation or his or her chief deputy.

(D) The Superintendent of Public Instruction or his or her designee.

(E) A representative from a nongovernmental agency or group concerned with the provision of services to persons with developmental disabilities.

(F) One representative from each of the two university centers for excellence in the state, pursuant to 42 U.S.C. Section 15061 et seq., providing training in the field of developmental services. These individuals shall have expertise in the field of developmental disabilities.

(G) The Director of Health Services or his or her chief deputy.

(H) 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 chief deputy.

(3) Six members at large, appointed by the Governor, as follows:

(A) Two shall be persons with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code.

(B) One shall be a person who is a parent, immediate relative, guardian, or conservator of a resident of a developmental center.

(C) One shall be a person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community.

(D) One shall be a person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community, nominated by the Speaker of the Assembly.

(E) One shall be a person with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code, nominated by the Senate Committee on Rules.

(c) Prior to appointing the 29 members pursuant to this section, the Governor shall request and consider recommendations from organizations representing, or providing services to, or both, persons with developmental disabilities, and shall take into account socioeconomic, ethnic, and geographic considerations of the state.

(d) The term of each member described in paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) shall be for three years; provided, however, of the members first appointed by the Governor pursuant to paragraph (1) of subdivision (b), five shall hold office for three years, four shall hold office for two years, and four shall hold office for one year. In no event shall any member described in paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) serve for more than a total of six years of service. Service by any individual on any state council on developmental disabilities existing on and after

January 1, 2003, shall be included in determining the total length of service.

(e) Members appointed to the state council prior to June 1, 2002, shall continue to serve until the term to which they were appointed expires. Members appointed on June 1, 2002, or thereafter shall have their terms expire on January 1, 2003.

(f) Notwithstanding subdivision (c) of Section 4546, members described in subdivision (b) shall continue to serve on the area board following the expiration of their term on the area board until their term on the state council has expired.

(g) A member may continue to serve following the expiration of his or her term until the Governor appoints that member's successor. The state council shall notify the Governor regarding membership requirements of the council and shall notify the Governor at least 60 days before a member's term expires, and when a vacancy on the council remains unfilled for more than 60 days.

SEC. 2. Section 4551 of the Welfare and Institutions Code is amended to read:

4551. (a) (1) Within the limit of funds allotted for these purposes, the state council chairperson, with the concurrence of a majority of the state council, shall appoint an executive director and, pursuant to paragraph (1) of subdivision (c) of Section 4553, shall appoint an executive director for each area board. The Governor, upon the recommendation of the executive director of the state council following consultation with the area boards, shall appoint a deputy director for area board operations. The Governor, upon recommendation of the executive director of the state council, shall appoint not more than two deputy directors. All other state council employees that the state council may require shall be appointed by the executive director, with the approval of the state council.

(2) The executive director, all deputy directors, and each area board executive director, shall be paid a salary that is comparable to the director, deputy director, or manager of other state boards, commissions, or state department regional offices with similar responsibilities. The executive director and three deputy directors of the state council and the executive director of each area board shall be exempt from civil service.

(b) Among other duties as the executive director of the state council may require, the deputy director for area board operations shall provide assistance to the area boards, including, but not limited to, resolving common problems, improving coordination, and fostering the exchange of information among the area boards and between the area boards and the state council.

(c) Each area board executive director employed by the state on December 31, 2002, shall continue to be employed in a job classification at the same or higher salary by the council on January 1, 2003, and thereafter, unless he or she resigns or is terminated from employment for good cause. The Executive Director of the Organization of Area Boards on December 31, 2002, shall continue to be employed in a job classification at the same or higher salary by the council on January 1, 2003, and shall serve as the deputy director of area board operations unless he or she resigns or is terminated from employment for good cause.

SEC. 2.5. Section 4622 of the Welfare and Institutions Code is amended to read:

4622. The state shall contract only with agencies, the governing boards of which conform to all of the following criteria:

(a) The governing board shall be composed of individuals with demonstrated interest in, or knowledge of, developmental disabilities.

(b) The membership of the governing board shall include persons with legal, management, public relations, and developmental disability program skills.

(c) The membership of the governing board shall include representatives of the various categories of disability to be served by the regional center.

(d) The governing board shall reflect the geographic and ethnic characteristics of the area to be served by the regional center.

(e) A minimum of 50 percent of the members of the governing board shall be persons with developmental disabilities or their parents or legal guardians. No less than 25 percent of the members of the governing board shall be persons with developmental disabilities.

(f) Members of the governing board shall not be permitted to serve more than seven years within each eight-year period.

(g) The regional center shall provide necessary training and support to these board members to facilitate their understanding and participation. As part of its monitoring responsibility, the department shall review and approve the method by which training and support are provided to board members to ensure maximum understanding and participation by board members.

(h) The governing board may appoint a consumers' advisory committee composed of persons with developmental disabilities representing the various categories of disability served by the regional center.

(i) The governing board shall appoint an advisory committee composed of a wide variety of persons representing the various categories of providers from which the regional center purchases client services.

The advisory committee shall provide advice, guidance, recommendations, and technical assistance to the regional center board in order to assist the regional center in carrying out its mandated functions. The advisory committee shall designate one of its members to serve as a member of the regional center board.

(j) The governing board shall annually review the performance of the director of the regional center.

(k) No member of the board who is an employee or member of the governing board of a provider from which the regional center purchases client services shall do any of the following:

(1) Serve as an officer of the board.

(2) Vote on any fiscal matter affecting the purchase of services from any regional center provider.

(3) Vote on any issue other than as described in paragraph (2), in which the member has a financial interest, as defined in Section 87103 of the Government Code, and determined by the regional center board. The member shall provide a list of his or her financial interests, as defined in Section 87103, to the regional center board.

Nothing in this section shall prevent the appointment to a regional center governing board of a person who meets the criteria for more than one of the categories listed above.

This section shall become operative on July 1, 1999.

SEC. 3. Section 4646.5 of the Welfare and Institutions Code is amended to read:

4646.5. (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery.

These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

(3) When developing individual program plans for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685.

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(5) When agreed to by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer or the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted. This review shall include a discussion of current medications, any observed side effects, and the date of last review of the medication. Service providers shall cooperate with the planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status and referrals shall be made in the consumer's record by the service coordinator.

(6) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

(c) (1) The department, with the participation of representatives of a statewide consumer organization, the Association of Regional Center Agencies, an organized labor organization representing service coordination staff, and the Organization of Area Boards shall prepare training material and a standard format and instructions for the preparation of individual program plans, which embodies an approach centered on the person and family.

(2) Each regional center shall use the training materials and format prepared by the department pursuant to paragraph (1).

(3) The department shall biennially review a random sample of individual program plans at each regional center to assure that these plans are being developed and modified in compliance with Section 4646 and this section.

SEC. 4. Section 4648 of the Welfare and Institutions Code is amended to read:

4648. In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the

qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; the procedure for an individual or an agency to appeal any vendorization decision made by the department or regional center.

(D) A regional center may vendorize a licensed facility for exclusive services to persons with developmental disabilities at a capacity equal to or less than the facility's licensed capacity. A facility already licensed on January 1, 1999, shall continue to be vendorized at their full licensed capacity until the facility agrees to vendorization at a reduced capacity.

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

(5) In order to ensure the maximum flexibility and availability of appropriate services and supports for persons with developmental disabilities, the department shall establish and maintain an equitable system of payment to providers of services and supports identified as necessary to the implementation of a consumers' individual program plan. The system of payment shall include provision for a rate to ensure that the provider can meet the special needs of consumers and provide

quality services and supports in the least restrictive setting as required by law.

(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available.

(E) The consumer's or, where appropriate, the parents, legal guardian, or conservator of a consumer's choice of providers.

(7) No service or support provided by any agency or individual shall be continued unless the consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 or subdivision (e) of Section 4705, is satisfied and the regional center and the consumer or, when appropriate, the person's parents or legal guardian or conservator agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

(9) (A) A regional center may, directly or through an agency acting on behalf of the center, provide placement in, purchase of, or follow-along services to persons with developmental disabilities in, appropriate community living arrangements, including, but not limited to, support service for consumers in homes they own or lease, foster family placements, health care facilities, and licensed community care facilities. In considering appropriate placement alternatives for children with developmental disabilities, approval by the child's parent or guardian shall be obtained before placement is made.

(B) Each person with developmental disabilities placed by the regional center in a community living arrangement shall have the rights specified in this division. These rights shall be brought to the person's attention by any means necessary to reasonably communicate these rights to each

resident, provided that, at a minimum, the Director of Developmental Services prepare, provide, and require to be clearly posted in all residential facilities and day programs a poster using simplified language and pictures that is designed to be more understandable by persons with cognitive disabilities and that the rights information shall also be available through the regional center to each residential facility and day program in alternative formats, including, but not limited to, other languages, braille, and audio tapes, when necessary to meet the communication needs of consumers.

(C) Consumers are eligible to receive supplemental services including, but not limited to, additional staffing, pursuant to the process described in subdivision (d) of Section 4646. Necessary additional staffing that is not specifically included in the rates paid to the service provider may be purchased by the regional center if the additional staff are in excess of the amount required by regulation and the individual's planning team determines the additional services are consistent with the provisions of the individual program plan. Additional staff should be periodically reviewed by the planning team for consistency with the individual program plan objectives in order to determine if continued use of the additional staff is necessary and appropriate and if the service is producing outcomes consistent with the individual program plan. Regional centers shall monitor programs to ensure that the additional staff is being provided and utilized appropriately.

(10) Emergency and crisis intervention services including, but not limited to, mental health services and behavior modification services, may be provided, as needed, to maintain persons with developmental disabilities in the living arrangement of their own choice. Crisis services shall first be provided without disrupting a person's living arrangement. If crisis intervention services are unsuccessful, emergency housing shall be available in the person's home community. If dislocation cannot be avoided, every effort shall be made to return the person to his or her living arrangement of choice, with all necessary supports, as soon as possible.

(11) Among other service and support options, planning teams shall consider the use of paid roommates or neighbors, personal assistance, technical and financial assistance, and all other service and support options which would result in greater self-sufficiency for the consumer and cost-effectiveness to the state.

(12) When facilitation as specified in an individual program plan requires the services of an individual, the facilitator shall be of the consumer's choosing.

(13) The community support may be provided to assist individuals with developmental disabilities to fully participate in community and

civic life, including, but not limited to, programs, services, work opportunities, business, and activities available to persons without disabilities. This facilitation shall include, but not be limited to, any of the following:

(A) Outreach and education to programs and services within the community.

(B) Direct support to individuals which would enable them to more fully participate in their community.

(C) Developing unpaid natural supports when possible.

(14) Other services and supports may be provided as set forth in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

(b) (1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division.

(2) Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request the area board to initiate action under the provisions defining area board advocacy functions established in this division.

(c) The regional center may assist consumers and families directly, or through a provider, in identifying and building circles of support within the community.

(d) In order to increase the quality of community services and protect consumers, the regional center shall, when appropriate, take either of the following actions:

(1) Identify services and supports that are ineffective or of poor quality and provide or secure consultation, training, or technical assistance services for any agency or individual provider to assist that agency or individual provider in upgrading the quality of services or supports.

(2) Identify providers of services or supports that may not be in compliance with local, state, and federal statutes and regulations and notify the appropriate licensing or regulatory authority, or request the area board to investigate the possible noncompliance.

(e) When necessary to expand the availability of needed services of good quality, a regional center may take actions that include, but are not limited to, the following:

(1) Soliciting an individual or agency by requests for proposals or other means, to provide needed services or supports not presently available.

(2) Requesting funds from the Program Development Fund, pursuant to Section 4677, or community placement plan funds designated from

that fund, to reimburse the startup costs needed to initiate a new program of services and supports.

(3) Using creative and innovative service delivery models, including, but not limited to, natural supports.

(f) Except in emergency situations, a regional center shall not provide direct treatment and therapeutic services, but shall utilize appropriate public and private community agencies and service providers to obtain those services for its consumers.

(g) Where there are identified gaps in the system of services and supports or where there are identified consumers for whom no provider will provide services and supports contained in his or her individual program plan, the department may provide the services and supports directly.

SEC. 5. Section 4677 of the Welfare and Institutions Code is amended to read:

4677. (a) All parental fees collected by or for regional centers shall be remitted to the State Treasury to be deposited in the Developmental Disabilities Program Development Fund, which is hereby created and hereinafter called the Program Development Fund. The purpose of the Program Development Fund shall be to provide resources needed to initiate new programs, consistent with approved priorities for program development in the state plan.

In no event shall an allocation from the Program Development Fund be granted for more than 24 months.

(b) (1) The State Council on Developmental Disabilities, in conjunction with the area boards shall, at least once every five years, request from all regional centers information on the types and amounts of services and supports needed, but currently unavailable.

(2) The state council shall work collaboratively with the department and the Association of Regional Center Agencies to develop standardized forms and protocols that shall be used by all regional centers and area boards in collecting and reporting this information. In addition to identifying services and supports that are needed but currently unavailable, the forms and protocols shall also solicit input and suggestions on alternative and innovative service delivery models that would address consumer needs.

(3) In addition to the information provided pursuant to paragraph (2), the state council may utilize information from other sources, including, but not limited to, public hearings, life quality assessments conducted pursuant to Section 4570, the annual report regarding persons moving from developmental centers produced pursuant to Section 4418.1, the annual report regarding community-based vendor services produced pursuant to Section 4637.5, regional center reports on alternative service

delivery submitted to the department pursuant to Section 4669.2, and the annual report on self-directed services produced pursuant to Section 4685.7.

(4) The department shall provide additional information, as requested by the state council.

(5) Based on the information provided by the regional centers and other agencies, the state council shall develop an assessment of the need for new, expanded, or converted community services and support, and make that assessment available to the public. The assessment shall include a discussion of the type and amount of services and supports necessary but currently unavailable including the impact on consumers with common characteristics, including, but not limited to, disability, specified geographic regions, age, and ethnicity, face distinct challenges. The assessment shall highlight alternative and innovative service delivery models identified through their assessment process.

(6) This needs assessment shall be conducted at least once every five years and updated annually. The assessment shall be included in the state plan and shall be provided to the department and to the appropriate committees of the Legislature. The assessment and annual updates shall be made available to the public. The State Council on Developmental Disabilities, in consultation with the department, shall make a recommendation to the Department of Finance as to the level of funding for program development to be included in the Governor's Budget, based upon this needs assessment.

(c) Parental fee schedules shall be evaluated pursuant to Section 4784 and adjusted annually by the department, with the approval of the state council. Fees for out-of-home care shall bear an equitable relationship to the cost of the care and the ability of the family to pay.

(d) In addition to parental fees and General Fund appropriations, the Program Development Fund may be augmented by federal funds available to the state for program development purposes, when these funds are allotted to the Program Development Fund in the state plan. The Program Development Fund is hereby appropriated to the department, and subject to any allocations that may be made in the annual Budget Act. In no event shall any of these funds revert to the General Fund.

(e) The department may allocate funds from the Program Development Fund for any legal purpose, provided that requests for proposals and allocations are approved by the state council in consultation with the department, and are consistent with the priorities for program development in the state plan. Allocations from the Program Development Fund shall take into consideration the following factors:

(1) The future fiscal impact of the allocations on other state supported services and supports for persons with developmental disabilities.

(2) The information on priority services and supports needed, but currently unavailable, submitted by the regional centers.

Consistent with the level of need as determined in the state plan, excess parental fees may be used for purposes other than new program development only when specifically appropriated to the State Department of Developmental Services for those purposes.

(f) Under no circumstances shall the deposit of federal moneys into the Program Development Fund be construed as requiring the State Department of Developmental Services to comply with a definition of "developmental disabilities" and "services for persons with developmental disabilities" other than as specified in subdivisions (a) and (b) of Section 4512 for the purposes of determining eligibility for developmental services or for allocating parental fees and state general funds deposited in the Program Development Fund.

SEC. 5.5. Section 4677 of the Welfare and Institutions Code is amended to read:

4677. (a) All parental fees collected by or for regional centers shall be remitted to the State Treasury to be deposited in the Developmental Disabilities Program Development Fund, which is hereby created and hereinafter called the Program Development Fund. The purpose of the Program Development Fund shall be to provide resources needed to initiate new programs, and to expand or convert existing programs. Within the context of, and consistent with, approved priorities for program development in the state plan, program development funds shall promote integrated residential, work, instructional, social, civic, volunteer, and recreational services and supports that increase opportunities for self-determination and maximum independence of persons with developmental disabilities.

In no event shall an allocation from the Program Development Fund be granted for more than 24 months.

(b) (1) The State Council on Developmental Disabilities shall, at least once every five years, request from all regional centers information on the types and amounts of services and supports needed, but currently unavailable.

(2) The state council shall work collaboratively with the department and the Association of Regional Center Agencies to develop standardized forms and protocols that shall be used by all regional centers and area boards in collecting and reporting this information. In addition to identifying services and supports that are needed, but currently unavailable, the forms and protocols shall also solicit input and

suggestions on alternative and innovative service delivery models that would address consumer needs.

(3) In addition to the information provided pursuant to paragraph (2), the state council may utilize information from other sources, including, but not limited to, public hearings, life quality assessments conducted pursuant to Section 4570, the annual report regarding persons moving from developmental centers produced pursuant to Section 4418.1, the annual report regarding community-based vendor services produced pursuant to Section 4637.5, regional center reports on alternative service delivery submitted to the department pursuant to Section 4669.2, and the annual report on self-directed services produced pursuant to Section 4685.7.

(4) The department shall provide additional information, as requested by the state council.

(5) Based on the information provided by the regional centers and other agencies, the state council shall develop an assessment of the need for new, expanded, or converted community services and support, and make that assessment available to the public. The assessment shall include a discussion of the type and amount of services and supports necessary but currently unavailable including the impact on consumers with common characteristics, including, but not limited to, disability, specified geographic regions, age, and ethnicity, face distinct challenges. The assessment shall highlight alternative and innovative service delivery models identified through their assessment process.

(6) This needs assessment shall be conducted at least once every five years and updated annually. The assessment shall be included in the state plan and shall be provided to the department and to the appropriate committees of the Legislature. The assessment and annual updates shall be made available to the public. The State Council on Developmental Disabilities, in consultation with the department, shall make a recommendation to the Department of Finance as to the level of funding for program development to be included in the Governor's Budget, based upon this needs assessment.

(c) Parental fee schedules shall be evaluated pursuant to Section 4784 and adjusted annually by the department, with the approval of the state council. Fees for out-of-home care shall bear an equitable relationship to the cost of the care and the ability of the family to pay.

(d) In addition to parental fees and General Fund appropriations, the Program Development Fund may be augmented by federal funds available to the state for program development purposes, when these funds are allotted to the Program Development Fund in the state plan. The Program Development Fund is hereby appropriated to the department, and subject to any allocations that may be made in the annual

Budget Act. In no event shall any of these funds revert to the General Fund.

(e) The department may allocate funds from the Program Development Fund for any legal purpose, provided that requests for proposals and allocations are approved by the state council in consultation with the department, and are consistent with the priorities for program development in the state plan. Allocations from the Program Development Fund shall take into consideration the following factors:

(1) The future fiscal impact of the allocations on other state supported services and supports for persons with developmental disabilities.

(2) The information on priority services and supports needed, but currently unavailable, submitted by the regional centers.

Consistent with the level of need as determined in the state plan, excess parental fees may be used for purposes other than programs specified in subdivision (a) only when specifically appropriated to the State Department of Developmental Services for those purposes.

(f) Under no circumstances shall the deposit of federal moneys into the Program Development Fund be construed as requiring the State Department of Developmental Services to comply with a definition of "developmental disabilities" and "services for persons with developmental disabilities" other than as specified in subdivisions (a) and (b) of Section 4512 for the purposes of determining eligibility for developmental services or for allocating parental fees and state general funds deposited in the Program Development Fund.

SEC. 6. Section 4701.6 of the Welfare and Institutions Code is amended to read:

4701.6. "Authorized representative" means the conservator of an adult, the guardian, conservator, or parent or person having legal custody of a minor claimant, or a person or agency appointed pursuant to subdivision (d) of Section 4548 or subdivision (e) of Section 4705 and authorized in writing by the claimant or by the legal guardian, conservator, or parent or person having legal custody of a minor claimant to act for or represent the claimant under this chapter.

SEC. 7. Section 4705 of the Welfare and Institutions Code is amended to read:

4705. (a) Every service agency shall, as a condition of continued receipt of state funds, have an agency fair hearing procedure for resolving conflicts between the service agency and recipients of, or applicants for, service. The State Department of Developmental Services shall promulgate regulations to implement this chapter by July 1, 1999, which shall be binding on every service agency.

Any public or private agency receiving state funds for the purpose of serving persons with developmental disabilities not otherwise subject

to the provisions of this chapter shall, as a condition of continued receipt of state funds, adopt and periodically review a written internal grievance procedure.

(b) An agency that employs a fair hearing procedure mandated by any other statute shall be considered to have an approved procedure for purposes of this chapter.

(c) The service agency's mediation and fair hearing procedure shall be stated in writing, in English and any other language that may be appropriate to the needs of the consumers of the agency's service. A copy of the procedure and a copy of the provisions of this chapter shall be prominently displayed on the premises of the service agency.

(d) All recipients and applicants, and persons having legal responsibility for recipients or applicants, shall be informed verbally of, and shall be notified in writing in a language which they comprehend of, the service agency's mediation and fair hearing procedure when they apply for service, when they are denied service, and when notice of service modification is given pursuant to Section 4710.

(e) If, in the opinion of any person, the rights or interests of a claimant who has not personally authorized a representative will not be properly protected or advocated, the local area board and the clients' right advocate assigned to the regional center or developmental center shall be notified, and the area board may appoint a person or agency as representative, pursuant to subdivision (d) of Section 4548, to assist the claimant in the mediation and fair hearing procedure. The appointment shall be in writing to the authorized representative and a copy of the appointment shall be immediately mailed to the service agency director.

SEC. 8. Section 4747 of the Welfare and Institutions Code is amended to read:

4747. If a consumer or, when appropriate, the parent, guardian, or conservator or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 or subdivision (e) of Section 4705, requests a relocation, the regional center shall schedule an individual program plan meeting, as soon as possible to assist in locating and moving to another residence.

SEC. 9. Section 4803 of the Welfare and Institutions Code is amended to read:

4803. If a regional center recommends that a person be admitted to a community care facility or health facility as a developmentally disabled resident, the employee or designee of the regional center responsible for making the recommendations shall certify in writing that neither the person recommended for admission to a community care facility or health facility, nor the parent of a minor or conservator of an adult, if appropriate, nor the person or agency appointed pursuant to subdivision

(d) of Section 4548 or subdivision (e) of Section 4705 has made an objection to the admission to the person making the recommendation. The regional center shall transmit the certificate, or a copy thereof, to the community care facility or health facility.

A community care facility or health facility shall not admit any adult as a developmentally disabled patient on recommendation of a regional center unless a copy of the certificate has been transmitted pursuant to this section.

Any person who, knowing that objection to a community care facility or health facility admission has been made, certifies that no objection has been made, shall be guilty of a misdemeanor.

Objections to proposed placements shall be resolved by a fair hearing procedure pursuant to Section 4700.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 4677 of the Welfare and Institutions Code proposed by both this bill and SB 1270. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 4677 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1270, in which case Section 5 of this bill shall not become operative.

CHAPTER 400

An act to amend Section 19518 of, and to add Section 19461.1 to, the Business and Professions Code, relating to horse racing.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 19461.1 is added to the Business and Professions Code, to read:

19461.1. (a) The withdrawal of an application for a license after it has been filed with the board shall not, unless the board has consented in writing to the withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law, or to enter an order denying the license upon any of those grounds.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by the board, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender

without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law, or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any of those grounds.

SEC. 2. Section 19518 of the Business and Professions Code is amended to read:

19518. (a) (1) The board shall contract with persons licensed as stewards pursuant to this article to perform the duties of stewards at horse racing meets. The board shall also contract with licensed veterinarians pursuant to this article to perform the duties of official veterinarians at horse racing meets. Contracts shall be upon any terms that the board, the stewards, and the official veterinarians may mutually agree upon and may contain different rates of compensation based upon the experience of the steward or official veterinarian.

(2) The board shall establish a committee of at least two board members to meet at least quarterly with representatives of the stewards, so that recommendations of the stewards can be discussed as necessary. These meetings may be scheduled the same day as regular board meetings or at the convenience of the board. Representatives of associations may attend and participate in these meetings, or portions thereof, when items directly affecting the associations are discussed.

(3) The board shall provide remuneration, including any fringe benefits, to stewards, to the official veterinarian, and for the costs of laboratory testing relating to horse racing.

(b) Stewards, official veterinarians, and other racing officials appointed or approved by the board, and while performing duties required by this chapter or by the board, 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 of the Government Code.

(c) The Legislature finds and declares that the services performed by stewards and official veterinarians at horse racing meetings are unique and cannot be performed adequately, competently, or satisfactorily by civil service personnel, and that the services cannot be adequately rendered by an existing public agency and do not duplicate the function of an existing public agency. Stewards and official veterinarians shall be personal service contractors of the board and shall not be civil service employees.

CHAPTER 401

An act to add Sections 9611, 9612, and 9613 to the Business and Professions Code, relating to cemeteries.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 9611 is added to the Business and Professions Code, to read:

9611. The bureau shall disclose on its Web site information about each cemetery subject to the jurisdiction of the bureau. In addition to the information required by Section 27, the bureau shall disclose the name of the owner of each cemetery, the name of the cemetery, the business address of the cemetery owner, and the physical address of the cemetery.

SEC. 2. Section 9612 is added to the Business and Professions Code, to read:

9612. Notwithstanding Section 8115 of the Health and Safety Code, in order to protect consumers, the bureau shall adopt regulations that establish minimum standards of maintenance for endowment care cemeteries under the jurisdiction of the bureau. The regulations shall consider differences in cemetery size, location, topography, and type of interments. The regulations shall also consider the extent to which funds are available from the cemetery's endowment care funds to perform maintenance.

The standards established pursuant to this section shall not supersede any standards of a higher level of care established pursuant to Section 8115 of the Health and Safety Code.

SEC. 3. Section 9613 is added to the Business and Professions Code, to read:

9613. (a) The bureau shall survey each of its licensees to obtain information to determine if the endowment care fund levels of the licensee's cemetery are sufficient to cover the cost of future operation. The bureau shall also review the levels of endowment care funds that have previously been reported pursuant to this chapter by licensed cemeteries.

(b) The bureau shall report its findings and recommendations to the Legislature by January 1, 2008.

CHAPTER 402

An act to amend Section 35178.4 of the Education Code, relating to schools.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 35178.4 of the Education Code is amended to read:

35178.4. (a) A school district governing board shall give official notice at a regularly scheduled school board meeting if a public school within the district that has elected to be accredited by the Western Association of Schools and Colleges (WASC) or any other chartered accrediting agency loses its accreditation status.

(b) If a school loses its accreditation status, the school district shall notify each parent or guardian of the pupils in the school that the school has lost its accreditation status, in writing, and this notice shall indicate the potential consequences of the school's loss of accreditation status. This notice shall also be posted on the school district's Internet Web site and the school's Internet Web site, if any.

(c) A school district that has within its jurisdiction a school that has elected to be accredited by WASC or any other chartered accrediting agency shall require that school to publish all results of any inspection of the school by the accrediting agency not later than 60 days after the results are made available to the school. Publication shall be either by notifying each parent or guardian in writing or by posting the information on the school district's Internet Web site or the school's Internet Web site, or by any combination of these methods, as determined by the school district.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 403

An act relating to tidelands and submerged lands.

[Approved by Governor September 22, 2006. Filed with
Secretary of State September 22, 2006.]

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

SECTION 1. As used in this act:

(a) "BCDC" means the San Francisco Bay Conservation and Development Commission.

(b) "Commission" means the State Lands Commission.

(c) "County" means the County of Marin.

(d) "Grant" means the legislative grant to the county pursuant to Chapter 497 of the Statutes of 1959, as amended by Chapter 1375 of the Statutes of 1969.

(e) "Granted lands" means certain tide and submerged lands in the county conveyed to the county by the grant.

(f) The phrase "sale or exchange" and similar phrases also mean "sale and exchange."

(g) "State" means the State of California.

(h) "Streets" means those tidelands within the grant reserved to the state solely for street purposes. The streets include portions of those streets designated as Manzanita, Madrona, Pescadero, Eureka, Grove, Petaluma, Humboldt, and Donahue within that portion of Richardson Bay bounded by Teutonia Street, Railroad Avenue, and Yuba Street.

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

(a) Upon its admission to the United States of America on September 9, 1850, the state, by virtue of its sovereignty, received in trust for the purposes of commerce, navigation and fishery, all rights, title, and interest in ungranted tidelands and submerged lands and beds of navigable waterways within its borders. The landward boundary of such waterways is the ordinary high water mark.

(b) Under Section 3 of Article X of the California Constitution, the state may sell tidelands within two miles of any incorporated city, city and county, or town in the state, and fronting on the water of any harbor, estuary, bay, or inlet that were reserved to the state solely for street purposes, to any town, city, county, city and county, municipal corporations, private persons, partnerships or corporations, subject to such conditions as the Legislature determines are necessary to be imposed in connection with the sales in order to protect the public interest, if the Legislature finds and declares that the tidelands are not used for navigation purposes and are not necessary for those purposes.

(c) Pursuant to the provisions of Division 6 (commencing with Section 6001) of the Public Resources Code, the commission is vested with jurisdiction and authority as to all right, title, and interest in tidelands

and submerged lands held by the state in trust for the benefit of all the people of the state.

(d) The commission is authorized by Section 6357 of the Public Resources Code to establish by agreement the ordinary high water mark whenever it is deemed expedient or necessary.

(e) Pursuant to Chapter 543 of the Statutes of 1867–1868, as amended by Chapter 388 of the Statutes of 1869–1870, the Board of Tide Land Commissioners sold tideland lots in various areas around San Francisco Bay.

(f) The streets were reserved to the state solely for street purposes. The state also retained title to an area designated as the "Rosedale Canal."

(g) In 1959, the Legislature granted to the county pursuant to the grant all the rights, title, and interest in the streets, the Rosedale Canal, and other designated areas in the county held by the state by virtue of its sovereignty or by patent from the United States of America pursuant to an act of Congress, 9 Stat. 519 (September 28, 1850). The grant provides that these areas shall "be forever held by said county and its successors, in trust for the uses and purposes and upon the express conditions following." The grant lists specific authorized uses including the conduct of a harbor and establishes the landward limit of the grant. The grant also permits the county to lease the granted lands "for purposes consistent with the trust upon which said lands are held by the State of California and with the requirements of commerce and navigation at said harbor." The grant further provides that the lands will revert to the state if not improved consistent with the terms of the grant within a ten-year period.

(h) The grant was amended in 1969. The 1969 amendment required that the lands be used "for purposes in which there is a statewide interest." This requirement was followed by a list of potential uses, including a harbor, airport, construction of highways, public buildings, a small boat harbor, preservation of land in its natural state and a marine biological reserve.

(i) In 1979, the county submitted a required report to the state indicating, among other things, certain portions of the tidelands granted to the county had been developed for houseboat use and stating that "In the county's opinion the statutory requirements [of the grant] have been met and that the granted lands should remain in county ownership . . . ."

(j) On May 8, 1984, the county leased portions of the granted lands for "any lawful use provided that such use is compatible with the existing houseboat marina." Portions of the granted lands are now, and have been for many years, used for the permanent mooring of houseboats.

(k) The use of the granted lands for the permanent mooring of houseboats is not a purpose in which there is a statewide public interest,

but moving the houseboats would require the construction of new docks and other facilities followed by vessel relocation which would have potentially significant adverse impacts on San Francisco Bay.

(*l*) The existing boundary configuration under which the state retained sovereign interest in the streets under Richardson Bay while lots in Richardson Bay were placed in private ownership was premised on the assumption that Richardson Bay would be filled and the streets used for pedestrian and vehicle access. This assumption as to the future use of this area is no longer valid.

(m) The existing configuration of the underwater streets leased by the county, located within the houseboat marinas, and running between privately owned lots in the houseboat marinas is a hindrance to the use of these sovereign lands for public trust purposes because the streets are narrow and in that location are not suitable for commerce or navigation.

(n) The following portions of the granted lands are not, as a practical matter, used for navigation purposes and are not necessary for such purposes: the portions of the granted lands within the existing houseboat marina located southwest of Humboldt Avenue (including Petaluma Avenue between Manzanita and Grove Streets, and Grove and Eureka Streets between Petaluma and Humboldt Avenues); those portions of Manzanita and Pescadero Streets southwest of Humboldt Avenue that are immediately adjacent to the existing houseboat berths; the filled portions of Madrona and Eureka Streets; and those portions of Grove and Eureka Streets northeast of Humboldt Avenue that are immediately adjacent to the existing houseboat berths in the houseboat marina located northeast of Humboldt Avenue. Shallow water depths in and immediately adjacent to the houseboat marinas render the marinas unsuitable as recreational boat harbors or for use by most shallow draft watercraft such as sailboats and larger recreational vessels. The houseboats themselves are an obstacle to navigation because they are moored for extended periods in a single location, do not float at most stages of the tide, and cannot move under their own power. The dredging necessary to render the houseboat marinas and immediately adjacent areas usable for other harbor purposes is currently impracticable and ecologically undesirable due to benthic contamination. The houseboat marinas are also too shallow to be used for navigation by even small, shallow draft commercial watercraft. In addition, commercial port use is incompatible with existing surrounding land uses and water depths. Port use and water-related industrial uses or cargo transport use in or adjacent to the houseboat marinas are not desirable or feasible, even with significant dredging because of surrounding incompatible land uses and distance from deep-draft navigation channels. BCDC's San Francisco Bay Plan, and San Francisco Bay Area Seaport Plan designations and needs

assessments have not identified port or water-related industrial uses for Richardson Bay.

SEC. 3. It is in the public interest for the commission to enter into, and the commission is authorized to enter into, one or more agreements with the county and with the lessees of the granted lands who also own privately owned tidelands subject to the public trust in Richardson Bay for the sale or exchange of lands, the settlement of boundaries, confirmation of title, and the establishment of an agreed ordinary high water mark, if the commission finds and declares that the agreement and underlying sale or exchange, boundary settlement, confirmation of title, and agreed ordinary high water mark meet all of the following criteria:

(a) The agreement is consistent with the findings and declarations in Section 2 of this act.

(b) The commission has independently conducted a review and analysis of the pertinent information bearing upon the relevant parcels and water bodies, including a review of all documents, surveys, and deed descriptions of record. The commission has also physically inspected and investigated the parcels included in the agreement, and has concluded, based on its findings, that the boundary lines, including without limitation the agreed ordinary high water mark, are supported by fact and law.

(c) The agreement provides the public with a significant public benefit because it will modify the existing pattern of state ownership to consolidate the state's sovereign ownership in this property in a pattern that will enhance the state's use of this property for public trust purposes.

(d) The agreement provides that lands not needed for navigation, not providing statewide public trust benefits, and currently used for private residential purposes will be sold or exchanged for privately owned open water areas that will be used for purposes providing statewide public trust benefits, including fishery, recreation, and open space.

(e) The agreement provides the public with a significant public benefit by establishing an agreed ordinary high water mark along the affected shoreline of Richardson Bay.

(f) A sale or exchange pursuant to such an agreement will not diminish the amount of property potentially available for public trust uses because the lands conveyed to a private party pursuant to the agreement which are bayward of the agreed ordinary high water mark shall remain subject to the public trust.

(g) The agreement to sell or exchange property provides the public with a significant public benefit because the property which the state will receive pursuant to a sale or exchange provided for in the agreement will be held by the state as state owned sovereign tide and submerged lands, and the monetary value of the interests in property that the state

will receive pursuant to the agreement and sale or exchange will be equal to or greater than the monetary value of the property being sold or exchanged to a private party to the agreement.

SEC. 4. To effectuate the foregoing, the commission is authorized to do all of the following:

(a) Convey to a private party by patent the right, title, and interest held by the state by virtue of its sovereign trust title to tide and submerged lands in and to the tidelands and submerged lands granted to the county under the grant, reserving to the state a public trust easement interest (the jus publicum) and subject to additional reservations as the commission may determine to be appropriate.

(b) Receive and accept on behalf of the state in its sovereign capacity lands or an interest in lands, conveyed to the state in its sovereign capacity by the county or by a private party pursuant to this act and pursuant to a sale or exchange authorized, ratified, or confirmed by this act.

(c) Convey to the county by patent all of the right, title, and interest of the state in lands conveyed to the state in its sovereign capacity by the county or by a private party pursuant to this act and pursuant to a sale or exchange authorized, ratified, or confirmed by this act, subject to terms, conditions, and reservations as the commission may determine are necessary to meet the requirements of Section 3 of this act.

(d) Determine or settle as part of a sale or exchange, the title to, the location of, or the boundaries of the granted lands or other boundary lines that the commission deems necessary to effectuate the sale or exchange or the purposes of this act.

(e) Confirm, by quitclaim of all of the right, title, and interest of the state, that lands claimed in fee by a private party and not subject to tidal action on and after February 22, 1980, are not subject to the public trust.

SEC. 5. In the case where the state, pursuant to this act conveys tidelands and submerged lands transferred to the county pursuant to the grant, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees, except that, notwithstanding the grant or Section 6401 of the Public Resources Code, any reservation shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(a) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by a grantee or by the grantee's successors or assignees.

(b) Conduct mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of a grantee of the lands or the grantee's successors or assignees.

SEC. 6. An agreement entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of the agreement commenced within 60 days after the recording of the agreement.

SEC. 7. (a) An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure by the parties to an agreement entered into pursuant to this act to confirm the validity of the agreement. Notwithstanding Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts and a determination as to whether the agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

(b) For purposes of Section 764.080 of the Code of Civil Procedure and unless otherwise agreed in writing, an agreement entered into pursuant to this act shall be deemed to be entered into on the date it is executed by the executive officer of the commission, who shall be the last of the parties to sign prior to the signature of the Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

SEC. 8. A sale or exchange, boundary settlement, confirmation of title, or agreed ordinary high water mark made, established, or accomplished pursuant to this act is hereby found to be of statewide significance, and, therefore, an ordinance, charter provision, or other provision of local law inconsistent with this act shall not be applicable to the exchange or sale.

SEC. 9. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands within Richardson Bay described in this act, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

CHAPTER 404

An act to amend Sections 13292 and 13385 of the Water Code, relating to water.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. The Legislature finds and declares that the California regional water quality control boards should afford all parties to an adjudicative proceeding, including public agencies, fair and adequate adjudication procedures.

SEC. 2. Section 13292 of the Water Code is amended to read:

13292. (a) It is the responsibility of the state board to provide guidance to the regional boards in matters of procedure, as well as policy and regulation. In order to ensure that regional boards are providing fair, timely, and equal access to all participants in regional board proceedings, the state board shall undertake a review of the regional boards' public participation procedures. As part of the review process, and upon request by the state board, the regional boards shall solicit comments from participants in their proceedings. Upon completion of the review, the state board shall report to the Legislature regarding its findings and include recommendations to improve regional board public participation processes.

(b) (1) The state board shall provide annual training to regional board members to improve public participation and adjudication procedures at the regional level.

(2) Paragraph (1) shall be implemented only during fiscal years for which funding is provided for the purposes of that paragraph in the annual Budget Act or in another statute.

SEC. 3. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity

subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars ($25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be

assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

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

(i) The discharger demonstrates all of the following:

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

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

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

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

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

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (*l*), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (*l*), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each violation whenever the person does any of the following four or more

times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

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

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

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

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

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

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

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

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

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

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

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

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

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the

date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures

to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

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

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

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

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

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length, except that the time schedule may not exceed 10 years in length for the upgrade described in subparagraph (B)(iv)(III). If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k) (1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "small community" means a publicly owned treatment works serving a population of 10,000 persons or less or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

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

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

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

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorneys' fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the

Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

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

CHAPTER 405

An act to amend Sections 789.8, 791.13, 1060, 1749.85, 1872.83, 1874.8, 10089.83, 12922, 12961, 12962, and 12967 of, to amend and renumber Section 10133.66 of, and to repeal Sections 742.435 and 1751.8 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 742.435 of the Insurance Code is repealed.

SEC. 1.5. Section 789.8 of the Insurance Code is amended to read:

789.8. (a) "Elder" for purposes of this section means any person residing in this state who is 65 years of age or older.

(b) If a life agent offers to sell to an elder any life insurance or annuity product, the life agent shall advise an elder or elder's agent in writing that the sale or liquidation of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product may have tax consequences, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation, and that the elder or elder's agent may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold. This section does not apply to a credit life insurance product as defined in Section 779.2.

(c) A life agent who offers for sale or sells a financial product to an elder on the basis of the product's treatment under the Medi-Cal program may not negligently misrepresent the treatment of any asset under the statutes and rules and regulations of the Medi-Cal program, as it pertains to the determination of the elder's eligibility for any program of public assistance.

(d) A life agent who offers for sale or sells any financial product on the basis of its treatment under the Medi-Cal program shall provide, in writing, the following disclosure to the elder or the elder's agent:

"NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY AND RECOVERY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse do not have to use up all of your savings before applying for Medi-Cal.

RECOVERY

An annuity purchased on or after September 1, 2004, shall be subject to recovery by the state upon the annuitant's death under the regulations of the Medi-Cal Recovery Program. Income derived from the annuity must be used to meet the annuitant's share of costs and, if the annuitant is married, the income derived from the annuity may impact the minimum monthly maintenance needs of the annuitant's community spouse. An annuity purchased by a community spouse on or after September 1, 2004, may also be subject to recovery if that spouse is the recipient of past or future Medi-Cal benefits.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of any health insurance premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of community countable assets).

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or (insert amount of the minimum monthly maintenance needs allowance), whichever is greater.

FAIR HEARINGS AND COURT ORDERS

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain additional resources or income. The order may allow the couple to retain more than (insert amount of community spouse resource allowance plus individual's resource allowance) in countable resources. The order also may allow the at-home spouse to retain more than (insert amount of the monthly maintenance needs allowance) in monthly income.

REAL AND PERSONAL PROPERTY EXEMPTIONS

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

REAL PROPERTY EXEMPTIONS

ONE PRINCIPAL RESIDENCE: One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday.

The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it.

Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE: Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS: These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

PERSONAL PROPERTY USED IN A TRADE OR BUSINESS.

ONE MOTOR VEHICLE.

IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS.

THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules. For more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney who is not connected with the sale of this product.

I have read the above notice and have received a copy.

Dated: _____ Signature: _____"

The statement required in this subdivision shall be printed in at least 12-point type, shall be clearly separate from any other document or writing, and shall be signed by the prospective purchaser and that person's spouse, and legal representative, if any.

(e) The State Department of Health Services shall update this form to ensure consistency with state and federal law and make the disclosure available to agents and brokers through its Internet Web site.

(f) Nothing in this section allows or is intended to allow the unlawful practice of law.

(g) Subdivisions (b) and (d) shall become operative on July 1, 2001.

SEC. 2. Section 791.13 of the Insurance Code is amended to read:

791.13. An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

(a) With the written authorization of the individual, and meets either of the conditions specified in paragraph (1) or (2):

(1) If such authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization meets the requirement of Section 791.06.

(2) If such authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization is:

(A) Dated.

(B) Signed by the individual.

(C) Obtained one year or less prior to the date a disclosure is sought pursuant to this section.

(b) To a person other than an insurance institution, agent, or insurance-support organization, provided such disclosure is reasonably necessary:

(1) To enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent, or insurance-support organization or insured and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

(A) Would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization; or

(B) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance-support organization.

(2) To enable such person to provide information to the disclosing insurance institution, agent or insurance-support organization for the purpose of:

(A) Determining an individual's eligibility for an insurance benefit or payment; or

(B) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.

(c) To an insurance institution, agent, insurance-support organization or self-insurer, provided the information disclosed is limited to that which is reasonably necessary under either paragraph (1) or (2):

(1) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or

(2) For either the disclosing or receiving insurance institution, agent or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

(d) To a medical-care institution or medical professional for the purpose of any of the following:

(1) Verifying insurance coverage or benefits.

(2) Informing an individual of a medical problem of which the individual may not be aware.

(3) Conducting operations or services audit, provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes.

(e) To an insurance regulatory authority; or

(f) To a law enforcement or other governmental authority pursuant to law.

(g) Otherwise permitted or required by law.

(h) In response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(i) Made for the purpose of conducting actuarial or research studies, provided:

(1) No individual may be identified in any actuarial or research report.

(2) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed.

(3) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.

(j) To a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, agent or insurance-support organization, provided:

(1) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably

necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation.

(2) The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.

(k) To a person whose only use of such information will be in connection with the marketing of a product or service, provided:

(1) No medical-record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed; or

(2) The individual has been given an opportunity to indicate that he or she does not want personal information disclosed for marketing purposes and has given no indication that he or she does not want the information disclosed; and

(3) The person receiving such information agrees not to use it except in connection with the marketing of a product or service.

(*l*) To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(m) By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent.

(n) To a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(o) To a professional peer review organization for the purpose of reviewing the service or conduct of a medical-care institution or medical professional.

(p) To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(q) To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

(r) To a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance. The information disclosed shall be limited to that which is reasonably necessary to permit the person to protect his or her interest in the policy and shall be consistent with Article 5.5 (commencing with Section 770).

(s) To an insured when the information disclosed is from an accident report, supplemental report, investigative report or the actual report from a government agency or is a copy of an accident report or other report which the insured is entitled to obtain under Section 20012 of the Vehicle Code or subdivision (f) of Section 6254 of the Government Code.

SEC. 3. Section 1060 of the Insurance Code is amended to read:

1060. The commissioner shall transmit all of the following to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance in the annual report submitted pursuant to Section 12922:

(a) The names of the persons proceeded against under this article.

(b) Whether such persons have resumed business or have been liquidated or have been mutualized.

(c) Such other facts as will acquaint the Governor, the policyholders, creditors, shareholders and the public with his or her proceedings under this article.

SEC. 4. Section 1749.85 of the Insurance Code is amended to read:

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

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

(c) This section shall not be construed to preclude licensed appraisers, contractors and architects from estimating replacement value of a structure.

(d) However, if the Department of Insurance, by adopting a regulation, establishes standards for the calculation of estimates of replacement value of a structure by appraisers, then on and after the effective date of the regulation a real estate appraiser's estimate of replacement value shall be calculated in accordance with the regulation.

SEC. 5. Section 1751.8 of the Insurance Code is repealed.

SEC. 6. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Fraud Division aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880,and in

subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Fraud Division shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, and of willful failure to secure payment of workers' compensation, in violation of Section 3700.5 of the Labor Code, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Fraud Division and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and

11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers' compensation fraud and of willful failure to secure payment of workers' compensation as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, at least 40 percent of the funds to be used for the purposes of this section shall be provided to the Fraud Division of the Department of Insurance for enhanced investigative efforts, and at least 40 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the division and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation fraud cases and cases relating to the willful failure to secure the payment of workers' compensation. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the Fraud Division and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation, the commissioner shall discontinue

distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims or claims relating to the willful failure to secure the payment of workers' compensation that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds or claims relating to the willful failure to secure the payment of workers' compensation prosecution otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) A county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud or the willful failure to secure

the payment of workers' compensation shall not become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Fraud Division does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report to the Governor, the Legislature, to the committees of the Senate and Assembly having jurisdiction over insurance, and the Fraud Assessment Commission on the activities of the Fraud Division and district attorneys supported by the funds provided by this section in the annual report submitted pursuant to Section 12922.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions and the names of all convicted fraud perpetrators.

(5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the

state to fight fraud and the willful failure to secure the payment of workers' compensation by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

(k) The Bureau of State Audits shall evaluate the effectiveness of the efforts of the Fraud Assessment Commission, the Fraud Division, the Department of Insurance, and the Department of Industrial Relations, as well as local law enforcement agencies, including district attorneys, in identifying, investigating, and prosecuting workers' compensation fraud and the willful failure to secure payment of workers' compensation. The report shall specifically identify areas of deficiencies. Included in this report shall be recommendations on whether the current program provides the appropriate levels of accountability for those responsible for the allocation and expenditure of funds raised from the assessment provided in this section. The Bureau of State Audits shall submit a report to the Chairperson of the Senate Committee on Labor and Industrial Relations and the Chairperson of the Assembly Committee on Insurance on or before May 1, 2004.

SEC. 7. Section 1874.8 of the Insurance Code, as amended by Section 14 of Chapter 717 of the Statutes of 2005, is amended to read:

1874.8. (a) Each insurer doing business in this state shall pay an annual fee 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 three 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, 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. 8. Section 10089.83 of the Insurance Code is amended to read:

10089.83. (a) On or before August 1 of each year in which this program is in effect, the commissioner shall report to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance on the status of the program in the prior year, including statistics about the number of cases suitable for mediation, the number sent to mediation, and the number accepted, as well as declined, by the insurers, and other similar information concerning the operation of the program in the annual report submitted pursuant to Section 12922.

(b) At six-month intervals, the department shall collect from the mediators with which it contracts for this service the following information: the number of persons to whom mediation was offered, the number of insurers that accepted and declined mediation, the number of settlements, and of those settlements, the number rejected within the three business day cooling off period. For each settlement, the mediation service shall also report the amount initially claimed by the consumer and the amount agreed to be paid, if any, by the insurer or other party.

(c) The department may adopt regulations, including reporting requirements, in the commissioner's discretion, to implement this chapter. The regulations shall be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of the regulations is deemed necessary for the immediate preservation of the public peace, health or safety, or general welfare.

SEC. 9. Section 10133.66 of the Insurance Code, as added by Section 6 of Chapter 723 of the Statutes of 2005, is amended and renumbered to read:

10133.661. On or before July 1, 2006, the commissioner, pursuant to his or her authority under Section 12921.1, shall also complete all of the following duties:

(a) Provide announcements that inform health insurance consumers and their health care providers of the department's toll-free telephone number that is dedicated to the handling of complaints and of the availability of the Internet Web page established under this section, and the process to register a complaint with the department and to submit an inquiry to it.

(b) Establish an Internet Web page located on the department's public Internet Web site dedicated exclusively to processing complaints and inquiries relating to health insurance issues from insureds and their health care providers. The Web page shall provide insureds and their health care providers with information concerning filing a complaint and making an inquiry concerning a health insurer and, at a minimum, shall provide the following information:

(1) The department's toll-free telephone number.

(2) A list of all health insurers licensed by the department.

(3) Educational and informational guides for health insurance consumers and health care providers describing their rights under this code. The guides shall be easy to read and understand and shall be made available to the public, including access on the department's Internet Web site.

(4) A separate, standardized complaint form for health care providers to file a complaint.

(c) An insured or health care provider may file a written complaint with the department with respect to the handling of a claim or other obligation under a health insurance policy by a health insurer or production agency, or with respect to the alleged misconduct by a health insurer or production agency. The commissioner shall notify the complainant of the receipt of the complaint within 10 business days of its receipt. The commissioner shall make a determination on the complaint within 60 calendar days of the date of its receipt, unless the commissioner, in his or her discretion, determines that additional time is reasonably necessary to fully and fairly evaluate the complaint. The commissioner shall notify the complainant of the final action taken on his or her complaint within 30 days of the final action. The notification shall include a summary explaining the commissioner's reasons for the final action.

SEC. 10. Section 12922 of the Insurance Code is amended to read:

12922. The commissioner shall, on or before the first day of August in each year, make a report to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance containing a tabular statement and synopsis of the reports which have been filed in his or her office and showing, generally, the condition of the insurance business and interests in this state, and other matters concerning insurance. The report shall also contain a detailed verified statement, of the moneys and fees of office received by him or her, and for what purpose.

SEC. 11. Section 12961 of the Insurance Code is amended to read:

12961. (a) The commissioner shall provide to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance an analysis of the following types of actions in the annual report submitted pursuant to Section 12922:

(1) Medical malpractice actions.

(2) Toxic substance tort actions.

(3) Product and design liability actions.

(4) Tort actions in which a public entity is a defendant.

(5) Tort actions involving judgments or settlements of one million dollars ($1,000,000) or more.

(6) Class action tort actions.

(7) Defamation and invasion of privacy actions.

(8) Other categories of tort actions involving commercial liability claims as the commissioner deems necessary.

(b) The study may exclude actions in which the only defendant is an individual sued in his or her private capacity. The study may exclude limited civil cases.

(c) If any of the information required to be provided by the parties is confidential under any other provision of law or pursuant to any court order, the commissioner shall keep that information confidential and shall limit its analysis of that information to aggregate data or other analyses which will not reveal the identity of the parties.

SEC. 12. Section 12962 of the Insurance Code is amended to read:

12962. The commissioner shall report to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance all of the following in the annual report submitted pursuant to Section 12922:

(a) An analysis of the information required by Sections 674.5, 1857.7, 1857.9, 1864, 11555.2, and 12963, including, but not limited to, all of the following:

(1) An aggregate and an average for all insurers for each item of information required by these sections.

(2) The number of insurers reporting policies written for each class during the calendar year.

(3) For each class, the number of insurers reporting a combined loss ratio of 100 percent or more, and the number reporting a combined loss ratio of under 100 percent.

(4) An analysis of adjustments made to loss reserves for prior years.

(5) The change in any item required to be included by paragraphs (1) to (4), inclusive, from the immediately prior year.

(b) An analysis of the activities of the Department of Insurance in implementing the provisions of Proposition 103 on the November 8, 1988, general election ballot, as set forth in Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1.

(c) Recommendations and proposals, including suggested legislation, to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.

(d) An analysis on the results of the program to reduce the number of uninsured motorists and the relationship to affordable private passenger

vehicle liability insurance rates pursuant to Sections 4750.2 and 4750.4 of the Vehicle Code.

(e) The requirements of this section shall be satisfied if the analysis required by this section is included in the annual report to the Governor required by Section 12922, and a copy of that report is provided to the Legislature.

SEC. 13. Section 12967 of the Insurance Code is amended to read:

12967. (a) (1) The department shall develop and implement a coordinated approach to gather, review, and analyze the archives of insurers and other archives and records, using onsite teams and the oversight committee, to provide for research and investigation into insurance policies, unpaid insurance claims, and related matters of victims of the Holocaust or of the Nazi-controlled German government or its allies, and the beneficiaries and heirs of those victims, and for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before and during World War II by insurers who have affiliates or subsidiaries authorized to do business in California. Information compiled shall be placed in a centralized database for the retention of policy and claimant data, and the data shall be used to implement this section and Section 790.15.

(2) The department has an affirmative duty to play an independent role in representing the interests of Holocaust survivors where necessary, including the duty to carry out research, investigations, and advocacy. The department shall cooperate with, participate in, promote coordination with, and to the extent feasible and consistent with the purposes of this section, work jointly with the National Association of Insurance Commissioners and the international commission on Holocaust survivor claims or any other entity involved in the documentation, resolution, settlement, or distribution of insurance claims, including the documentation of unpaid claims and the distribution of proceeds, and the establishment and maintenance of a database to contain information relevant to claimants and documents and historical information. The department shall work to recover information and records that will strengthen the claims of California residents.

(3) The department shall employ insurance archaeologists, economists, attorneys, accountants, and other specialists, in this country and in Europe, to implement this section. The department shall work jointly with the National Association of Insurance Commissioners and other organizations for this purpose. The department's cooperation with other states shall be for the purpose of advancing survivors' claims while avoiding duplication of efforts, and shall be dependent upon contributions by other states.

(4) In order to assure that Holocaust survivors receive the most aggressive and independent representation possible in pursuit of their historic claims, in contracting with accounting firms, law firms, economists, or others to implement this section, the department shall, to the maximum extent possible, avoid any potential or actual conflict of interest by doing the following:

(A) Seek and give preference to firms that are entirely free of any associations with firms representing insurers and nations from which Holocaust survivors are seeking just treatment of their claims.

(B) If the department finds that it is necessary to contract with a firm or firms that have conflicts or potential conflicts of interest, those conflicts or potential conflicts of interest shall be disclosed to the commissioner, and the following requirements shall apply:

(i) The contract shall contain a provision that expresses a formal commitment on the part of the firm to aggressively pursue a maximum just settlement for Holocaust survivors and their families without regard to any adverse impacts on insurers, affiliates of insurers, nations, or others that may have employed the firm or affiliates of the firm that is contracting with the commissioner to assist in carrying out the commissioner's responsibilities under this section.

(ii) If any conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation or others directly or indirectly involving Holocaust claims, the firm shall disclose both the fact of the conflict or potential conflict, and all relevant information describing the nature of the conflict or potential conflict.

(iii) If a conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation, or others that does not directly or indirectly involve Holocaust claims, the firm shall disclose the fact of the conflict or potential conflict and identify the source of the conflict or potential conflict, but need not describe the particular circumstances or facts that create the conflict or potential conflict.

(C) The department may take whatever special measures it deems necessary to avoid either the appearance or the reality of conflicts that may undermine public confidence in the integrity of the effort to secure justice for Holocaust survivors.

(b) The funding of the activities provided for by this section for the 1998–99 fiscal year shall be from funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, which funds are hereby appropriated to the commissioner for that purpose. The commissioner shall seek reimbursement of those funds as provided in subdivision (c).

Funding for subsequent fiscal years shall be subject to the Budget Act and based on a plan submitted by the commissioner to the Legislature outlining the plan for reimbursement of expenses of the department by affected insurers.

Funds made available to implement this section shall be used to develop and implement a coordinated approach to gather, review, and analyze the archives of affected insurance groups, and other archives and records, using onsite teams and the oversight committee. These funds shall also be used to fund the necessary expenses of the Holocaust Era Insurance Claims Oversight Committee established in subdivision (d). The information compiled shall be placed in a centralized database for the retention of policy and claimant data, and that data shall be used by the department to implement this section.

(c) (1) Any funds recovered by the department for the purpose of reimbursing the state for costs associated with investigation and enforcement actions under this section shall not be deposited in the Insurance Fund, but instead shall be delivered to the Controller for deposit into the General Fund.

(2) To the maximum extent possible, the department shall seek reimbursement for its costs incurred in implementing this section, including funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, from any settlements reached with affected insurers.

(d) (1) There is established a seven-member Holocaust Era Insurance Claims Oversight Committee, that shall be known as the oversight committee, and whose members shall be appointed as follows:

(A) Four members shall be appointed by the Governor.

(B) One member shall be appointed by the President pro Tempore of the Senate.

(C) One member shall be appointed by the Speaker of the Assembly.

(D) One member shall be appointed by the Commissioner of Insurance.

(2) The Governor shall designate one of his or her appointees as the chairperson of the committee.

(3) Each member of the committee shall serve at the pleasure of the authority that appointed him or her to serve on the committee.

(4) The oversight committee shall be composed of qualified individuals with experience in Holocaust claims cases, similar investigations, archival research, and international law. The oversight committee shall also include Holocaust survivors. No member of the oversight committee shall have a potential or actual conflict of interest, or shall be employed by a person who has a potential or actual conflict of interest.

(5) The appointments shall be expedited because of the urgency due to survivors' needs.

(6) The oversight committee shall have the following authority and shall do all of the following:

(A) Review and make recommendations concerning any insurance settlement negotiation or offer relating to a Holocaust era insurance claim in which the department is involved.

(B) Review and make recommendations to the commissioner on the priorities for expenditure of funds and use of resources by the department for Holocaust era insurance claims related activities.

(C) Recommend whether a proposed settlement of a Holocaust era insurance claim submitted to the committee pursuant to paragraph (7) is equitable before the department finalizes the settlement agreement.

(7) The commissioner, in the event of a proposed settlement of any policy or group of policies relating to Holocaust era insurance claims, shall confer with the committee prior to the department finalizing the settlement agreement. The department may not finalize a proposed settlement of a Holocaust era insurance claim unless the committee, pursuant to subparagraph (C) of paragraph (6), recommends that the proposed settlement is equitable.

(e) The department shall report its progress in implementing this section and its participation in the identification and resolution of insurance claims of Holocaust survivors and their beneficiaries and heirs. The report shall also include an overview of current and anticipated expenditures in implementing this section. The department shall report this information to the Governor, the Legislature, and the insurance and budget committees of the Legislature in the annual report submitted pursuant to Section 12922.

SEC. 14. Notwithstanding Section 15 of this bill, Sections 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13 shall not become operative until January 1, 2007.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify existing provisions of law concerning persons who are permitted to estimate replacement values of a structure, it is necessary that these provisions go into immediate effect.

CHAPTER 406

An act to amend Section 4005 of the Fish and Game Code, relating to trapping licenses.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 4005 of the Fish and Game Code is amended to read:

4005. (a) Except as otherwise provided in this section, every person, other than a fur dealer, who traps fur-bearing mammals or nongame mammals, designated by the commission or who sells raw furs of those mammals, shall procure a trapping license. "Raw fur" means any fur, pelt, or skin that has not been tanned or cured, except that salt-cured or sun-cured pelts are raw furs.

(b) The department shall develop standards that are necessary to ensure the competence and proficiency of applicants for a trapping license. No person shall be issued a license until he or she has passed a test of his or her knowledge and skill in this field.

(c) Persons trapping mammals in accordance with Section 4152 or 4180 are not required to procure a trapping license except when providing trapping services for profit.

(d) No raw furs taken by persons providing trapping services for profit may be sold.

(e) The license requirement imposed by this section does not apply to any of the following:

(1) Officers or employees of federal, county, or city agencies or the department, when acting in their official capacities, or officers or employees of the Department of Food and Agriculture when acting pursuant to the Food and Agricultural Code pertaining to pests or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(2) Structural pest control operators license pursuant to Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code, when trapping rats, mice, voles, moles, or gophers.

(3) Persons and businesses licensed or certified by the Department of Pesticide Regulation pursuant to Chapter 4 (commencing with Section 11701) and Chapter 8 (commencing with Section 12201) of Division 6 of, and Chapter 3.6, (commencing with Section 14151) of Division 7

of, the Food and Agricultural Code, when trapping rats, mice, voles, moles, or gophers.

CHAPTER 407

An act to amend Sections 17303, 17305, 81133, 81134, and 81135 of, to add Sections 81133.1 and 81133.2 to, and to add Article 3.3 (commencing with Section 17319) to Chapter 3 of Part 10.5 of, the Education Code, relating to school facilities, and making an appropriation therefor.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

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

(a) Current law requires the Department of General Services to review and approve plans for community college and school buildings serving kindergarten and grades 1 to 12, inclusive, after the plans are completed by the building designers in accordance with the Field Act.

(b) Because of the increasing complexity of building design, especially seismic requirements, it is costly and time consuming for building designers to change the design of a building after the plans are completed.

(c) Returning plans after review for corrections or redesign can delay the completion and use of the building.

(d) Early collaboration among the Department of General Services, community college districts, school districts, and their design professionals during critical stages of the building design and project development process will facilitate the early identification and resolution of technical issues, and thus reduce the probability that significant changes in the building plans will be required after plan review. The current project submittal and plan review process established by existing law does not formally accommodate, prior to design completion, this desired degree of collaboration and issue resolution between these parties.

(e) The Legislature acknowledges that the Department of General Services and the Board of Governors of the California Community Colleges have entered into a memorandum of understanding for the development and implementation of the collaborative process for project development and review to ensure the public safety of community college facilities through a collaborative, consistent, and timely project development and plan review process.

(f) This process may be made available to community college districts and school districts serving kindergarten and grades 1 to 12, inclusive, on a voluntary basis, as an alternative to the traditional plan review and approval process currently provided by the Department of General Services. The collaborative process for project development and review involves the early and full participation of all parties involved in the development, plan review, construction, and certification of facilities projects on behalf of community college districts and school districts serving kindergarten and grades 1 to 12, inclusive. These parties include the Department of General Services staff, qualified plan review firms, community college districts, school districts, and their design professionals.

SEC. 1.5. Section 17303 of the Education Code is amended to read:

17303. (a) The Department of General Services shall establish one or more methods to ensure that each application has been completed sufficiently by the applicant to enable the plan review to be performed.

(b) Upon receipt of a complete application, the Department of General Services shall inform the applicant of the period of time that it anticipates to elapse prior to commencing review of the applicant's plans. Within 10 days of being so notified, the applicant shall make an election to either use the Department of General Services for the review of the applicant's plan or, request that the plan review be performed by one or more qualified plan review firms pursuant to Sections 17305 and 17306. If the applicant elects to use the services of the Department of General Services for review of the applicant's plan, the department, as it deems necessary to expedite review of the applicant's plans, in addition to making a good faith effort to hire state employees, shall do one or more of the following:

(1) Contract for assistance from one or more qualified plan review firms pursuant to Section 17305.

(2) Employ additional staff on a temporary basis.

(3) Maximize the use of department staff through the use of overtime or other appropriate means.

(4) Any other action determined by the department to have the effect of expediting the review and approval process.

(c) Each application shall identify, for purposes of receiving the notifications required under this subdivision, an employee of the applicant school district and either the applicant's architect or structural engineer. The Department of General Services immediately shall notify that employee, and the identified architect or structural engineer, when each of the following steps in the plan review process occurs:

(1) The department requests the applicant's architect or structural engineer to correct or complete any part of the application.

(2) An application number is assigned to the application.

(3) Review of the applicant's plans is commenced.

(4) Review of the applicant's plans is completed and the department returns the plans to the architect or structural engineer for correction.

(5) Corrected plans are returned to the department by the applicant's architect or structural engineer for final review and approval.

(6) The department approves the plans and causes a final record set of the plans to be printed in accordance with Section 17304.

(d) The Department of General Services may provide additional notifications to applicants as it deems necessary.

SEC. 2. Section 17305 of the Education Code is amended to read:

17305. (a) Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

(1) "Prequalified list" means a list of qualified firms established by the Department of General Services to perform specific types of plan review services.

(2) "Qualified plan review firm" means an individual, firm, or the building official of a city, a county, or a city and county, as defined in Section 18949.27 of the Health and Safety Code, or the authorized representative of the building official that is identified by the Department of General Services as having appropriate expertise and knowledge of the requirements that apply to school buildings under this article.

(b) The department shall establish and maintain a list of qualified plan review firms, and shall make that list available, upon request, to school districts and other interested parties.

(c) Notwithstanding Section 14952 of the Government Code, the Department of General Services shall contract with sufficient numbers of qualified plan review firms for assistance in performing the plan review required under the Field Act.

(d) At the discretion of the Department of General Services, contracts for a qualified plan review firm made pursuant to this article may be advertised and awarded in accordance with this section.

(e) (1) The Department of General Services may establish prequalified lists of qualified firms in accordance with this subdivision.

(2) (A) For each type of plan review for which the department elects to use the process established by this section for advertising and awarding contracts, the Department of General Services may request statements of qualifications from interested firms.

(B) The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications of relevant professional societies.

(C) Each announcement shall describe the general scope of services to be provided within each generic project category for plan review

services that the Department of General Services anticipates may be awarded during the period covered by the announcement. For the purposes of this section, a generic project category shall be defined in a manner that each specific project to be awarded within that discipline meets all of the following requirements:

(i) The project is substantially similar to all other projects within that discipline.

(ii) The project is within the same size range and geographical area.

(iii) The project requires substantially similar skills and magnitude of professional effort as compared to every other project within that discipline.

(3) The Department of General Services shall evaluate the statements of qualifications, and develop a list of qualified plan review firms that meet the criteria established and published by the Department of General Services. Interviews may be held to determine a plan review firm's qualifications. Lists of qualified plan review firms shall be maintained by the Department of General Services for not more than four years.

(4) During the term of a prequalified list, as specific projects are identified by the Department of General Services as being eligible for contracting, the Department of General Services shall contact a firm on the prequalified list, on a rotational basis, for both of the following purposes:

(A) To distribute the work in a fair and equitable manner.

(B) To determine that the firm has sufficient staff and is available for performance of the project.

(5) If the contacted firm is not available, the Department of General Services shall continue to contact firms on the prequalified list, on a rotational basis, until an available firm is identified.

(6) The Department of General Services shall negotiate a contract for the services with the identified firm, including a price and timeframe that it determines is fair and reasonable.

(7) If the identified plan review firm is unable to negotiate a satisfactory contract with the Department of General Services, the department shall terminate negotiations, and shall undertake new negotiations, on a rotational basis, with the next firm available for performance from the prequalified list until a successful negotiation is achieved. If the Department of General Services is unable to negotiate a satisfactory contract with a firm on two separate occasions, that firm may be removed from the prequalified list.

(f) Contracts for plan review services that the Department of General Services elects to advertise and award in accordance with this section are not subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 3. Article 3.3 (commencing with Section 17319) is added to Chapter 3 of Part 10.5 of the Education Code, to read:

Article 3.3. Collaborative Process for Project Development and Review

17319. (a) The Legislature finds and declares all of the following:

(1) The purpose of the collaborative process for project development and review is to ensure the public safety of school facilities through a collaborative, consistent, and timely project development and review process.

(2) The collaborative process for project development and review may be made available, as an alternative to the traditional plan review and approval process, to school districts that voluntarily apply to the Department of General Services.

(3) This process entails the early participation of all parties involved in a project from project development and continuing through plan review, construction, and certification of school facilities projects. These parties include the Department of General Services' staff and their qualified plan review firms, and school districts and their design professionals.

(b) The Department of General Services, in consultation with the Office of Public School Construction, shall establish procedures and requirements governing the use of the collaborative process for project development and review alternative. These procedures and requirements shall include an application and selection process. Upon project selection, the Department of General Services and the school district shall mutually agree to the roles and responsibilities of the Department of General Services, the applicant school district, and its design professionals.

(c) As a part of the establishment of the requirements for the collaborative process for project development and review, the Department of General Services, in consultation with participating school districts, shall establish mutually determined timeframe goals for a project's plan review, district and consultant response, response review, and final approval. Those timeframe goals shall reflect the project's estimated construction cost, complexity, size, and other requirements of the collaborative process for project development and review.

(d) The Department of General Services shall establish model statewide timeframe goals, in consultation with school districts and other relevant parties, by February 1, 2007. Implementation of the collaborative process for project development and review with participating districts shall not negatively impact the traditional plan review process with other districts.

(e) The Department of General Services shall submit a preliminary report to the Legislature by July 1, 2008, and a final report by July 1, 2009. These reports shall address whether the implementation of the collaborative process for project development and review has assisted the department and school districts in meeting their mutually determined timeframe goals.

(f) Notwithstanding Section 17300, the application for the collaborative process for project development and review may be accompanied by a filing fee from the school district in amounts determined by the Department of General Services based on the estimated project cost and according to the fee schedule identified in subdivisions (a) to (c), inclusive, of Section 17300. The Department of General Services may establish a procedure for the payment and collection of this filing fee.

(g) The department may assess a fee on a participating district to cover the unreimbursed costs of the department incurred pursuant to that district's participation in the collaborative process if the department deems the assessment of the fee to be necessary for the support of its operations and establishes a procedure for the determination, collection, and deposit of the fee.

(h) During project development, the school district may provide input to the Department of General Services in its selection of a qualified plan review firm to provide consultative services to that department. Upon project submittal by the applicant school district, the department shall also refer the necessary project documents to the selected qualified plan review firm for plan review. The department shall establish procedures governing the use of this article by applicant school districts for the selection of a qualified plan review firm.

SEC. 4. Section 81133 of the Education Code is amended to read:

81133. (a) The Department of General Services shall pass upon, and approve or reject, all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars ($25,000), the alteration of any school building. To enable it to do so, the governing board of each community college district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a), where the estimated cost of reconstruction or alteration of, or addition to, a school building exceeds twenty-five thousand dollars ($25,000), but does not exceed one hundred thousand dollars ($100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a

nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this section.

(5) Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Department of General Services, shall first be had and obtained.

(6) In each case the application for approval of the plans shall be accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Department of General Services.

(7) (A) The application shall be accompanied by a filing fee in amounts as determined by the Department of General Services based on the estimated cost according to the following schedule:

(i) For the first one million dollars ($1,000,000), a fee of not more than 0.7 percent of the estimated cost.

(ii) For all costs in excess of one million dollars ($1,000,000), a fee of not more than 0.6 percent of the estimated cost.

(B) The minimum fee in any case shall be two hundred fifty dollars ($250). If the actual cost exceeds the estimated cost by more than 5 percent, a further fee shall be paid to the Department of General Services, based on the above schedule and computed on the amount by which the actual cost exceeds the amount of the estimated cost.

(8) (A) All fees collected under this article shall be paid into the State Treasury and credited to the Public School Planning, Design, and Construction Review Revolving Fund, and are continuously appropriated, without regard to fiscal years, for the use of the Department of General Services, subject to approval of the Department of Finance, in carrying out this article.

(B) Adjustments in the amounts of the fees, as determined by the Department of General Services and approved by the Department of Finance, shall be made within the limits set in paragraph (7) in order to maintain a reasonable working balance in the fund.

(9) No contract for the construction or alteration of any school building, made or executed by the governing board of any community college district or other public board, body, or officer otherwise vested with authority to make or execute this contract, is valid, and no public money shall be paid for any work done under this contract or for any labor or materials furnished in constructing or altering the building, unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Department of General Services and unless the approval thereof in writing has first been had and obtained from the Department of General Services.

(d) For purposes of this section, "design professional in responsible charge" or "design professional" means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

SEC. 5. Section 81133.1 is added to the Education Code, to read:

81133.1. (a) The Legislature finds and declares all of the following:

(1) The purpose of the collaborative process for project development and review is to ensure the public safety of community college facilities through a collaborative, consistent and timely project development and review process.

(2) The collaborative process for project development and review may be made available, as an alternative to the traditional plan review and approval process, to community college districts that voluntarily apply to the Department of General Services.

(3) This process entails the early participation of all parties involved in a project from project development and continuing through plan review, construction and certification of community college facilities projects. These parties include, but are not limited to, the Department of General Services' staff and their qualified plan review firms, and community college districts and their design professionals.

(b) In consultation with the Board of Governors of the California Community Colleges, the Department of General Services shall establish procedures and requirements governing the use of the collaborative process for project development and review alternative. These procedures and requirements shall include an application and selection process. Upon project selection, the Department of General Services and the community college district shall mutually agree to the roles and responsibilities of the Department of General Services, the applicant community college district, and its design professionals.

(c) As a part of the establishment of the requirements for the collaborative process for project development and review, the Department of General Services, in consultation with participating community college districts, shall establish mutually determined timeframe goals for a project's plan review, district and consultant response, response review, and final approval. Those timeframe goals shall reflect the project's estimated construction cost, complexity, size, and other requirements of the collaborative process for project development and review.

(d) The Department of General Services shall establish model statewide timeframe goals, in consultation with community college districts and other relevant parties, by February 1, 2007. Implementation of the collaborative process for project development and review with participating community college districts shall not negatively impact the traditional plan review process with other community college districts.

(e) The Department of General Services shall submit a preliminary report to the Legislature by July 1, 2008, and a final report by July 1, 2009. These reports shall address whether the implementation of the collaborative process for project development and review has assisted the department and community college districts in meeting their mutually determined timeframe goals.

(f) Notwithstanding Section 81133, the application for the collaborative process for project development and review may be accompanied by a filing fee from the community college district in amounts determined by the Department of General Services based on the estimated project cost and according to the filing fee schedule identified in paragraph (7) of subdivision (c) of Section 81133. The Department of General Services may establish a procedure for the payment and collection of this filing fee.

(g) The department may assess a fee on a participating district to cover the unreimbursed costs of the department incurred pursuant to that district's participation in the collaborative process if the department deems the assessment of the fee to be necessary for the support of its operations and establishes a procedure for the determination, collection, and deposit of the fee.

(h) During project development, the community college district may provide input to the Department of General Services in its selection of a qualified plan review firm to provide consultative services to that department. Upon project submittal by the applicant community college district, the department may also refer the necessary project documents to the selected qualified plan review firm for plan review. The department may establish procedures governing the use of this section by applicant community college districts for the selection of a qualified plan review firm.

SEC. 6. Section 81133.2 is added to the Education Code, to read:

81133.2. (a) The Department of General Services shall provide training, on an ongoing basis, to its employees and to the employees of architectural and structural engineering firms that contract with the department for the purposes of this chapter. The training shall address all phases of the plan review process established under this chapter, and shall be designed to ensure that all individuals who develop and review college building plans obtain sufficient knowledge of the rules, regulations, and standards that apply under this chapter.

(b) The department shall make the training described in subdivision (a) available to the employees of architectural and structural engineering firms that contract with applicant community college districts for the purpose of this chapter, and to any other individuals, firms, and governmental agencies that are involved in college building design, construction, or inspection, and that may benefit from the training.

(c) The department may charge a fee for training provided pursuant to this subdivision.

SEC. 6.5. Section 81134 of the Education Code is amended to read:

81134. (a) The Department of General Services shall establish one or more methods to ensure that each application has been completed sufficiently by the applicant to enable the plan review to be performed.

(b) Upon receipt of a complete application, the Department of General Services shall inform the applicant of the period of time that it anticipates to elapse prior to commencing review of the applicant's plans. Within 10 days of being so notified, the applicant shall make an election to either use the Department of General Services for the review of the applicant's plans or, request that the plan review be performed by one or more qualified plan review firms pursuant to Sections 81135 and 81136. If

the applicant elects to use the services of the Department of General Services for review of the applicant's plans, the department, as it deems necessary to expedite review of the applicant's plans, in addition to making a good faith effort to hire state employees, shall do one or more of the following:

(1) Contract for assistance from one or more qualified plan review firms pursuant to Sections 81135 and 81136.

(2) Employ additional staff on a temporary basis.

(3) Maximize the use of department staff through the use of overtime or other appropriate means.

(4) Any other action determined by the department to have the effect of expediting the review and approval process.

(c) Each application shall identify, for purposes of receiving the notifications required under this subdivision, an employee of the applicant community college district and either the applicant's architect or structural engineer. The Department of General Services immediately shall notify that employee, and the identified architect or structural engineer, when each of the following steps in the plan review process occurs:

(1) The department requests the applicant's architect or structural engineer to correct or complete any part of the application.

(2) An application number is assigned to the application.

(3) Review of the applicant's plans is commenced.

(4) Review of the applicant's plans is completed and the department returns the plans to the architect or structural engineer for correction.

(5) Corrected plans are returned to the department by the applicant's architect or structural engineer for final review and approval.

(6) The department approves the plans and causes a final record set of the plans to be printed in accordance with Section 17304.

(d) The Department of General Services may provide additional notifications to applicants as it deems necessary.

SEC. 7. Section 81135 of the Education Code is amended to read:

81135. (a) Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

(1) "Prequalified list" means a list of qualified firms established by the Department of General Services to perform specific types of plan review services.

(2) "Qualified plan review firm" means an individual, firm, or the building official of a city, county, or city and county, as defined in Section 18949.27 of the Health and Safety Code, or the authorized representative of that building official that is identified by the Department of General Services as having appropriate expertise and knowledge of the requirements that apply to school buildings under this article.

(b) The department shall establish and maintain a list of qualified plan review firms, and shall make that list available, upon request, to community college districts and other interested parties.

(c) Notwithstanding Section 14952 of the Government Code, the Department of General Services shall contract with sufficient numbers of qualified plan review firms for assistance in performing the plan review required under the Field Act.

(d) At the discretion of the Department of General Services, contracts for a qualified plan review firm made pursuant to this article may be advertised and awarded in accordance with this section.

(e) (1) The Department of General Services may establish prequalified lists of qualified firms in accordance with this subdivision.

(2) (A) For each type of plan review for which the department elects to use the process established by this section for advertising and awarding contracts, the Department of General Services may request statements of qualifications from interested firms.

(B) The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications of relevant professional societies.

(C) Each announcement shall describe the general scope of services to be provided within each generic project category for plan review services that the Department of General Services anticipates may be awarded during the period covered by the announcement. For the purposes of this section, a generic project category shall be defined in a manner that each specific project to be awarded within a respective discipline meets all of the following requirements:

(i) The project is substantially similar to all other projects within that discipline.

(ii) The project is within the same size range and geographical area.

(iii) The project requires substantially similar skills and magnitude of professional effort as compared to every other project within that discipline.

(3) The Department of General Services shall evaluate the statements of qualifications, and develop a list of qualified plan review firms that meet the criteria established and published by the Department of General Services. Interviews may be held to determine a firm's qualifications. Lists of qualified plan review firms shall be maintained by the Department of General Services for not more than four years.

(4) During the term of a prequalified list, as specific projects are identified by the Department of General Services as being eligible for contracting, the Department of General Services shall contact a firm on the prequalified list, on a rotational basis, for both of the following purposes:

(A) To distribute the work in a fair and equitable manner.

(B) To determine that the firm has sufficient staff and is available for performance of the project.

(5) If the contacted firm is not available, the Department of General Services shall continue to contact firms on the prequalified list, on a rotational basis, until an available firm is identified.

(6) The Department of General Services shall negotiate a contract for the services with the identified firm, including a price and timeframe that it determines is fair and reasonable.

(7) If the identified plan review firm is unable to negotiate a satisfactory contract with the Department of General Services, the department shall terminate negotiations, and shall undertake negotiations, on a rotational basis, with the next firm available for performance from the prequalified list until a successful negotiation is achieved. If the Department of General Services is unable to negotiate a satisfactory contract with a firm on two separate occasions, that firm may be removed from the prequalified list.

(f) Contracts for plan review services that the Department of General Services elects to advertise and award in accordance with this section are not subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

CHAPTER 408

An act to add and repeal Article 10 (commencing with Section 52499.65) to Chapter 9 of Part 28 of the Education Code, relating to technical education.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Article 10 (commencing with Section 52499.65) is added to Chapter 9 of Part 28 of the Education Code, to read:

Article 10. Miscellaneous Provisions

52499.65. (a) The department shall develop and maintain a registry of career technical education equipment that is listed for sale pursuant to subdivision (b) and shall make the registry accessible to school districts via an Internet Web site.

(b) (1) A school district that intends to offer for sale any career technical education equipment, including table saws, drafting equipment, or auto diagnostic tools, may list the equipment in the registry established by the department pursuant to subdivision (a).

(2) Equipment listed pursuant to paragraph (1) shall be offered for sale to other school districts and maintained in the registry for a period of no less than four months unless the equipment is purchased by a school district.

(c) On or before March 1, 2010, the Legislative Analyst shall report to the Legislature on the efficacy of the registry developed pursuant to subdivision (a). The Legislative Analyst may submit the report to the Legislature by including it in its annual analysis of the Budget Bill.

(d) This article shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

CHAPTER 409

An act to amend Sections 77001, 77003.6, 77004, 77028, 77029, 77031, 77032, 77051, 77057, 77058, 77065, 77091, 77123, 77151, 77152, and 77193 of, to addSection 77103 to, to repeal Sections 77025, 77032.5, 77122, 77128, and 77129 of, and to repeal and add Section 77026 to, the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 77001 of the Food and Agricultural Code is amended to read:

77001. The production and handling of walnuts constitute an important industry of this state. This industry not only provides substantial and necessary revenues for the state and employment for its citizens, but also furnishes essential food vital to the public health and welfare.

SEC. 2. Section 77003.6 of the Food and Agricultural Code is amended to read:

77003.6. The successes that the walnut industry of California have enjoyed have come about in part through a commitment to industry-funded research that has led to significant improvements in the

quality of the walnuts available to consumers and increasingly efficient cultural practices resulting in increased awareness of, and a more receptive environment for, the production and handling of walnuts in domestic and foreign markets. It has also led to walnuts being a better consumer value. The establishment of the commission will maintain and enhance this research effort and make it possible for the walnut industry to realize its potential, resulting in increased consumer value and enhanced producer returns.

SEC. 3. Section 77004 of the Food and Agricultural Code is amended to read:

77004. The production and handling of walnuts produced in this state is hereby declared to be affected with a public interest. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

SEC. 4. Section 77025 of the Food and Agricultural Code is repealed.

SEC. 5. Section 77026 of the Food and Agricultural Code is repealed.

SEC. 6. Section 77026 is added to the Food and Agricultural Code, to read:

77026. "Handle" or "handling" means to market, pack, sell, consign, transport, or ship, except as a common or contract carrier of walnuts owned by another person, or in any other way place walnuts, inshell or shelled, into commerce either within the area of production or from the area of production to any other point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a producer. "Handle" or "handling" does not include sales and deliveries within the area of production by producers to handlers, or between handlers.

SEC. 7. Section 77028 of the Food and Agricultural Code is amended to read:

77028. "Handler" means any person who handles inshell or shelled walnuts.

SEC. 8. Section 77029 of the Food and Agricultural Code is amended to read:

77029. "Pack" means to bleach, clean, grade, shell, or otherwise prepare walnuts for market as inshell or shelled walnuts.

SEC. 9. Section 77031 of the Food and Agricultural Code is amended to read:

77031. "Marketing year" or "fiscal year" means the period from August 1 of any year to July 31, inclusive, of the next year. Beginning September 1, 2008, "marketing year" or "fiscal year" means the period from September 1 of any year to August 31, inclusive, of the next year.

SEC. 10. Section 77032 of the Food and Agricultural Code is amended to read:

77032. "Producer" means any person in this state who grows walnuts for market and who, upon request, provides proof of commodity sale. "Producer" does not include any person who handles 2,000 pounds or less of walnuts during a market year.

SEC. 11. Section 77032.5 of the Food and Agricultural Code is repealed.

SEC. 12. Section 77051 of the Food and Agricultural Code is amended to read:

77051. (a) There is in state government the California Walnut Commission. The commission shall be composed of eight walnut producers who are not handlers, four walnut handlers, and one public member.

(b) Eight producer members, four from each district, shall be elected by producers. In accordance with procedures adopted by the commission, no more than two producers from each district who ship the largest percentage of their walnuts in the preceding marketing year to the same handler may be elected to the commission as members. Producers who ship to two or more handlers in equal percentages shall declare which handler they are affiliated with, for purposes of this section. No producer member shall be connected in a proprietary capacity with a handler.

(c) In accordance with procedures adopted by the commission, four handler members shall be elected on a weighted basis by all other handlers to serve on the commission. No handler member shall be connected in a proprietary capacity or in any other manner with any handler member serving on the commission.

(d) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(e) The secretary and other appropriate individuals as determined by the commission shall be ex officio members of the commission.

SEC. 13. Section 77057 of the Food and Agricultural Code is amended to read:

77057. Any vacancy on the commission occurring by the failure of any person elected to the commission as a producer member or alternate producer member to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, or resignation, shall be filled for the unexpired portion of the term by a majority vote of the remaining producer members of the commission. Any person filling a vacant producer member or alternate producer member position shall meet all the qualifications set forth in this article as required for the member whose office he or she is to fill.

SEC. 14. Section 77058 of the Food and Agricultural Code is amended to read:

77058. Any vacancy on the commission occurring by the failure of any person elected to the commission as a handler member or alternate handler member to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, or resignation, shall be filled for the unexpired portion of the term by a majority vote of the remaining handler members of the commission. Any person filling a vacant handler member or alternate handler member position shall meet all the qualifications set forth in this article as required for the member whose office he or she is to fill.

SEC. 15. Section 77065 of the Food and Agricultural Code is amended to read:

77065. A quorum of the commission shall be eight voting members of the commission. Except as provided in Section 77027, a vote in favor of a motion by nine members present at a meeting shall constitute the act of the commission.

SEC. 16. Section 77091 of the Food and Agricultural Code is amended to read:

77091. The commission may educate and instruct the wholesale and retail trade in domestic and foreign markets with respect to proper methods of handling walnuts.

SEC. 16.5. Section 77103 is added to the Food and Agricultural Code, to read:

77103. (a) Notwithstanding any other provision of this chapter, the following duties are imposed upon the executive committee of the commission, established in the commission's bylaws, for the 2006 marketing year:

(1) Continue any and all existing contracts and agreements necessary for the operation of the commission.

(2) Establish the annual budget according to accepted accounting practices.

(3) Establish the assessment rate not later than the first day of the marketing year or as soon thereafter as possible. The assessment rate shall not exceed the 2005 marketing year assessment rate.

(b) In fulfilling the duties of this section, except for the disbursements made pursuant to Section 77086, the executive committee shall obtain concurrence by the secretary.

(c) This section shall become inoperative on July 1, 2007.

SEC. 17. Section 77122 of the Food and Agricultural Code is repealed.

SEC. 18. Section 77123 of the Food and Agricultural Code is amended to read:

77123. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds in a referendum vote conducted by the secretary that at least 40 percent of the total number of producers from the list established by the secretary pursuant to this article participate, and that a majority of the producers voting in the referendum voted in favor of this chapter, and the producers so voting handled a majority of the total quantity of walnuts handled in the preceding marketing year by all those producers who voted in the referendum.

SEC. 19. Section 77128 of the Food and Agricultural Code is repealed.

SEC. 20. Section 77129 of the Food and Agricultural Code is repealed.

SEC. 21. Section 77151 of the Food and Agricultural Code is amended to read:

77151. (a) The commission shall establish the assessment for the following marketing year not later than the first day of each marketing year or as soon thereafter as is possible.

(b) The assessment shall not exceed one cent ($0.01) per inshell pound on all walnuts shipped by producers to handlers or handled by producers.

(c) Assessments provided for in this section shall be levied on the producer. The handler shall deduct the assessment from amounts paid by him or her to the producer and shall be a trustee of the funds until they are paid to the commission at the time and in the manner prescribed by the commission.

(d) A fee greater than the amount provided for in subdivision (b) may not be charged unless and until a greater fee is approved by producers pursuant to the procedures specified in Section 77123.

SEC. 22. Section 77152 of the Food and Agricultural Code is amended to read:

77152. This chapter does not apply to the walnuts produced only for the producer's home use and to producers who handle 2,000 pounds or less of walnuts in the preceding marketing year. However, the producer shall file an affidavit with the commission establishing that he or she has not handled walnuts. The commission shall then determine whether the affidavit should be approved.

SEC. 23. Section 77193 of the Food and Agricultural Code is amended to read:

77193. (a) Every six years, beginning in the 1992–93 marketing year, the secretary shall hold a hearing to determine whether operation of this chapter should be continued. If the secretary finds after the hearing that a substantial question exists among the producers assessed under this chapter regarding whether operation of this chapter should be

continued, the secretary shall cause a referendum vote to be conducted among producers. If a referendum is required, the operation of this chapter shall continue if the secretary finds that a majority of producers voting in the referendum voted in favor of the continuation of this chapter, and those so voting handled a majority of the total quantity of walnuts handled in the preceding marketing years by all such producers voting in the referendum.

(b) If the secretary finds that a favorable vote has been given, the secretary shall so certify and this chapter shall remain in operation. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operation of this chapter suspended upon expiration of the then current marketing year.

SEC. 24. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that any modification to the legal structure of specified entities representing producers of walnuts will not deprive those producers of their rights to participate in the activities of the California Walnut Commission, including, but not limited to, serving as members of the commission or participating in votes of the commission, it is necessary that this act take effect immediately.

CHAPTER 410

An act to amend Sections 1812.622, 1812.623, 1812.624, 1812.632, and 1812.644 of the Civil Code, relating to personal property.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 1812.622 of the Civil Code is amended to read:

1812.622. As used in this title:

(a) "Advertisement" means a commercial message in any medium that directly or indirectly solicits or promotes one or more specific rental-purchase transactions, excluding instore merchandising aids. This definition does not limit or alter the application of other laws, including Chapter 5 (commencing with Section 17200) of Part 2 and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code, to rental-purchase transactions.

(b) "Consumer" means a natural person or persons who rent or lease personal property from a lessor pursuant to a rental-purchase agreement or to whom a lessor offers personal property for use pursuant to a rental-purchase agreement.

(c) "Lessor" means any person or entity that provides or offers to provide personal property for use by consumers pursuant to a rental-purchase agreement.

(d) "Rental-purchase agreement," except as otherwise provided in this subdivision, means an agreement between a lessor and a consumer pursuant to which the lessor rents or leases, for valuable consideration, personal property for use by a consumer for personal, family, or household purposes for an initial term not exceeding four months that may be renewed or otherwise extended, if under the terms of the agreement the consumer acquires an option or other legally enforceable right to become owner of the property. A rental-purchase agreement is a lease subject to Title 1.5 (commencing with Section 1750) and Title 1.7 (commencing with Section 1790).

"Rental-purchase agreement" shall not be construed to be, nor be governed by, and shall not apply to, any of the following:

(1) A retail installment sale, as defined in Section 1802.5.

(2) A retail installment contract, as defined in Section 1802.6.

(3) A retail installment account, as defined in Section 1802.7.

(4) A lease or agreement that constitutes a security interest, as defined in Section 1201 of the Commercial Code.

(5) A consumer credit contract, as defined in Section 1799.90.

(e) "Cash price" means the price of the personal property described in the rental-purchase agreement that the consumer may pay in cash to the lessor at the inception of the rental-purchase agreement to acquire ownership of that personal property.

(f) "Cost of rental" means the difference between the total of all periodic payments necessary to acquire ownership under the rental-purchase agreement and the cash price of the rental property that is subject to the rental-purchase agreement.

(g) "Fee" means any payment, charge, fee, cost, or expense, however denominated, other than a rental payment.

(h) "Appliance" means and includes any refrigerator, freezer, range including any cooktop or oven, microwave oven, washer, dryer, dishwasher, or room air conditioner or air purifier.

(i) "Electronic set" means and includes any television, radio, camera, video game, or any type of device for the recording, storage, copying, printing, transmission, display, or playback of any sound or image, but does not include any item that is part of a computer system.

(j) "Computer system" means a computer processor and a video monitor, printer, and peripheral items primarily designed for use with a computer. Audio and video devices, which are commonly used for entertainment and into which data may be downloaded from a computer, are not part of a computer system.

(k) "Lessor's cost" means the documented actual cost, including actual freight charges, of the rental property to the lessor from a wholesaler, distributor, supplier, or manufacturer and net of any discounts, rebates, and incentives.

(*l*) "Total of payments" means the total amount of periodic payments necessary to acquire ownership of the property that is the subject of the rental-purchase agreement if the consumer makes all regularly scheduled payments.

SEC. 2. Section 1812.623 of the Civil Code is amended to read:

1812.623. (a) Every rental-purchase agreement shall be contained in a single document which shall set forth all of the agreements of the lessor and the consumer with respect to the rights and obligations of each party. Every rental-purchase agreement shall be written in at least 10-point type in the same language as principally used in any oral sales presentation or negotiations leading to the execution of the agreement, and shall clearly and conspicuously disclose all of the following:

(1) The names of the lessor and the consumer, the lessor's business address and telephone number, the consumer's address, the date on which the agreement is executed, and a description of the property sufficient to identify it.

(2) Whether the property subject to the rental-purchase agreement is new or used. If the property is new, the lessor shall disclose the model year or, if the model year is not known by the lessor, the date of the lessor's acquisition of the property. If the property is used, the age or the model year shall be disclosed if known by the lessor.

(3) The minimum period for which the consumer is obligated under the rental-purchase agreement; the duration of the rental-purchase agreement if all regularly scheduled periodic payments are made, designated as the "rental period"; and the amount of each periodic payment.

(4) The total of payments and the total number of periodic payments necessary to acquire ownership of the property if the renter makes all regularly scheduled periodic payments.

(5) The cash price of the property subject to the rental purchase agreement.

(6) The cost of rental.

(7) The amount and purpose of any other payment or fee permitted by this title in addition to those specified pursuant to paragraphs (3) and (4), including any late payment fee.

(8) A statement that the total number and dollar amount of payments necessary to acquire ownership of the rental property disclosed under paragraph (4) does not include other fees permitted by this title, such as late payment fees, and that the consumer should read the rental-purchase agreement for an explanation of any applicable additional fees.

(9) Whether the consumer is liable for loss or damage to the rental property and, if so, the maximum amount for which the consumer may be liable as provided in subdivision (a) of Section 1812.627.

(10) The following notice:

NOTICE

You are renting this property. You will not own it until you make all of the regularly scheduled payments or you use the early purchase option.

You do not have the right to keep the property if you do not make required payments or do not use the early purchase option. If you miss a payment, the lessor can repossess the property, but, you may have the right to the return of the same or similar property.

See the contract for an explanation of your rights.

(11) A description of the consumer's right to acquire ownership of the property before the end of the rental period as provided in subdivisions (a) and (b) of Section 1812.632.

(12) A description of the consumer's reinstatement rights as provided in Section 1812.631.

(13) If warranty coverage is transferable to a consumer who acquires ownership of the property, a statement that the unexpired portion of all warranties provided by the manufacturer, distributor, or seller of the property that is the subject of the rental-purchase agreement will be transferred by the lessor to the consumer at the time the consumer acquires ownership of the property from the lessor.

(14) A description of the lessor's obligation to maintain the rental property and to repair or replace rental property that is not operating properly, as provided in Section 1812.633.

(b) (1) The disclosures required by paragraphs (3), (4), (5), and (6) of subdivision (a) shall be printed in at least 10-point boldface type or capital letters if typed and shall be grouped together in a box formed by a heavy line in the following form:

<table>
<tr><td>TOTAL OF PAYMENTS
$</td><td>COST OF RENTAL
$
Amount over cash price you will pay if you make all regular payments.</td><td colspan="2">CASH PRICE
$
Property available at this price for cash from the lessor. See about your early purchase option rights.</td></tr>
<tr><td rowspan="2">You must pay this amount to own the property if you make all the regular payments.
You can buy the property for less under the early purchase option.</td><td>AMOUNT OF EACH PAYMENT
$ per
_____
(insert period)</td><td>NUMBER OF PAYMENTS</td><td>RENTAL PERIOD</td></tr>
</table>

(2) The box described in paragraph (1) shall appear immediately above the space reserved for the buyer's signature.

(c) The disclosures required by paragraphs (3), (4), (5), and (6) of subdivision (a) shall be grouped together in a box formed by a heavy line in the form prescribed in subdivision (b) and shall be clearly and conspicuously placed on a tag or sticker affixed to the property available for rental-purchase. If the property available for rental-purchase is not displayed at the lessor's place of business but appears in a photograph or catalog shown to consumers, a tag or sticker shall be affixed to the photograph of the property or catalog shown to consumers or shall be given to consumers. The disclosure required by paragraph (2) of subdivision (a) also shall be clearly and conspicuously placed on the tag or sticker.

(d) All disclosures required by this section shall be printed or typed in a color or shade that clearly contrasts with the background.

SEC. 3. Section 1812.624 of the Civil Code is amended to read:

1812.624. (a) No rental-purchase agreement or any document that the lessor requests the consumer to sign shall contain any provision by which:

(1) A power of attorney is given to confess judgment in this state or to appoint the lessor, its agents, or its successors in interest as the

consumer's agent in the collection of payments or the repossession of the rental property.

(2) The consumer authorizes the lessor or its agent to commit any breach of the peace in repossessing the rental property or to enter the consumer's dwelling or other premises without obtaining the consumer's consent at the time of entry.

(3) The consumer agrees to purchase from the lessor insurance or a liability waiver against loss or damage to the rental property.

(4) The consumer waives or agrees to waive any defense, counterclaim, or right the consumer may have against the lessor, its agent, or its successor in interest.

(5) The consumer is required to pay any fee in connection with reinstatement except as provided in Section 1812.631.

(6) The consumer is required to pay a fee in connection with the pickup of the property or the termination or rescission of the rental-purchase agreement.

(7) The consumer is required to pay any fee permitted by the rental-purchase agreement and this title that is not reasonable and actually incurred by the lessor. The lessor has the burden of proof to establish that a fee was reasonable and was an actual cost incurred by the lessor.

(8) The consumer is required to pay a downpayment, more than one advance periodic rental payment, or any other payment except a security deposit permitted under Section 1812.625.

(9) Except to the extent permitted by subdivision (b) of Section 1812.627, the consumer waives any rights under Sections 1928 or 1929.

(10) The consumer grants a security interest in any property.

(11) The consumer's liability for loss or damage to the property which is the subject of the rental-purchase agreement may exceed the maximum described in subdivision (a) of Section 1812.627.

(12) Except under the circumstances authorized by subdivision (a) or (b) of Section 1812.632, the consumer is obligated to make any balloon payment. A "balloon payment" is any payment for the purchase or use of the rental property which is more than the regularly scheduled periodic payment amount.

(13) The consumer is required to pay a late payment fee that is not permitted under Section 1812.626.

(14) The consumer is required to pay both a late payment fee and a fee for the lessor's collection of a past due payment at the consumer's home or other location.

(15) The consumer waives or offers to waive any right or remedy against the lessor, its agents, or its successors in interest for any violation of this title or any other illegal act. This subdivision does not apply to a

document executed in connection with the bona fide settlement, compromise, or release of a specific disputed claim.

(16) The lessor, its agents, or its successors in interest may commence any judicial action against the consumer in a county other than the county in which (A) the rental-purchase agreement was signed or (B) the consumer resides at the time the action is commenced.

(17) The amount stated as the cash price for any item of personal property exceeds the cash price permitted under Section 1812.644.

(18) The total of payments exceeds the amount permitted under Section 1812.644.

(b) Any provision in a rental-purchase agreement that is prohibited by this title shall be void and unenforceable and a violation of this title. A rental-purchase agreement which contains any provision that is prohibited by this title is voidable by the consumer.

SEC. 4. Section 1812.632 of the Civil Code is amended to read:

1812.632. (a) (1) The consumer has the right to acquire ownership of the property within three months of the date on which the consumer executed the rental-purchase agreement by tendering to the lessor an amount equal to the cash price and any past due fees less all periodic payments that the consumer has paid.

(2) Within 10 days after the consumer executes the rental purchase agreement, the lessor shall personally deliver or send by first-class mail to the consumer a notice informing the consumer of the right described in paragraph (1), including the amount the consumer must pay to acquire ownership and the date by which payment must be made. The statement shall not be accompanied by any other written information including solicitations for other rental-purchase agreements.

(b) After the expiration of the three-month period following the execution of the rental-purchase agreement, the consumer has the right to acquire ownership of the property at any time by tendering to the lessor all past due payments and fees and an amount equal to the cash price stated in the rental-purchase agreement multiplied by a fraction that has as its numerator the number of periodic payments remaining under the agreement and that has as its denominator the total number of periodic payments.

(c) (1) The lessor shall, in connection with a consumer's rights under subdivision (b), provide the consumer with a written statement in the manner set forth in paragraph (2) below that clearly states (A) the total amount the consumer would have to pay to acquire ownership of the rental property if the consumer makes all regularly scheduled payments remaining under the rental-purchase agreement and (B) the total amount the consumer would have to pay to acquire ownership of that property pursuant to subdivision (a).

(2) The statement required by paragraph (1) shall be personally delivered or sent by first-class mail to the consumer within seven days after (A) the date the consumer requests information about the amount required to purchase the rental property and (B) the date the consumer has made one-half of the total number of periodic payments required to acquire ownership of the rental property. The statement shall not be accompanied by any other written information including solicitations for other rental-purchase agreements.

(d) (1) Subject to paragraph (2), if any consumer who has signed the rental-purchase agreement has experienced an interruption or reduction of 25 percent or more of income due to involuntary job loss, involuntary reduced employment, illness, pregnancy, or disability after one-half or more of the total amount of the periodic payments necessary to acquire ownership under the agreement has been paid, the lessor shall reduce the amount of each periodic rental payment by (A) the percentage of the reduction in the consumer's income or (B) 50 percent, whichever is less, for the period during which the consumer's income is interrupted or reduced. If payments are reduced, the total dollar amount of payments necessary to acquire ownership shall not be increased, and the rights and duties of the lessor and the consumer shall not otherwise be affected. When the consumer's income is restored, the lessor may increase the amount of rental payments, but in no event shall rental payments exceed the originally scheduled amount of rental payments.

(2) Paragraph (1) applies only after the consumer provides to the lessor some evidence of the amount and cause of the interruption or reduction of income.

SEC. 5. Section 1812.644 of the Civil Code is amended to read:

1812.644. (a) A lessor shall maintain records that establish the lessor's cost, as defined in subdivision (k) of Section 1812.622, for each item of personal property that is the subject of the rental-purchase agreement. A copy of each rental-purchase agreement and of the records required by this subdivision shall be maintained for two years following the termination of the agreement.

(b) The maximum cash price for the lessor's first rental of the property that is the subject of the rental-purchase agreement may not exceed 1.65 times the lessor's cost for computer systems and appliances, 1.7 times the lessor's cost for electronic sets, 1.9 times the lessor's cost for automotive accessories, furniture, jewelry, and musical instruments, and 1.65 times the lessor's cost for all other items.

(c) The maximum total of payments may not exceed 2.25 times the maximum cash price that could have been charged for the first rental of the property under subdivision (b).

(d) The maximum total of payments for the lessor's second and subsequent rental of the property that is the subject of the rental-purchase agreement may not exceed the maximum total of payments permitted under subdivision (c) for the first rental of that property less (1) for appliances and electronic sets, one-third the amount of all rental payments paid to the lessor by consumers who previously rented that property or (2) for furniture, computer systems, and all other items, one-half the amount of all rental payments paid to the lessor by consumers who previously rented that property.

(e) The maximum cash price for property on its second or subsequent rental may not exceed the maximum total of payments for that property as permitted under subdivision (d) divided by 2.25.

(f) Upon the written request of the Attorney General, any district attorney or city attorney, or the Director of the Department of Consumer Affairs, a lessor shall provide copies of the records described in this section.

(g) If a lessor willfully discloses a cash price or a total of payments that exceeds the amount permitted by this section, the rental-purchase agreement is void, the consumer shall retain the property without any obligation, and the lessor shall refund to the consumer all amounts paid.

SEC. 6. On and after June 1, 2006 to December 31, 2006, inclusive, a lessor may comply with Sections 1812.622, 1812.623, 1812.624, 1812.632, and 1812.644 of the Civil Code as amended by this act in lieu of complying with those sections as they were in effect before the effective date of this act without incurring any liability for doing so.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 411

An act to amend Section 7403 of, and to add Sections 7308 and 7396.5 to, the Business and Professions Code, relating to barbering and cosmetology.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 7308 is added to the Business and Professions Code, to read:

7308. (a) The board shall study the effects of current law, regulations, and policy related to the licensing functions of the board that may create unnecessary barriers to employing people with criminal records. The objective of the study shall be to identify changes in law or board policy to help remove unnecessary barriers to licensing due to criminal records while protecting the safety and security of customers and the integrity of the occupations regulated by the board. The board shall report all of its findings to the Legislature on or before September 1, 2007.

(b) For each of the calendar years 2002, 2003, 2004, 2005, and 2006, the study shall provide the following information:

(1) The total number of applicants, by occupation.

(2) The number of applicants who were denied licensure.

(3) The number of applicants, by occupation, who disclosed a criminal record on their application. Of those applicants:

(A) The number of applicants who were denied licensure.

(B) The number of applicants who were denied licensure who requested a hearing to appeal the decision.

(C) The number of applicants whose appeal resulted in reversal or modification of the decision, including the issuance of a probationary license.

(D) The age and severity of each offense.

(E) The number of applicants with nonviolent drug offenses.

(F) The number of applicants with misdemeanor offenses.

(G) The number of applicants that were asked by the board to supply additional information relating to their criminal record.

(H) The number of applicants who provided evidence of rehabilitation.

(4) The criteria applied by the board to determine whether an applicant's criminal record is substantially related to the requested license, including the specific categories of disqualifying offenses and any criteria related to the age and severity of the disqualifying offenses.

(5) The criteria applied by the board to determine whether an applicant has been sufficiently rehabilitated, including an analysis of the factors that most often lead to a determination of rehabilitation resulting in licensing.

(6) The average length of time that an appeal is pending relative to the date of the hearing request and final decision.

(7) The number and percentage of appeals pending longer than 30 days and longer than 100 days from the time the applicant requested the hearing.

SEC. 2. Section 7396.5 is added to the Business and Professions Code, to read:

7396.5. (a) The board may, in its sole discretion, issue a probationary license to an applicant subject to terms and conditions deemed appropriate by the board, including, but not limited to, the following:

(1) Continuing medical, psychiatric, or psychological treatment.

(2) Ongoing participation in a specified rehabilitation program.

(3) Abstention from the use of alcohol or drugs.

(4) Compliance with all provisions of this chapter.

(b) The board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the applicant or licensee.

SEC. 3. Section 7403 of the Business and Professions Code is amended to read:

7403. (a) The board may revoke, suspend, or deny at any time any license required by this chapter on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denying a license to an applicant, the board shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the board's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(d) Notwithstanding Section 487, the board shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the board shall determine when the hearing shall be conducted.

(e) In any case in which the administrative law judge recommends that the board revoke, suspend or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee to pay the board the reasonable costs of the investigation and adjudication of the case. For purposes of this section, "costs" include charges by the board for investigating the case, charges incurred by the office of the Attorney General for investigating and presenting the case, and charges

incurred by the Office of Administrative Hearings for hearing the case and issuing a proposed decision.

(f) The costs to be assessed shall be fixed by the administrative law judge and shall not, in any event, be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(g) The board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(h) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(i) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the board's contingent fund as a scheduled reimbursement in the fiscal year in which the costs are actually recovered.

CHAPTER 412

An act to amend Section 11515 of the Vehicle Code, relating to auto insurance.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 11515 of the Vehicle Code is amended to read:

11515. (a) (1) Whenever an insurance company makes a total loss settlement on a total loss salvage vehicle, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, within 10 days from the settlement of the loss, shall forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15), to the department. An occupational licensee of the department may submit a certificate of license plate destruction in lieu of the actual license plate.

(2) If an insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool

authorized by the insurance company is unable to obtain the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department within 30 days following oral or written acceptance by the owner of an offer of an amount in settlement of a total loss, that insurance company, licensee, or salvage pool, on a form provided by the department and signed under penalty of perjury, may request the department to issue a salvage certificate for the vehicle. The request shall include and document that the requester has made at least two written attempts to obtain the certificate of ownership or other acceptable evidence of title, and shall include the license plates and fee described in paragraph (1).

(3) The department, upon receipt of the certificate of ownership, other evidence of title, or properly executed request described in paragraph (2), the license plates, and the fee, shall issue a salvage certificate for the vehicle.

(b) Whenever the owner of a total loss salvage vehicle retains possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the fee, shall issue a salvage certificate for the vehicle.

(c) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department.

(d) Whenever a total loss salvage vehicle is not the subject of an insurance settlement, a self-insurer, as defined in Section 16052, shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars ($15) to the department.

(e) Prior to the sale or disposal of a total loss salvage vehicle, the owner, owner's agent, or salvage pool, shall obtain a properly endorsed salvage certificate and deliver it to the purchaser within 10 days after payment in full for the salvage vehicle and shall also comply with Section 5900. The department shall accept the endorsed salvage certificate in lieu of the certificate of ownership or other evidence of ownership when

accompanied by an application and other documents and fees, including, but not limited to, the fees required by Section 9265, as may be required by the department.

(f) This section does not apply to a vehicle that has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a total loss salvage vehicle.

(g) A violation of subdivision (a), (b), (d), or (e) is a misdemeanor, pursuant to Section 40000.11. Notwithstanding Section 40000.11, a violation of subdivision (c) is an infraction, except that, if committed with the intent to defraud, a violation of subdivision (c) is a misdemeanor.

(h) (1) A salvage certificate issued pursuant to this section shall include a statement that the seller and subsequent sellers that transfer ownership of a total loss vehicle pursuant to a properly endorsed salvage certificate are required to disclose to the purchaser at, or prior to, the time of sale that the vehicle has been declared a total loss salvage vehicle.

(2) Effective on and after the department includes in the salvage certificate form the statement described in paragraph (1), a seller who fails to make the disclosure described in paragraph (1) shall be subject to a civil penalty of not more than five hundred dollars ($500).

(3) Nothing in this subdivision affects any other civil remedy provided by law, including, but not limited to, punitive damages.

SEC. 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 413

An act to add Section 49452.8 to the Education Code, relating to pupil health.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

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

(a) Oral health is integral to overall health.

(b) Tooth decay is the most common chronic childhood disease, experienced by more than two-thirds of California's children and five times more common than asthma.

(c) California's schoolchildren, ages 6 to 8, inclusive, experience oral disease at twice the rate of schoolchildren in other states.

(d) Oral diseases are infectious, are not self-limiting, contribute to many lost school hours, negatively impact learning, interfere with eating, contribute to poor self-esteem, and can cause considerable pain.

(e) Tooth decay is preventable.

SEC. 2. Section 49452.8 is added to the Education Code, to read:

49452.8. (a) A pupil, while enrolled in kindergarten in a public school, or while enrolled in first grade in a public school if the pupil was not previously enrolled in kindergarten in a public school, shall, no later than May 31 of the school year, present proof of having received an oral health assessment by a licensed dentist, or other licensed or registered dental health professional operating within his or her scope of practice, that was performed no earlier than 12 months prior to the date of the initial enrollment of the pupil.

(b) The parent or legal guardian of a pupil may be excused from complying with subdivision (a) by indicating on the form described in subdivision (d) that the oral health assessment could not be completed because of one or more of the reasons provided in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (d).

(c) A public school shall notify the parent or legal guardian of a pupil described in subdivision (a) concerning the assessment requirement. The notification shall, at a minimum, consist of a letter that includes all of the following:

(1) An explanation of the administrative requirements of this section.

(2) Information on the importance of primary teeth.

(3) Information on the importance of oral health to overall health and to learning.

(4) A toll-free telephone number to request an application for Healthy Families, Medi-Cal, or other government-subsidized health insurance programs.

(5) Contact information for county public health departments.

(6) A statement of privacy applicable under state and federal laws and regulations.

(d) In order to ensure uniform data collection, the department, in consultation with interested persons, shall develop and make available on the Internet Web site of the department, a standardized notification form as specified in subdivision (c) that shall be used by each school district. The standardized form shall include all of the following:

(1) A section that can be used by the licensed dentist or other licensed or registered dental health professional performing the assessment to record information that is consistent with the information collected on the oral health assessment form developed by the Association of State and Territorial Dental Directors.

(2) A section in which the parent or legal guardian of a pupil can indicate the reason why an assessment could not be completed by marking the box next to the appropriate reason. The reasons for not completing an assessment shall include all of the following:

(A) Completion of an assessment poses an undue financial burden on the parent or legal guardian.

(B) Lack of access by the parent or legal guardian to a licensed dentist or other licensed or registered dental health professional.

(C) The parent or legal guardian does not consent to an assessment.

(e) Upon receiving completed assessments, all school districts shall, by December 31 of each year, submit a report to the county office of education of the county in which the school district is located. The report shall include all of the following:

(1) The total number of pupils in the district, by school, who are subject to the requirement to present proof of having received an oral health assessment pursuant to subdivision (a).

(2) The total number of pupils described in paragraph (1) who present proof of an assessment.

(3) The total number of pupils described in paragraph (1) who could not complete an assessment due to financial burden.

(4) The total number of pupils described in paragraph (1) who could not complete an assessment due to lack of access to a licensed dentist or other licensed or registered dental health professional.

(5) The total number of pupils described in paragraph (1) who could not complete an assessment because their parents or legal guardians did not consent to their child receiving the assessment.

(6) The total number of pupils described in paragraph (1) who are assessed and found to have untreated decay.

(7) The total number of pupils described in paragraph (1) who did not return either the assessment form or the waiver request to the school.

(f) Each county office of education shall maintain the data described in subdivision (e) in a manner that allows the county office to release it upon request.

(g) This section does not prohibit any of the following:

(1) County offices of education from sharing aggregate data collected pursuant to this section with other governmental agencies, philanthropic organizations, or other nonprofit organizations for the purpose of data analysis.

(2) Use of assessment data that is compliant with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) for purposes of conducting research and analysis on the oral health status of public school pupils in California.

(h) This section does not preclude a school district or county office of education from developing a schoolsite-based oral health assessment program to meet the requirements of this section.

(i) The Office of Oral Health of the Chronic Disease Control Branch of the State Department of Health Services shall conduct an evaluation of the requirements imposed by this section and prepare and submit a report to the Legislature by January 1, 2010, that discusses any improvements in the oral health of children resulting from the imposition of those requirements. The Office of Oral Health may receive private funds and contract with the University of California to fulfill the duties described in this subdivision.

SEC. 3. Funds allocated to local educational agencies pursuant to Item 6110-268-0001 of Section 2.00 of the Budget Act of 2006 (Chapters 47 and 48 of the Statutes of 2006) shall first be used to offset any reimbursement to local educational agencies provided pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act.

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 414

An act to amend Section 49423.5 of the Education Code, relating to pupil health.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 49423.5 of the Education Code is amended to read:

49423.5. (a) Notwithstanding Section 49422, any individual with exceptional needs who requires specialized physical health care services,

during the regular schoolday, may be assisted by any of the following individuals:

(1) Qualified persons who possess an appropriate credential issued pursuant to Section 44267 or 44267.5.

(2) Qualified designated school personnel trained in the administration of specialized physical health care if they perform those services under the supervision, as defined by Section 3051.12 of Title 5 of the California Code of Regulations, of a credentialed school nurse or licensed physician and surgeon and the services are determined by the credentialed school nurse or licensed physician and surgeon, in consultation with the physician treating the pupil, to include all of the following:

(A) Routine for the pupil.

(B) Pose little potential harm for the pupil.

(C) Performed with predictable outcomes, as defined in the individualized education program of the pupil.

(D) Does not require a nursing assessment, interpretation, or decisionmaking by the designated school personnel.

(b) Specialized health care or other services that require medically related training shall be provided pursuant to the procedures prescribed by Section 49423.

(c) Persons providing specialized physical health care services shall also demonstrate competence in basic cardiopulmonary resuscitation and shall be knowledgeable of the emergency medical resources available in the community in which the services are performed.

(d) "Specialized physical health care services," as used in this section, include catheterization, gastric tube feeding, suctioning, or other services that require medically related training.

(e) Regulations necessary to implement this section shall be developed jointly by the State Department of Education and the State Department of Health Services, and adopted by the state board.

(f) This section does not diminish or weaken any federal requirement for serving individuals with exceptional needs under the Individuals with Disabilities Education Improvement Act (20 U.S.C. Sec. 1400 et seq.), and its implementing regulations, and under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and its implementing regulations.

(g) Nothing in this section affects current state law or regulation regarding medication administration.

(h) It is the intent of the Legislature that nothing in this section shall cause the placement of individuals with exceptional needs at schoolsites

other than those they would attend but for their needs for specialized physical health care services.

CHAPTER 415

An act to add Article 10.1.1 (commencing with Section 25214.1) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to toxic substances.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Article 10.1.1 (commencing with Section 25214.1) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.1.1. Lead-Containing Jewelry

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 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) "EPA reference methods 3050B (Acid Digestion of Sediments, Sludges and Soils) or 3051 (Microwave Assisted Digestion/ Sludge, Soils)" means those test methods incorporated by reference in paragraph (11) of subdivision (a) of Section 260.11 of Title 40 of the Code of Federal Regulations.

(j) "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) Decorated hair accessories.

(I) Earring.

(J) Necklace.

(K) Pin.

(L) Ring.

(M) Body piercing jewelry.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(k) (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.

25214.2. (a) On and after March 1, 2008, a person shall not manufacture, ship, sell, or offer for sale jewelry for retail sale 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, or offer for sale children's jewelry for retail sale 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.

(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, or offer for sale body piercing jewelry for retail sale 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.

25214.3. (a) Notwithstanding this chapter, a person who violates this article shall not be subject to any criminal penalties imposed pursuant to this chapter and shall only be subject to the civil penalty specified in subdivision (b).

(b) (1) A person who violates this article shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this article, the court 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) All 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) Notwithstanding subdivision (b), a party to the amended consent judgment, or a party 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 be deemed to be in compliance with this article, and any action brought to enforce this article against the party shall be subject to Section 4 of the amended consent judgment.

25214.4. The testing methods for determining compliance with this article shall be conducted using the EPA reference methods 3050B or 3051 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.

25214.4.1. In addition to the requirements of Section 25214.4, the following procedures shall be used for testing the following materials:

(a) For testing a metal plated with suitable undercoats and finish coats, the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.1 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(b) For testing unplated metal and metal substrates that are not a class 1 material the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.01 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(c) For testing polyvinyl chloride (PVC), the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Digested samples may require dilution prior to analysis.

(4) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(d) For testing plastic or rubber that is not polyvinyl chloride (PVC), including acrylic, polystyrene, plastic beads, or plastic stones, the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Plastic beads or stones shall be crushed prior to digestion.

(4) Digested samples may require dilution prior to analysis.

(5) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(6) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(e) For testing coatings on glass and plastic pearls, the following protocols shall be observed:

(1) The coating of glass or plastic beads shall be scraped onto a surface free of dust, including a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The substrate pearl material shall not be included in the scrapings.

(2) The razor blade or sharp instrument shall be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples.

(3) The scrapings shall be weighed and not less than 50 micrograms of scraped coating shall be used for analysis. If less than 50 micrograms of scraped coating is obtained from an individual pearl, multiple pearls from that sample shall be scraped and composited to obtain a sufficient sample amount.

(4) The number of pearls used to make the composite shall be noted.

(5) The scrapings shall be digested according to EPA reference method 3050B or 3051 or an equivalent procedure for hot acid digestion in preparation for trace lead analysis.

(6) The digestate shall be diluted in the minimum volume practical for analysis.

(7) The digested sample shall be analyzed according to specification of an approved and validated methodology for inductively coupled plasma mass spectrometry.

(8) A reporting limit of 0.001 percent (10 parts per million) in the coating shall be obtained for the analysis.

(9) The sample result shall be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, the sample shall be diluted and reanalyzed within the calibrated range of the instrument.

(f) For testing dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, or crystal, the following testing protocols shall be observed:

(1) The digestion shall use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be not less than 0.050 gram, and shall be chopped or comminuted prior to digestion.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(g) For testing glass and crystal used in children's jewelry, the following testing protocols for determining weight shall be used:

(1) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(2) The scale used to weigh a component shall be calibrated immediately before the components are weighed using S-class weights of one and two grams, as certified by the National Institute of Standards and Technology (NIST) of the Department of Commerce.

(3) The calibration of the scale shall be accurate to within 0.01 gram.

25214.4.2. The department may adopt 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.

CHAPTER 416

An act to amend Sections 117555 and 117560 of, to amend the heading of Article 6 (commencing with Section 117550) of Chapter 4 of Part 13 of Division 104 of, and to repeal and add Section 117550 of, the Health and Safety Code, and to amend Sections 374a, 374.3, 374.4, and 374.7 of the Penal Code, relating to solid waste.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. The heading of Article 6 (commencing with Section 117550) of Chapter 4 of Part 13 of Division 104 of the Health and Safety Code is amended to read:

Article 6. Prohibited Waste Disposal

SEC. 2. Section 117550 of the Health and Safety Code is repealed.

SEC. 3. Section 117550 is added to the Health and Safety Code, to read:

117550. For purposes of this article, "solid waste" has the same meaning as that term is defined in Section 40191 of the Public Resources Code.

SEC. 4. Section 117555 of the Health and Safety Code is amended to read:

117555. A person who places, deposits, or dumps, or who causes to be placed, deposited, or dumped, or who causes or allows to overflow, sewage, sludge, cesspool or septic tank effluent, accumulation of human excreta, or solid waste, in or upon a street, alley, public highway, or road in common use or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of the property, or upon private property without the owner's consent, is guilty of a misdemeanor.

This section does not apply to the placing, depositing, or dumping of solid waste upon private property by the owner, or a person authorized by the owner, of the private property, except that the placing, depositing, or dumping of the solid waste shall not create a public health and safety hazard, nuisance, or a fire hazard, as determined by a local enforcement agency, as defined in Section 40130 of the Public Resources Code, local health department, local fire department or fire district, or the Department of Forestry and Fire Protection.

SEC. 5. Section 117560 of the Health and Safety Code is amended to read:

117560. A state fish and game warden, police officer of a city, sheriff, deputy of a sheriff, person described in subdivision (i) of Section 830.7 of the Penal Code, and any other peace officer of the State of California, within his or her respective jurisdiction, shall enforce this article.

SEC. 6. Section 374a of the Penal Code is amended to read:

374a. A person giving information leading to the arrest and conviction of a person for a violation of Section 374c, 374.2, 374.3, 374.4, or 374.7 is entitled to a reward for providing the information.

The amount of the reward for each arrest and conviction shall be 50 percent of the fine levied against and collected from the person who violated Section 374c, 374.2, 374.3, 374.4, or 374.7 and shall be paid by the court. If the reward is payable to two or more persons, it shall be divided equally. The amount of collected fine to be paid under this section shall be paid prior to any distribution of the fine that may be prescribed by any other section, including Section 1463.9, with respect to the same fine.

SEC. 7. Section 374.3 of the Penal Code is amended to read:

374.3. (a) It is unlawful to dump or cause to be dumped waste matter in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon

which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property.

(b) It is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property.

(c) A person violating this section is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of subdivision (a) or (b) remains is a separate violation.

(d) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(e) A person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1,500) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than three thousand dollars ($3,000) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that a person convicted of a violation of this

section pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours.

(h) (1) A person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000) upon a first conviction, not less than three thousand dollars ($3,000) nor more than six thousand dollars ($6,000) upon a second conviction, and not less than six thousand dollars ($6,000) nor more than ten thousand dollars ($10,000) upon a third or subsequent conviction.

(2) "Commercial quantities" means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This subdivision does not apply to the dumping of household waste at a person's residence.

(i) For purposes of this section, "person" means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation.

(j) Except in unusual cases where the interests of justice would be best served by waiving or reducing a fine, the minimum fines provided by this section shall not be waived or reduced.

SEC. 8. Section 374.4 of the Penal Code is amended to read:

374.4. (a) It is unlawful to litter or cause to be littered in or upon public or private property. A person, firm, or corporation violating this section is guilty of an infraction.

(b) This section does not restrict a private owner in the use of his or her own property, unless the littering of waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(c) As used in this section, "litter" means the discarding, dropping, or scattering of small quantities of waste matter ordinarily carried on or about the person, including, but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspapers, and magazines, in a place other than a place or container for the proper disposal thereof, and including waste matter that escapes or is allowed to escape from a container, receptacle, or package.

(d) A person, firm, or corporation convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1,500)

upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than three thousand dollars ($3,000) upon a third or subsequent conviction.

(e) The court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of this section pick up litter at a time and place within the jurisdiction of the court for not less than eight hours.

SEC. 9. Section 374.7 of the Penal Code is amended to read:

374.7. (a) A person who litters or causes to be littered, or dumps or causes to be dumped, waste matter into a bay, lagoon, channel, river, creek, slough, canal, lake, or reservoir, or other stream or body of water, or upon a bank, beach, or shore within 150 feet of the high water mark of a stream or body of water, is guilty of a misdemeanor.

(b) A person convicted of a violation of subdivision (a) shall be punished by a mandatory fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1,500) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than three thousand dollars ($3,000) upon a third or subsequent conviction.

(c) The court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of subdivision (a), pick up litter at a time and place within the jurisdiction of the court for not less than eight hours.

SEC. 10. Section 5 of this bill shall become effective only if Assembly Bill No. 1688 of the 2005–06 Regular Session is enacted and becomes effective on or before January 1, 2007, and adds subdivision (i) to Section 830.7 of the Penal Code.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 417

An act to add Section 401.20 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

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

(1) The property used in certain high technology focused industries is subject to the rapid pace of technological change.

(2) The annual valuation factors currently published by the State Board of Equalization that are used to assess this property is based upon dated studies, causing the validity of these factors to be questioned and giving rise to costly and time-consuming assessment appeals and litigation.

(3) A new study would allow the development of objective and defensible valuation factors and ensure more accurate assessments.

(4) The uncertainty created by pending appeals and litigation over the valuation of this property is disruptive to industry tax planning, local government finance, and school finance.

(b) It is the intent of the Legislature in enacting this act to do both of the following:

(1) Facilitate uniform assessment practices in the assessment of this property within the State of California.

(2) Facilitate the resolution of disputes over the assessment of this property by clearly establishing a presumption of correctness if county assessors use a prescribed assessment methodology.

SEC. 2. Section 401.20 is added to the Revenue and Taxation Code, to read:

401.20. (a) (1) The State Board of Equalization shall, in consultation with the California Assessors' Association and representatives of the computer, semiconductor, and biopharmaceutical industries, conduct a study to obtain and analyze data in order to update the information used to develop the valuation factors annually published by the State Board of Equalization that are applied to nonproduction computers, semiconductor manufacturing equipment, and biopharmaceutical industry equipment and fixtures.

(2) The State Board of Equalization shall conduct the study described in paragraph (1) only if funds are appropriated by the Legislature to the board for that purpose during the 2005-06 Regular Session.

(3) To the extent the State Board of Equalization periodically conducts these studies, the board shall publish revised valuation factors based on the updated information. If the board reviews the data and determines that an update is not warranted, the existing factors shall remain in effect.

(b) (1) Notwithstanding any other provision of law relating to the determination of the values for property tax assessment, values determined by using valuation factors resulting from the study described in subdivision (a), as instructed by the State Board of Equalization for nonproduction computers, semiconductor manufacturing equipment, and biopharmaceutical industry equipment and fixtures, shall be rebuttably presumed to be the full cash value.

(2) The assessor or the taxpayer shall have the right to present evidence supporting values different from those based on the published factors in order to attempt to overcome the presumption.

(c) The presumption in subdivision (b) shall not apply to any particular tax year if the information upon which the valuation factors for that category of property are based was last reviewed by the State Board of Equalization more than six years before the lien date for that tax year.

CHAPTER 418

An act to amend Sections 7500.1, 7500.3, 7507.9, 7507.12, 7507.13, 7508.4 of the Business and Professions Code, and to amend Sections 14602.6 and 14602.7 of the Vehicle Code, relating to collateral recovery.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 7500.1 of the Business and Professions Code is amended to read:

7500.1. The following terms as used in this chapter have the meaning expressed in this section.

(a) "Advertisement" means any written or printed communication, including a directory listing, except a free telephone directory listing that does not allow space for a license number.

(b) "Assignment" means a written authorization by the legal owner, lienholder, lessor or lessee, or the agent of any of them, to skip trace,

locate, or repossess or to collect money payment in lieu of repossession of, any collateral, including, but not limited to, collateral registered under the Vehicle Code that is subject to a security agreement that contains a repossession clause. "Assignment" also means a written authorization by an employer to recover any collateral entrusted to an employee or former employee if the possessor is wrongfully in possession of the collateral. A photocopy, facsimile copy, or electronic copy of an assignment shall have the same force and effect as an original written assignment.

(c) "Bureau" means the Bureau of Security and Investigative Services.

(d) "Chief" means the Chief of the Bureau of Security and Investigative Services.

(e) "Collateral" means any vehicle, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement.

(f) "Combustibles" means any substance or article that is capable of undergoing combustion or catching fire, or that is flammable, if retained.

(g) "Dangerous drugs" means any controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(h) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

(i) "Debtor" means any person obligated under a security agreement.

(j) "Department" means the Department of Consumer Affairs.

(k) "Director" means the Director of Consumer Affairs.

(*l*) "Health hazard" means any personal effects which if retained would produce an unsanitary or unhealthful condition.

(m) "Legal owner" means a person holding a security interest in any collateral that is subject to a security agreement, a lien against any collateral, or an interest in any collateral that is subject to a lease agreement.

(n) "Licensee" means an individual, partnership, limited liability company, or corporation licensed under this chapter as a repossession agency.

(o) "Multiple licensee" means a repossession agency holding more than one repossession license under this chapter, with one fictitious trade style and ownership, conducting repossession business from additional licensed locations other than the location shown on the original license.

(p) "Person" includes any individual, partnership, limited liability company, or corporation.

(q) "Personal effects" means any property that is not the property of the legal owner.

(r) "Private building" means and includes any dwelling, outbuilding, or other enclosed structure.

(s) "Qualified certificate holder" or "qualified manager" is a person who possesses a valid qualification certificate in accordance with the provisions of Article 5 (commencing with Section 7504) and is in active control or management of, and who is a director of, the licensee's place of business.

(t) "Registrant" means a person registered under this chapter.

(u) "Secured area" means and includes any fenced and locked area.

(v) "Security agreement" means an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principal obligation. "Security agreement" also includes a bailment where an employer-employee relationship exists or existed between the bailor and the bailee.

(w) "Services" means any duty or labor to be rendered by one person for another.

(x) "Violent act" means any act that results in bodily harm or injury to any party involved.

(y) The amendments made to this section during the 2005–06 Regular Session shall not be deemed to exempt any person from the provisions of this chapter.

SEC. 2. Section 7500.3 of the Business and Professions Code is amended to read:

7500.3. A repossession agency shall not include any of the following:

(a) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(b) Any person organized, chartered, or holding a license or authorization certificate to make loans pursuant to the laws of this state or the United States who is subject to supervision by any official or agency of this state or the United States.

(c) An attorney at law in performing his or her duties as an attorney at law.

(d) The legal owner of collateral that is subject to a security agreement or a bona fide employee employed exclusively and regularly by the legal owner of collateral that is subject to a security agreement. With regard to collateral subject to registration under the Vehicle Code, the legal

owner shall be the legal owner listed on the records of the Department of Motor Vehicles.

(e) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties.

(f) A qualified certificate holder or a registrant when performing services for, or on behalf of, a licensee.

SEC. 3. Section 7507.9 of the Business and Professions Code is amended to read:

7507.9. Personal effects shall be removed from the collateral, including any personal effect that is mounted but detachable from the collateral by a release mechanism. A complete and accurate inventory of the personal effects shall be made, and the personal effects shall be labeled and stored by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the debtor or the party in possession of the collateral at the time of the repossession. If the licensee or the licensee's agent cannot determine whether the property attached to the collateral is a personal effect or a part of the collateral, then that fact shall be noted on the inventory and the licensee or agent shall not be obligated to remove the item from the collateral, unless the item can be removed without the use of tools, in which case it shall be removed and inventoried. The licensee or the licensee's agent shall notify the debtor that if the debtor takes the position that an item is a personal effect, then the debtor shall contact the legal owner to resolve the issue.

(a) The date and time the inventory is made shall be indicated. The permanent records of the licensee shall indicate the name of the employee or registrant who performed the inventory.

(b) The following items of personal effects are items determined to present a danger or health hazard when recovered by the licensee and shall be disposed of in the following manner:

(1) Deadly weapons and dangerous drugs shall be turned over to any law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date and the time and the place the deadly weapon or dangerous drug was turned over to the law enforcement agency, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency.

(2) Combustibles shall be inventoried and noted as "disposed of, dangerous combustible," and the item shall be disposed of in a reasonable and safe manner.

(3) Food and other health hazard items shall be inventoried and noted as "disposed of, health hazard," and disposed of in a reasonable and safe manner.

(c) Personal effects may be disposed of after being held for at least 60 days. The inventory, and adequate information as to how, when, and to whom the personal effects were disposed of, shall be filed in the permanent records of the licensee.

(d) The inventory shall include the name, address, business hours, and telephone number of the repossession agency to contact for recovering the personal effects and an itemization of all personal effects removal and storage charges that will be made by the repossession agency. The inventory shall also include the following statement: "Please be advised that the property listed on this inventory will be disposed of by the repossession agency after being held for 60 days from the date of this notice IF UNCLAIMED."

(e) The inventory shall be provided to a debtor not later than 48 hours after the recovery of the collateral, except that if:

(1) The 48-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 72 hours after the recovery of the collateral.

(2) The 48-hour period encompasses a Saturday or Sunday and a postal holiday, the inventory shall be provided no later than 96 hours after the recovery of the collateral.

(3) Inventory resulting from repossession of a yacht, motor home, or travel trailer is such that it shall take at least four hours to inventory, then the inventory shall be provided no later than 96 hours after the recovery of the collateral. When the 96-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 120 hours after the recovery of the collateral.

(f) Environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor shall be removed from the collateral and inventoried pursuant to this section. If the plates are not claimed by the debtor within 60 days, they shall be effectively destroyed and the licensee shall, within 30 days thereafter, notify the Department of Motor Vehicles of their effective destruction on a form promulgated by the chief that has been approved as to form by the Director of the Department of Motor Vehicles.

(g) The notice may be given by regular mail addressed to the last known address of the debtor or by personal service at the option of the repossession agency.

(h) The debtor may waive the preparation and presentation of an inventory if the debtor redeems the personal effects or other personal property not covered by a security interest within the time period for the

notices required by this section and signs a statement that he or she has received all the property.

(i) If personal effects or other personal property not covered by a security agreement are to be released to someone other than the debtor, the repossession agency may request written authorization to do so from either the debtor or the legal owner.

(j) The inventory shall be a confidential document. A licensee shall only disclose the contents of the inventory under the following circumstances:

(1) In response to the order of a court having jurisdiction to issue the order.

(2) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

(3) When the debtor has consented in writing to the release and the written consent is signed and dated by the debtor subsequent to the repossession and states the entity or entities to whom the contents of the inventory may be disclosed.

SEC. 4. Section 7507.12 of the Business and Professions Code is amended to read:

7507.12. With regard to collateral subject to registration under the Vehicle Code, a repossession is complete when the repossessor gains entry to the collateral or when the collateral becomes connected to a tow truck or the repossessor's tow vehicle, as those terms are defined in Section 615 of the Vehicle Code.

SEC. 5. Section 7507.13 of the Business and Professions Code is amended to read:

7507.13. (a) A licensed repossession agency is not liable for the act or omission of a legal owner, debtor, lienholder, lessor or lessee, or an agent of any of them, in making an assignment to it or for accepting an assignment from any legal owner, debtor, lienholder, lessor or lessee, or an agent of any of them, and is entitled to indemnity from the legal owner, debtor, lienholder, lessor or lessee for any loss, damage, cost, or expense, including court costs and attorney's fees, that it may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(b) The legal owner, debtor, lienholder, lessor or lessee, or the agent of any of them, is not liable for any act or omission by a licensed repossession agency, or its agent, in carrying out an assignment and is entitled to indemnity from the repossession agency for any loss, damage, cost, or expense, including court costs and attorney's fees, that the legal owner, debtor, lienholder, lessor or lessee, or the agent of any of them, may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(c) The legal owner, debtor, lienholder, lessor or lessee, or the agent of any of them, is not guilty of a violation of Section 7502.1 or 7502.2 if, at the time of the assignment, the party making the assignment has in its possession a copy of the repossessor's current, unexpired repossession agency license, and a copy of the current, unexpired repossession agency's qualified manager's certificate, and does not have actual knowledge of any order of suspension or revocation of the license or certificate.

(d) Neither a licensed repossession agency nor a legal owner, debtor, lienholder, lessor or lessee, or an agent of any of them may, by any means, direct or indirect, express or implied, instruct or attempt to coerce the other to violate any law, regulation, or rule regarding the recovery of any collateral, including, but not limited to, the provisions of this chapter or Section 9609 of the Commercial Code.

SEC. 6. Section 7508.4 of the Business and Professions Code is amended to read:

7508.4. The director may assess administrative fines for any of the following prohibited acts:

(a) Conducting business from any location other than that location to which a license was issued or conducting a business as an individual, partnership, limited liability company, or corporation unless the licensee holds a valid license issued to that exact same individual, partnership, limited liability company, or corporation. The fine shall be one thousand dollars ($1,000) for each violation.

(b) Aiding or abetting an unlicensed repossessor or assigning his or her license. "Assigning his or her license" means that no licensee shall permit a registrant, employee, or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under this chapter. The fine shall be one thousand dollars ($1,000) for each violation.

(c) Failing to register registrants within 15 days. The fine shall be two hundred fifty dollars ($250) for each of the first two violations and one thousand dollars ($1000) for each violation thereafter.

(d) Employing a person whose registration has expired or been revoked, denied, suspended, or canceled, if the bureau has furnished a listing of these persons to the licensee. The fine shall be twenty-five dollars ($25) for each violation.

(e) Failing to notify the bureau, within 30 days, of any change in officers. A notice of warning shall be issued for the first violation. Thereafter, the fine shall be twenty-five dollars ($25) for each violation.

(f) Failing to present the debtor with an itemized receipt of payment, if payment is made in lieu of repossession. The fine shall be twenty-five

dollars ($25) for the first violation and one hundred dollars ($100) for each violation thereafter.

(g) Failing to submit a notice regarding a violent act within seven days pursuant to Section 7507.6 or to submit a copy of a judgment awarded against the licensee for an amount of more than the then prevailing maximum claim that may be brought in small claims court within seven days pursuant to Section 7507.7. The fine shall be twenty-five dollars ($25) for the first violation and one hundred dollars ($100) per violation thereafter.

(h) Failing to include the licensee's name, address, and license number in any advertisement. A notice of warning shall be issued for the first violation. Thereafter, the fine shall be twenty-five dollars ($25) for each violation.

(i) Failing to maintain personal effects for at least 60 days. The fine shall be twenty-five dollars ($25) for the first violation and one hundred dollars ($100) for each violation thereafter.

(j) Failing to provide a personal effects list or a notice of seizure within the time limits set forth in Section 7507.9 or 7507.10. The fine shall be twenty-five dollars ($25) for the first violation and one hundred dollars ($100) for each violation thereafter.

(k) Failing to file the required report pursuant to Section 28 of the Vehicle Code. The fine shall be twenty-five dollars ($25) for each of the first five violations and one hundred dollars ($100) for each violation thereafter, per audit.

(*l*) Failing to maintain an accurate record and accounting of secure temporary registration forms. The qualified certificate holder shall be fined twenty-five dollars ($25) for the first violation, one hundred dollars ($100) for the second violation, two hundred fifty dollars ($250) for the third violation, and two hundred fifty dollars ($250) plus a one year suspension of the privilege to issue temporary registrations pursuant to Section 7506.9 for the fourth and subsequent violations.

(m) Representing that a licensee has an office and conducts business at a specific address when that is not the case. The fine shall be five thousand dollars ($5,000) for each violation.

(n) Notwithstanding any other provision of law, the money in the Private Security Services Fund that is attributable to administrative fines imposed pursuant to subdivision (c) shall not be continuously appropriated and shall be available for expenditure only upon appropriation by the Legislature.

SEC. 7. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) (1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is

restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

(2) The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code, and any one of the following: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency shall not require any documents to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city or county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the

legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph. The impounding agency shall not require any documents to be notarized.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

SEC. 8. Section 14602.7 of the Vehicle Code is amended to read:

14602.7. (a) A magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, was an instrumentality used in the peace officer's presence in violation of Section 2800.1, 2800.2, 2800.3, or 23103, shall issue a warrant or order authorizing any peace officer to immediately seize and cause the removal of the vehicle. The warrant or court order may be entered into a computerized database. A vehicle so impounded may be impounded for a period not to exceed 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded and providing the owner with a copy of the warrant or court order. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days impoundment when a legal owner redeems the impounded vehicle.

(b) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the vehicle's seizure under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of the business establishment, including a parking service or repair garage.

(C) When the registered owner of the vehicle causes a peace officer to reasonably believe, based on the totality of the circumstances, that the registered owner was not the driver who violated Section 2800.1, 2800.2, or 2800.3, the agency shall immediately release the vehicle to the registered owner or his or her agent.

(2) No vehicle shall be released pursuant to this subdivision, except upon presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of the court.

(c) (1) Whenever a vehicle is impounded under this section, the magistrate ordering the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(2) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours after issuance of the warrant or court order, excluding weekends and holidays, by the person or agency executing the warrant or court order, and shall include all of the following information:

(A) The name, address, and telephone number of the agency providing the notice.

(B) The location of the place of storage and a description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage of the vehicle.

(C) A copy of the warrant or court order and the peace officer's affidavit, as described in subdivision (a).

(D) A statement that, in order to receive their poststorage hearing, the owners, or their agents, are required to request the hearing from the magistrate issuing the warrant or court order in person, in writing, or by telephone, within 10 days of the date of the notice.

(3) The poststorage hearing shall be conducted within two court days after receipt of the request for the hearing.

(4) At the hearing, the magistrate may order the vehicle released if he or she finds any of the circumstances described in subdivision (b) or (e) that allow release of a vehicle by the impounding agency. The magistrate may also consider releasing the vehicle when the continued impoundment will cause undue hardship to persons dependent upon the vehicle for employment or to a person with a community property interest in the vehicle.

(5) Failure of either the registered or legal owner, or his or her agent, to request, or to attend, a scheduled hearing satisfies the poststorage hearing requirement.

(6) The agency employing the peace officer who caused the magistrate to issue the warrant or court order shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

(d) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(e) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the seizure of the vehicle if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a financial interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor

any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code, and any one of the following: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency shall not require any documents to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph. The impounding agency shall not require any documents to be notarized.

(f) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (e) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless a registered owner is a rental car agency, until the termination of the impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining the custody of the vehicle.

(g) (1) A vehicle impounded and seized under subdivision (a) shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver who used the vehicle that was seized to evade a police officer until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented and who evaded the peace officer to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(h) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 and any parking fines, penalties, and administrative fees incurred by the registered owner.

(i) (1) This section does not apply to vehicles abated under the Abandoned Vehicle Abatement Program pursuant to Sections 22660 to 22668, inclusive, and Section 22710, or to vehicles impounded for investigation pursuant to Section 22655, or to vehicles removed from private property pursuant to Section 22658.

(2) This section does not apply to abandoned vehicles removed pursuant to Section 22669 that are determined by the public agency to have an estimated value of three hundred dollars ($300) or less.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

CHAPTER 419

An act to amend Section 43200 of the Health and Safety Code, and to amend Sections 505.2 and 17300 of the Vehicle Code, relating to transportation.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 43200 of the Health and Safety Code is amended to read:

43200. (a) The state board may adopt a regulation to prohibit the sale and registration in this state of a new motor vehicle certified by the state board to which there has not been securely and conspicuously affixed on a side window to the rear of the driver or, if it cannot be so placed, to the windshield of the motor vehicle in accordance with paragraph (3) of subdivision (b) of Section 26708 of the Vehicle Code, by the manufacturer a label on which the manufacturer shall endorse clearly, distinctly, and legibly true and correct entries disclosing the following information concerning the motor vehicle:

(1) The emission standards adopted by the state board pursuant to Section 43101 that are applicable to that motor vehicle.

(2) The information required by Section 43200.1 and related air pollution emissions information as specified by the state board.

(b) A regulation may be adopted pursuant to this section only if the state board finds that the regulation is necessary for either of the following:

(1) To enforce or ensure compliance with applicable statutes, standards, or procedures relating to vehicle emissions.

(2) For the protection or information of consumers.

(c) Nothing in this division or in any other statute shall be construed as prohibiting a purchaser from removing the decal required by this section, after the purchaser has taken possession of the vehicle.

SEC. 2. Section 505.2 of the Vehicle Code is amended to read:

505.2. (a) A "registration service" is a person engaged in the business of soliciting or receiving an application for the registration, renewal of registration, or transfer of registration or ownership, of a vehicle of a type subject to registration under this code, or of soliciting or receiving an application for a motor carrier permit under Division 14.85 (commencing with Section 34600), or of transmitting or presenting those documents to the department, when any compensation is solicited or received for the service. "Registration service" includes, but is not limited to, a person who, for compensation, processes registration documents, conducts lien sales, or processes vehicle dismantling documents.

(b) "Registration service" does not include the following:

(1) A person performing registration services on a vehicle acquired by that person for his or her own personal use or for use in the regular course of that person's business.

(2) A person who solicits applications for or sells, for compensation, nonresident permits for the operation of vehicles within this state.

(3) An employee of one or more dealers or dismantlers, or a combination thereof, who performs either of the following:

(A) Registration services for vehicles acquired by, consigned to, or sold by one or more of the employing dealers or dismantlers.

(B) Vehicle transactions on behalf of one or more of the employing dealers or dismantlers, if the transaction is for an employing dealer or dismantler who is a qualified business partner in compliance with the Business Partner Automation Program established by the department pursuant to Section 1685.

(4) A motor club, as defined in Section 12142 of the Insurance Code.

(5) A common carrier acting in the regular course of its business in transmitting applications.

SEC. 3. Section 17300 of the Vehicle Code is amended to read:

17300. (a) A person who willfully or negligently damages a street or highway, or its appurtenances, including, but not limited to, guardrails, signs, traffic signals, snow poles, and similar facilities, is liable for the reasonable cost of repair or replacement thereof.

(b) A person who willfully damages or destroys a memorial sign placed by the Department of Transportation, including, but not limited to, a sign memorializing a victim under Section 101.10 of the Streets and Highways Code, is liable for that damage or destruction for the highest of the following amounts:

(1) One thousand five hundred dollars ($1,500).

(2) The actual repair cost or replacement cost, whichever is applicable.

(c) A person who willfully or negligently causes or permits the contents of a vehicle to be deposited upon a street or highway, or its appurtenances, is liable for the reasonable costs of removing those contents from the street or highway or its appurtenances.

(d) The liability stated in this section also applies to an owner of a vehicle operated with the owner's permission, as provided in Article 2 (commencing with Section 17150), and includes liability for the reasonable cost of necessary safety precautions, including, but not limited to, warning traffic, the removal of debris resulting from accidents, the removal of any materials, or providing detours.

(e) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, may present claims for liability under this section, bring actions for recovery thereon, and settle and compromise, in their discretion, claims arising under this section.

(f) If the Department of Transportation or a local authority provides services on a highway outside its jurisdiction, at the request of the department or the local authority that has jurisdiction over that highway, the department or the local authority may present a claim for liability

for rendering this service under this section, bring actions for recovery thereon, and, in its discretion, settle and compromise the claim.

CHAPTER 420

An act to amend Section 2454 of the Streets and Highways Code, relating to highway funds.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 2454 of the Streets and Highways Code is amended to read:

2454. Allocations made pursuant to Section 2453 shall be made on the basis of the following:

(a) An allocation of 80 percent of the estimated cost of the project shall be made; except that whenever contributions from other sources exceed 20 percent of the estimated cost, the allocation shall be reduced by the amount in excess of 20 percent of the estimated cost.

(b) An allocation of 50 percent of the estimated cost of the project shall be made for a proposed crossing.

(c) No allocation shall be made in excess of 50 percent of the estimated cost of the project unless the grade crossing to be eliminated has been in existence for at least 10 years prior to the date of allocation.

(d) On projects that eliminate an existing crossing, or alter or reconstruct an existing grade separation, no allocation shall be made unless the railroad agrees to contribute 10 percent of the cost of the project.

(e) Where a project does not include a grade separation, but eliminates existing grade crossing or crossings, the allocation shall not exceed the estimated allocation that would have been made for the grade separation which is no longer needed because of the elimination of the grade crossing by the project and which is indicated on the priority list to be urgently in need of grade separation.

(f) Where the project includes the separation of a highway and a railroad passenger service operated by a city or county, the operating agency shall contribute 20 percent of the cost of the project. The priority listing for these projects shall be in accordance with criteria established for railroad passenger service by the Public Utilities Commission.

(g) (1) Notwithstanding subdivisions (a) to (f), inclusive, the total of these allocations for a single project shall not exceed five million dollars ($5,000,000) without specific legislative authorization, except that the amount for a single project may be increased to either (1) an amount that includes the federal construction cost index increase each year since 1976, or (2) an amount that does not exceed one-third of the total funds appropriated for grade separation projects for the year of allocation, whichever amount is less, as determined each year by the Public Utilities Commission.

(2) Notwithstanding paragraph (1), the California Transportation Commission may allocate up to fifteen million dollars ($15,000,000) to a single project if that project is the highest ranking project on the priority list established by the Public Utilities Commission pursuant to Section 2452.

(h) Notwithstanding subdivisions (a) to (g), inclusive, a single project in excess of five million dollars ($5,000,000), but not exceeding twenty million dollars ($20,000,000), shall be considered without specific legislative authority, if the project (1) is included in the Public Utilities Commission's priority list of projects scheduled to be funded, (2) eliminates the need for future related grade separation projects, (3) provides projected cost savings of at least 50 percent to the state or local jurisdiction, or both of them, by eliminating the need for future projects, and (4) alleviates traffic and safety problems or provides improved rail service not otherwise possible. Projects approved pursuant to this subdivision shall be funded over a multiyear period, not to exceed five years, and the allocation for any one of those years shall not exceed the amount prescribed by subdivision (g) for a single project. Not more than one-half of the total allocation available in any one fiscal year for grade separation projects may be used for the purposes of this subdivision. An agency that has received an allocation for a project approved pursuant to this subdivision shall not be eligible for an allocation for another project under this subdivision for a period of 10 years from the date of approval of that project. However, if funds are available for allocation, as determined by the Department of Transportation, an agency may be eligible for an allocation for another project.

(i) Notwithstanding any of the above provisions of this section or any other provision of law, when the state or local agency uses funds derived from federal sources in financing its share of project costs, the railroad contribution, where required by federal law or regulation, shall be computed pursuant to federal law. However, the allocation made pursuant to this chapter shall be computed as though that matching contribution was derived from nonfederal sources and shall be computed as though the railroad had made its contribution pursuant to state law rather than

pursuant to federal law. Where the contribution of the railroad is computed according to federal law or regulation because of the use of federal funds in the allocation for a project, the allocation shall be increased by the amount the share of the railroad is reduced below 10 percent of the estimated cost of the project.

CHAPTER 421

An act to amend Sections 1522.41, 1562.3, and 1569.616 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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.

(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 1562.3 of the Health and Safety Code is amended to read:

1562.3. (a) The Director of Social Services, in consultation with the Director of Mental Health and the Director of Developmental Services, shall establish a training program to ensure that licensees, operators, and staffs of adult residential facilities, as defined in paragraph (1) of subdivision (a) of Section 1502, have appropriate training to provide the care and services for which a license or certificate is issued. The training program shall be developed in consultation with provider organizations.

(b) (1) An administrator of an adult residential care facility, as defined in paragraph (1) of subdivision (a) of Section 1502, shall successfully

complete a department-approved certification program pursuant to subdivision (c) prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with both the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 30 days of any change in administrators.

(c) (1) The administrator certification program shall require a minimum of 35 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Use, misuse, and interaction of medication commonly used by facility residents.

(H) Resident admission, retention, and assessment procedures.

(I) Nonviolent crisis intervention for administrators.

(2) The requirement for 35 hours of classroom instruction pursuant to this subdivision shall not apply to persons who were employed as administrators prior to July 1, 1996. A person holding the position of administrator of an adult residential facility on June 30, 1996, shall file a completed application for certification with the department on or before April 1, 1998. In order to be exempt from the 35-hour training program and the test component, the application shall include documentation showing proof of continuous employment as the administrator of an adult residential facility between, at a minimum, June 30, 1994, and June 30, 1996. An administrator of an adult residential facility who became certified as a result of passing the department-administered challenge test, that was offered between October 1, 1996, and December 23, 1996, shall be deemed to have fulfilled the requirements of this paragraph.

(3) Unless an extension is granted to the applicant by the department, an applicant for an administrator's certificate shall, within 60 days of the applicant's completion of classroom instruction, pass the written test provided in this section.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of an adult residential facility. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in subdivision (c). 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 an adult residential facility administrator and who is required to complete the continuing education hours required by the regulations of the State Department of Developmental Services, and approved by the regional center, shall be permitted to have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every licensee and administrator of an adult residential facility is required to complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after January 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the

certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f) and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for one year to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1550.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1522 or Section 1558.

(h) (1) The department, in consultation with the State Department of Mental Health and the State Department of Developmental Services,

shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. These regulations shall be developed in consultation with provider organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (i).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in adult residential facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in adult residential facilities and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses, 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 intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years to certification program vendors for review and approval of the initial 35-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee not to exceed one hundred dollars ($100) every two years for the

review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(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) This section shall be operative upon regulations being adopted by the department, no later than July 1, 1996, to implement the administrator certification program as provided for in this section. If regulations are not adopted by the department, or are adopted after July 1, 1996, this section shall not become operative.

(j) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

SEC. 3. Section 1569.616 of the Health and Safety Code is amended to read:

1569.616. (a) (1) An administrator of a residential care facility for the elderly shall be required to successfully complete a department-approved certification program prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, or a licensed nursing home administrator, the individual shall comply with the requirements of this section unless he or she qualifies for one of the exemptions provided for in subdivision (b).

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility where an individual is functioning as the administrator.

(4) The licensee shall notify the department within 30 days of any change in administrators.

(b) Individuals seeking exemptions under paragraph (2) of subdivision (a) shall meet the following criteria and fulfill the required portions of the certification program, as the case may be:

(1) An individual designated as the administrator of a residential care facility for the elderly who holds a valid license as a nursing home administrator issued in accordance with Chapter 2.35 (commencing with Section 1416) of Division 2 of the Health and Safety Code shall be required to complete the areas in the uniform core of knowledge required by this section that pertain to the law, regulations, policies, and procedural standards that impact the operations of residential care facilities for the elderly, the use, misuse, and interaction of medication commonly used by the elderly in a residential setting, and resident admission, retention, and assessment procedures, equal to 12 hours of classroom instruction. An individual meeting the requirements of this paragraph shall not be required to take a written test.

(2) In those cases where the individual was both the licensee and administrator on or before July 1, 1991, the individual shall be required to complete all the areas specified for the certification program, but shall not be required to take the written test required by this section. Those individuals exempted from the written test shall be issued a conditional certification that is valid only for the administrator of the facility for which the exemption was granted.

(A) As a condition to becoming an administrator of another facility, the individual shall be required to pass the written test provided for in this section.

(B) As a condition to applying for a new facility license, the individual shall be required to pass the written test provided for in Section 1569.23.

(c) (1) The administrator certification program 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 residential care facilities for the elderly.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the elderly.

(E) Community and support services.

(F) Physical needs for elderly persons.

(G) Use, misuse, and interaction of medication commonly used by the elderly.

(H) Resident admission, retention, and assessment procedures.

(I) Training focused specifically on serving clients with dementia. This training shall be for at least four hours.

(2) 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 the documentation required by subdivision (d) to the department within 30 days of 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 of passing the written test or of qualifying for an exemption pursuant to subdivision (b).

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current criminal record clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a residential care facility for the elderly. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in paragraph (1) of 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, individuals who hold a valid license as a nursing home administrator issued in accordance with Chapter 2.35 (commencing with Section 1416) of Division 2 of the Health and Safety Code and meet the requirements of paragraph (1) of subdivision (b) shall only be required to complete 20 hours of continuing education.

(2) Every certified administrator of a residential care facility for the elderly is required to renew his or her certificate and shall complete the

continuing education requirements of this subdivision whether he or she is certified according to subdivision (a) or (b). At least eight hours of the 40-hour continuing education requirement for a certified administrator of a residential care facility for the elderly shall include instruction on serving clients with dementia, including, but not limited to, instruction related to direct care, physical environment, and admissions procedures and assessment.

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after January 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall 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.

(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 program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The department may revoke a certificate issued under this section for any of the following:

(1) Procuring a certificate by fraud or misrepresentation.

(2) Knowingly making or giving any false statement or information in conjunction with the application for issuance of a certificate.

(3) Criminal conviction unless an exemption is granted pursuant to Section 1569.17.

(h) The certificate shall be considered forfeited under either of the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1569.50.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1569.58.

(i) (1) The department shall establish, by regulation, the program content, the testing instrument, the process for approving certification programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification programs and continuing education courses. These regulations shall be developed in consultation with provider and consumer organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person that has not provided satisfactory evidence of their ability to meet the requirements of vendorization set out in the regulations adopted pursuant to subdivision (j).

(2) (A) A vendor of online programs for continuing education shall ensure that each online course contains all of the following:

(i) An interactive portion where the 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 section 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.

(3) The department may authorize vendors to conduct the administrator certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(4) The department shall prepare and maintain an updated list of approved training vendors.

(5) The department may inspect training programs, continuing education courses, and online courses, at no charge to the department, in order to determine if content and teaching methods comply with paragraphs (1) and (2), if applicable, and with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(6) The department shall establish reasonable procedures and timeframes, not to exceed 30 days, for the approval of vendor training programs.

(7) 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.

(j) This section shall be operative upon regulations being adopted by the department to implement the administrator certification program as provided for in this section.

(k) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

(*l*) 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 residential care facility for the elderly, as defined in subdivision (k) of Section 1569.2, a group home facility, as defined by regulations of the department, or an adult residential care facility, as defined by regulations of the department, 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. 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 422

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

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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, except license fees collected pursuant to Section 7149.8 collected pursuant to Article 3 (commencing with Section 7145) of Chapter 1 of Part 2 of Division 6 shall be deposited into the Hatchery and Inland Fisheries Fund, which is hereby established in the State Treasury. Moneys in the fund may be expended, upon appropriation by the Legislature, to support programs of the Department of Fish and Game related to the management, maintenance, and capital improvement of California's fish hatcheries, the Heritage and Wild Trout Program, and enforcement activities related thereto, and to support other activities eligible to be funded from revenue generated by sport fishing license fees.

(b) The sport fishing license fees collected and subject to appropriation pursuant to subdivision (a) shall be used for the following purposes:

(1) For the department's attainment of the following production goals for state hatcheries, based on the sales of the following types of sport fishing licenses: resident; lifetime; nonresident year; nonresident, 10-day; 2-day; 1-day; and reduced fee.

(A) By July 1, 2007, a minimum of 2.25 pounds of released trout per sport fishing license sold in 2006, 1.75 pounds of which must be of catchable size or larger.

(B) By July 1, 2008, a minimum of 2.5 pounds of released trout per sport fishing license sold in 2007, 2.0 pounds of which must be of catchable size or larger.

(C) By July 1, 2009, and thereafter, a minimum of 2.75 pounds of released trout per sport fishing license sold in 2008, 2.25 pounds of which must be of catchable size or larger.

(D) The department shall attain these goals in compliance with Fish and Game Commission trout policies concerning catchable-sized trout stocking.

(2) To the Heritage and Wild Trout Program, two million dollars ($2,000,000), which shall be used for permanent positions and seasonal aides in each region of the state as necessary, and other activities necessary to the program.

(A) The funds allocated pursuant to this paragraph shall be used to fund seven new positions for the Heritage and Wild Trout Program.

(B) In addition to the seven new positions specified in subparagraph (A), the department may hire seasonal aides in each region of the state to assist with the operations of the Heritage and Wild Trout Program.

(3) The department shall, by July 1, 2011, ensure that 25 percent of the fish produced by state fish hatcheries are used for the purpose of initiating and managing the restoration of naturally indigenous stocks of trout to their original California source watersheds. This paragraph shall not be construed to prohibit the department from using surplus fish in waters outside of their original California source watersheds. All trout restored pursuant to this paragraph shall be native California trout, as defined in Section 7261. The department shall attain the 25-percent restoration goal of this paragraph according to the following schedule:

(A) By July 1, 2009, 15 percent and at least four species, not including the coastal rainbow trout/steelhead.

(B) By July 1, 2010, 20 percent and at least four species, not including the coastal rainbow trout/steelhead.

(C) By July 1, 2011, and thereafter, 25 percent and at least five species, not including the coastal rainbow trout/steelhead.

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

(c) The department may allocate any funds under this section, not necessary to maintain the minimums specified in 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 back to the fiscal and policy committees in the Legislature on the implementation of these provisions.

CHAPTER 423

An act to amend Sections 7171 and 31000.6 of the Government Code, relating to government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 7171 of the Government Code is amended to read:

7171. (a) With respect to real property, at any time after creation of a state tax lien, the agency may record in the office of the county recorder of the county in which the real property is located a notice of state tax lien.

(b) With respect to personal property, at any time after creation of a state tax lien, the agency may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220).

(c) (1) The notice of state tax lien recorded or filed pursuant to subdivision (a) or (b) shall include all of the following:

(A) The name and last known address of the taxpayer.

(B) The name of the agency giving notice of the lien.

(C) The amount of the unpaid tax.

(D) A statement that the amount of the unpaid tax is a lien on all real or personal property and rights to that property, including all after-acquired property and rights to property, belonging to the taxpayer.

(E) A statement that the agency has complied with all of the provisions of the applicable law for determining and assessing the tax.

(2) Notwithstanding paragraph (4) of subdivision (b) of Section 27390, the transmission, filing, recording, and indexing of notices of state tax

liens recorded or filed pursuant to subdivision (a) or (b), and all documents that relate to or affect those liens, including, but not limited to, a release, an extension, or a subordination, by electronic or magnetic means using computerized data processing, telecommunications, the other similar information technologies available to the filing offices shall be permitted. A facsimile signature that complies with the requirements of paragraph (2) of subdivision (b) of Section 27201 shall be accepted on any document relating to a state tax lien filed or recorded pursuant to this paragraph.

(d) If the notice of state tax lien recorded in any county reflects an out-of-state address as the last known address of the taxpayer, the agency shall pay the fees required by Sections 27361, 27361.2, 27361.4, and 27361.8.

(e) The agency recording a notice of state tax lien pursuant to subdivision (d) may collect from the taxpayer, in any manner provided by law for the collection of the tax, the cost of recording.

SEC. 2. Section 31000.6 of the Government Code is amended to read:

31000.6. (a) Upon request of the assessor or the sheriff of the county, the board of supervisors shall contract with and employ legal counsel to assist the assessor or the sheriff in the performance of his or her duties in any case where the county counsel or the district attorney would have a conflict of interest in representing the assessor or the sheriff.

(b) In the event that the board of supervisors does not concur with the assessor or the sheriff that a conflict of interest exists, the assessor or the sheriff, after giving notice to the county counsel or the district attorney, may initiate an ex parte proceeding before the presiding judge of the superior court. The county counsel or district attorney may file an affidavit in the proceeding in opposition to, or in support of, the assessor's or the sheriff's position.

(c) The presiding superior court judge that determines in any ex parte proceeding that a conflict actually exists, must, if requested by one of the parties, also rule whether representation by the county counsel or district attorney through the creation of an "ethical wall" is appropriate. The factors to be considered in this determination of whether an "ethical wall" should be created are: (1) equal representation, (2) level of support, (3) access to resources, (4) zealous representation, or (5) any other consideration that relates to proper representation.

(d) If a court determines that the action brought by the assessor or sheriff is frivolous and in bad faith, the assessor's office or sheriff's office shall pay their own legal costs and all costs incurred in the action by the opposing party. As used in this section, "bad faith" and "frivolous" have the meaning given in Section 128.5 of the Code of Civil Procedure.

(e) If the presiding judge determines that a conflict of interest does exist, and that representation by the county counsel or district attorney through the creation of an ethical wall is inappropriate, the board of supervisors shall immediately employ legal counsel to assist the assessor or the sheriff.

(f) As used in this section, "conflict of interest" means a conflict of interest as defined in Rule 3-310 of the Rules of Professional Conduct of the State Bar of California, as construed for public attorneys.

(g) This section shall also apply to any matter brought after an assessor or sheriff leaves office if the matter giving rise to the need for independent legal counsel was within the scope of the duties of the assessor or sheriff while in office, and the assessor or sheriff would have been authorized under this section to request the appointment of independent legal counsel.

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. 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 the Franchise Tax Board to record liens in the most efficient method possible to prevent the unnecessary expense of state tax dollars, and to ensure county officials are able to carry out their official duties as prescribed by law for actions taken in their official capacity, it is necessary that this act take effect immediately.

CHAPTER 424

An act to add Section 15321 to the Elections Code, relating to elections.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 15321 is added to the Elections Code, to read:

15321. For any statewide election or special election to fill a vacancy in a congressional or legislative office, votes cast by absentee ballot and votes cast at the polling place shall be tabulated by precinct.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 425

An act to add Section 40982 to the Health and Safety Code, relating to air resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 40982 is added to the Health and Safety Code, to read:

40982. Each member of the Sacramento district board shall receive actual and necessary expenses incurred in the performance of board duties, and may receive compensation, to be determined by the Sacramento district board, not to exceed one hundred dollars ($100) for each day attending the meetings of the Sacramento district board and committee meetings thereof, or upon authorization of the Sacramento district board, while on official business of the Sacramento district, but the compensation shall not exceed six thousand dollars ($6,000) in any one year. Compensation pursuant to this section shall be fixed by ordinance.

SEC. 2. The Legislature finds and declares that, due to the unique circumstances relating to the governing board of the Sacramento metropolitan Air Quality Management District, a general statute cannot be made applicable and the enactment of Section 1 of this act as a special statute is therefore necessary.

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 are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the

Government Code and Section 6 of Article XIII B of the California Constitution.

SEC. 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 enable the Sacramento Metropolitan Air Quality Management District to comply with the provisions of Chapter 700 of the Statutes of 2005 at the earliest possible date, it is necessary that this act take effect immediately.

CHAPTER 426

An act to amend Sections 16101 and 16956 of the Corporations Code, and to amend Section 5 of Chapter 504 of the Statutes of 1998, relating to limited liability partnerships.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Electronic transmission by the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, together with a separate notice

to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a partnership to an individual partner is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(5) "Electronic transmission to the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the partnership has provided from time to time to partners for sending communications to the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(6) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited

liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(9) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2

(commencing with Section 15501) or Chapter 3 (commencing with Section 15611).

(10) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) "Professional limited liability partnership services" means the practice of architecture, the practice of public accountancy, or the practice of law.

(15) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(18) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(19) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2012.

SEC. 1.5. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Electronic transmission by the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a partnership to an individual partner is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(5) "Electronic transmission to the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the partnership has provided from time to time to partners for sending communications to the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(6) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner

is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited

liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(9) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2 (commencing with Section 15501), Chapter 3 (commencing with Section 15611), or Chapter 5.5 (commencing with Section 15900).

(10) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) "Professional limited liability partnership services" means the practice of architecture, the practice of public accountancy, or the practice of law.

(15) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(18) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(19) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2012.

SEC. 2. Section 16956 of the Corporations Code is amended to read:

16956. (a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, and Section 16959, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those

policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and

winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed seven million five hundred thousand dollars ($7,500,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a

partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding fifteen million dollars ($15,000,000).

(3) For claims based upon acts, errors, or omissions arising out of the practice of architecture, a registered limited liability partnership or foreign limited liability partnership providing architectural services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. On and after January 1, 2008, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of liability coverage shall be obtained for each additional licensee; however, the total aggregate limit of liability under the policy or policies of insurance is not required to exceed five million dollars ($5,000,000). The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the

aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than five hundred thousand dollars ($500,000), and for all other partnerships is not required to exceed five million dollars ($5,000,000). On and after January 1, 2008, the maximum amount of security for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than one million dollars ($1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars ($100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed five million dollars ($5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability

partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing architectural services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a), subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), or subparagraphs (A), (B), (C), and (D) of paragraph (3) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), or subparagraph (D) of paragraph (3) of subdivision (a) shall furnish the following information to the Secretary of State's office, in the manner

prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE WITH SECTION 16956(a)(1)(D), SECTION 16956(a)(2)(D), OR SECTION 16956(a)(3)(D) OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership

2. _____
Jurisdiction where partnership is organized

3. _____
Address of principal office

4. The registered or foreign limited liability partnership chooses to satisfy the requirements of Section 16956 by confirming, pursuant to Section 16956(a)(1)(D), 16956(a)(2)(D), or 16956(a)(3)(D) and pursuant to Section 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000), in the case of a partnership providing accountancy services, fifteen million dollars ($15,000,000) in the case of a partnership providing legal services, or ten million dollars ($10,000,000), in the case of a partnership providing architectural services.

5. _____
Title of authorized person executing this form

6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), or subparagraph (D) of paragraph (3) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current

in a given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1), (2), or (3) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

SEC. 3. Section 5 of Chapter 504 of the Statutes of 1998, as amended by Section 2 of Chapter 595 of the Statutes of 2001, is amended to read:

SEC. 5. The authorization in this act for registered limited liability partnerships and foreign limited liability partnerships to engage in the practice of architecture shall terminate on January 1, 2012.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 16101 of the Corporations Code proposed by both this bill and AB 339. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 16101 of the Corporations Code, and (3) this bill is enacted after AB 339, in which case Section 1 of this bill shall not become operative.

CHAPTER 427

An act to amend Section 54957.8 of the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with
Secretary of State September 22, 2006.]

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

SECTION 1. Section 54957.8 of the Government Code is amended to read:

54957.8. (a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 54957.8 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the public interest in preventing the impairment of ongoing law enforcement investigations, protecting witnesses and informants, and permitting the discussion of effective courses of action in particular cases, it is necessary to authorize the legislative body of a multijurisdictional law enforcement agency to hold a closed session for specified purposes related to any ongoing criminal investigation of the multijurisdictional law enforcement agency.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and

informants, and to permit the discussion of effective courses of action in particular cases at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 428

An act to amend Sections 18662 and 18668 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 18662 of the Revenue and Taxation Code is amended to read:

18662. (a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rents, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person failing to withhold from any payments any amounts required by subdivision (a) to be withheld is liable for the amount withheld or the amount of taxes due from the person to whom the payments are made to an extent not in excess of the amounts required to be withheld, whichever is greater, unless it is shown that the failure to withhold is due to reasonable cause.

(e) (1) This subdivision applies to any disposition of a California real property interest by:

(A) Any person, other than either of the following:

(i) A corporation, including an entity classified for tax purposes as a corporation under Part 11 (commencing with Section 23001).

(ii) A partnership, as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, including an entity classified as a partnership for tax purposes under Part 10 (commencing with Section 17001).

(B) A corporation, if the corporation immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation has no permanent place of business in California if all of the following apply:

(i) It is not organized and existing under the laws of California.

(ii) It does not qualify with the office of the Secretary of State to transact business in California.

(iii) It does not maintain and staff a permanent office in California.

(2) (A) Except as provided in subparagraph (B), in the case of any disposition of a California real property interest by a transferor described in paragraph (1), the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to 3⅓ percent of the sales price of the California real property conveyed.

(B) If the transferor makes an election under this subparagraph, the transferee, including any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to an amount certified by the transferor in writing under penalty of perjury. The amount certified shall not be less than the gain required to be recognized under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) on the disposition of the California real property multiplied by the rate specified in either Section 23151 or Section 23186, as applicable, for transferors that are corporations, or the highest rate specified in Section 17041 for transferors other than corporations. For purposes of applying the previous sentence, the highest rate specified in Section 17041 is determined without regard to any other tax rate specified under Part 10 (commencing with Section 17001) irrespective of whether the applicable statute provides that tax shall be treated as if imposed under Section 17041.

(C) (i) The written certification required by subparagraph (B) shall be in a form, as prescribed by the Franchise Tax Board. The form shall provide as follows:

"Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose."

(ii) The Franchise Tax Board shall make this form available electronically on its Web site in a format that allows a transferor to complete and print the form. The Franchise Tax Board shall also provide electronic means to enable the transferor to estimate the amount of gain required to be recognized by the transferor in the transaction. Any form or worksheet, electronic or otherwise, developed for this purpose shall provide as follows:

"Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose."

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee is required to withhold any amount under this subdivision unless the sales price of the California real property conveyed exceeds one hundred thousand dollars ($100,000).

(B) No transferee, other than an intermediary or an accommodator in a deferred exchange, is required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) (i) No transferee, trustee under a deed of trust, or mortgagee under a mortgage with a power of sale is required to withhold under this subdivision when the transferee has acquired California real property at a sale pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the property by a deed in lieu of foreclosure.

(ii) No transferee is required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a

written certificate executed by the transferor, certifying, under penalty of perjury, one of the following:

(i) (I) The California real property being conveyed is the seller's or decedent's principal residence, within the meaning of Section 121 of the Internal Revenue Code.

(II) The last use of the property being conveyed was use by the transferor as the transferor's principal residence within the meaning of Section 121 of the Internal Revenue Code.

(ii) (I) The California real property being conveyed is being exchanged, or will be exchanged, for property of like kind, within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of the gain not required to be recognized for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code.

(II) Subclause (I) may not apply if an exchange does not qualify for nonrecognition treatment for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code, in whole or in part, due to the failure of the transaction to comply with the provisions of Section 1031(a)(3) of the Internal Revenue Code, relating to the requirement that property be identified and that the exchange be completed not more than 180 days after the transfer of the exchanged property.

(III) In any case where clause (ii) applies, the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to notify the Franchise Tax Board in writing within 10 days of the expiration of the statutory periods specified in Section 1031(a)(3) of the Internal Revenue Code and thereafter remit the applicable withholding amounts determined under this subdivision in accordance with paragraph (4).

(iii) The California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and the transferor intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

(iv) The transaction will result in either a net loss or a net gain not required to be recognized for California income or franchise tax purposes.

(v) The transferor is a corporation with a permanent place of business in California.

(E) (i) In the case of any transaction otherwise subject to this subdivision that qualifies as an "installment sale," within the meaning of Section 453(b) of the Internal Revenue Code, for California income tax purposes, the provisions of this subdivision may, upon the irrevocable

written election of the transferee, be separately applied to each principal payment to be made under the terms of the installment sale agreement between the parties.

(ii) For purposes of clause (i), subparagraph (A) of paragraph (3) does not apply to each individual payment to be received under the terms of the installment sale agreement.

(iii) The election under this subparagraph shall be made at the time, and in the form and manner, specified by the Franchise Tax Board in forms and instructions, except that the form shall, at a minimum, include the requirement specified in clause (iv) of this subparagraph.

(iv) The election under this subparagraph is valid only if the transferee agrees to withhold and remit from each installment payment the amount specified under this subdivision in the form and manner, and at the time, specified in paragraph (4).

(4) (A) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board. Notwithstanding the foregoing, funds withheld on individual transactions by real estate escrow persons may, at the option of the real estate escrow person, be remitted by the 20th day of the month following the close of escrow for the individual transaction, or may be remitted on a monthly basis in combination with other transactions closed during that month.

(B) The transferor shall submit a copy of the written certificate and supporting documentation for the reduced withholding specified in subparagraph (B) of paragraph (2) or subparagraph (D) of paragraph (3), executed by the transferor, to the Franchise Tax Board upon request.

(5) For purposes of this subdivision, "California real property interest" means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(6) For purposes of this subdivision, "real estate escrow person" means any of the following persons involved in the real estate transaction:

(A) The person, including any attorney, escrow company, or title company, responsible for closing the transaction.

(B) If no person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(7) (A) Unless the real estate escrow person provides "assistance," it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, "assistance" includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision or, upon

request of the parties, withholding an amount under this subdivision and remitting that amount to the Franchise Tax Board.

(C) For purposes of this paragraph, "assistance" does not include providing the written notification of the withholding requirements of this subdivision.

(D) In a case where the real estate escrow person provides "assistance" in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars ($45).

(8) For purposes of this subdivision, "sales price" means the sum of all of the following:

(A) The cash paid, or to be paid, but excluding for this purpose any stated or unstated interest or original issue discount, as determined under Sections 1271 through 1275, inclusive, of the Internal Revenue Code.

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(9) The Franchise Tax Board may prescribe, by forms, instructions, published notices, or regulations, any requirements necessary for the efficient administration of this subdivision relating to the treatment of "de minimus" amounts otherwise required under this section.

(f) Whenever any person has withheld any amount pursuant to this section, the amount so withheld shall be held in trust for the State of California. The amount of the fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations, including penalties, as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(g) Withholding is not required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors' meeting.

(h) In the case of any payment described in subdivision (g), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

(i) (1) The amendments to this section made by Chapter 488 of the Statutes of 2002 apply to dispositions of California real property interests that occur on or after January 1, 2003.

(2) In the case of any payments received on or after January 1, 2003, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2003, the amendments to this section made by Chapter 488 of the Statutes of 2002 do not apply to those payments.

SEC. 2. Section 18668 of the Revenue and Taxation Code is amended to read:

18668. (a) Every person required under this article to deduct and withhold any tax is hereby made liable for that tax, to the extent provided by this section and, insofar as they are not inconsistent with this article, all the provisions of this part relating to penalties, interest, assessment, and collections shall apply to persons subject to this part, and for these purposes any amount required to be deducted and paid to the Franchise Tax Board under this article shall be considered the tax of the person. Any person who fails to withhold from any payments any amount required to be withheld under this article is liable for the amount withheld or the amount of taxes due from the taxpayer to whom the payments are made but not in excess of the amount required to be withheld, whichever is more, unless it is shown that the failure to withhold is due to reasonable cause.

(b) If any amount required to be withheld under this article is not paid to the Franchise Tax Board on or before the due date required by regulations, interest shall be assessed at the adjusted annual rate established pursuant to Section 19521, computed from the due date to the date paid.

(c) Whenever any person has withheld any amount pursuant to this article, the amount so withheld shall be held to be a special fund in trust for the State of California.

(d) In lieu of the amount provided for in subdivision (a), unless it is shown that the failure to withhold is due to reasonable cause, whenever any transferee is required to withhold any amount pursuant to subdivision (e) of Section 18662, the transferee is liable for the greater of the following amounts for failure to withhold only after the transferee, as specified, is notified in writing of the requirements under subdivision (e) of Section 18662:

(1) Five hundred dollars ($500).

(2) Ten percent of the amount required to be withheld under subdivision (e) of Section 18662.

(e) (1) Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person is liable for the amount specified in subdivision (d), when written notification of the withholding requirements

of subdivision (e) of Section 18662 is not provided to the transferee, other than a transferee that is an intermediary or accommodator in a deferred exchange, and the California real property disposition is subject to withholding under subdivision (e) of Section 18662.

(2) The real estate escrow person shall provide written notification to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) in substantially the same form as follows:

"In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to 3 ⅓ percent of the sales price or the amount that is specified in a written certificate executed by the transferor in the case of a disposition of California real property interest by either:

1. A seller who is an individual, trust, or estate or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR

2. A corporate seller that has no permanent place of business in California immediately after the transfer of title to the California real property.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000), OR

2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation with a permanent place of business in California, OR

3. The seller, who is an individual, trust, estate or a corporation without a permanent place of business in California executes a written certificate, under the penalty of perjury, of any of the following:

A. The California real property being conveyed is the seller's or decedent's principal residence, within the meaning of Section 121 of the Internal Revenue Code.

B. The last use of the property being conveyed was use by the transferor as the transferor's principal residence within the meaning of Section 121 of the Internal Revenue Code.

C. The California real property being conveyed is or will be exchanged for property of like kind, within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of gain not

required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.

D. The California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

E. The California real property transaction will result in a loss or a net gain not required to be recognized for California income tax purposes.

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement."

(3) The real estate escrow person is not liable under this subdivision if the tax due as a result of the disposition of California real property is paid by the original or extended due date of the transferor's return for the taxable year in which the disposition occurred.

(4) The real estate escrow person or transferee is not liable under paragraph (1) or subdivision (d), if the failure to withhold is the result of his or her reliance, based on good faith and on all the information of which he or she has knowledge, upon a written certificate executed by the transferor under penalty of perjury pursuant to subparagraph (D) of paragraph (3) of subdivision (e) of Section 18662.

(5) Any transferor who for the purpose of avoiding the withholding requirements of subdivision (e) of Section 18662 knowingly executes a false certificate pursuant to that section is liable for twice the amount specified in subdivision (d).

(f) The amount of tax required to be deducted and withheld under this article shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations, including penalties, as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

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 429

An act to amend Sections 11211.5, 11226, 11238, 11240, 11241, 11242, 11267, and 11275 of, and to add Sections 11226.1, 11242.1, and 11265.1 to, the Business and Professions Code, relating to time-share developments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. Section 11211.5 of the Business and Professions Code is amended to read:

11211.5. (a) This chapter applies to all of the following:

(1) Time-share plans with an accommodation or component site in this state.

(2) Time-share plans without an accommodation or component site in this state, if those time-share plans are sold or offered to be sold to any individual located within this state.

(3) Exchange programs as defined in this chapter.

(4) Short-term products as defined in this chapter.

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

(1) Time-share plans, whether or not an accommodation is located in this state, consisting of 10 or fewer time-share interests. Use of an exchange program by owners of time-share interests to secure access to other accommodations shall not affect this exemption.

(2) Time-share plans, whether or not an accommodation is located in this state, the use of which extends over any period of three years or less.

(3) Time-share plans, whether or not an accommodation is located in this state, under which the prospective purchaser's total financial obligation will be equal to or less than three thousand dollars ($3,000) during the entire term of the time-share plan.

(c) For purposes of determining the term of a time-share plan, the period of any renewal or renewal option shall be included.

(d) Single site time-share plans located outside the state and component sites of multisite time-share plans located outside the state, that are offered for sale or sold in this state are subject only to Sections 11210 to 11219, inclusive, Sections 11225 to 11246, inclusive, Sections 11250 to 11256, inclusive, paragraphs (1), (2), (3), and (4) of subdivision (a), and subdivisions (b) and (c), of Section 11265, subdivision (g) of Section 11266, subdivisions (a) and (c) of Section 11267, Sections 11272

and 11273, subdivisions (b), (c), and (d) of Section 11274, and Sections 11280 to 11287, inclusive.

SEC. 2. Section 11226 of the Business and Professions Code is amended to read:

11226. (a) Any person who, to any individual located in the state, sells, offers to sell, or attempts to solicit prospective purchasers to purchase a time-share interest, or any person who creates a time-share plan with an accommodation in the state, shall register the time-share plan with the commissioner, unless the time-share plan is otherwise exempt under this chapter.

(b) A developer, or any of its agents, shall not sell, offer, or dispose of a time-share interest in the state unless all necessary registration requirements are provided and approved by the commissioner, or the sale, offer, or disposition is otherwise permitted by this chapter, or while an order revoking or suspending a registration is in effect.

(c) In registering a time-share plan, the developer shall provide the commissioner all of the following information:

(1) The developer's legal name, any assumed names used by the developer, principal office street address, mailing address, primary contact person, and telephone number.

(2) The name of the developer's authorized or registered agent in the state upon whom claims can be served or service of process be had, the agent's street address in California, and telephone number.

(3) The name, street address, mailing address, primary contact person, and telephone number of the time-share plan being registered.

(4) The name, street address, mailing address, and telephone number of any managing entity of the time-share plan.

(5) A public report that complies with the requirements of Section 11234, or for a time-share plan located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to Section 11234.

(6) A description of the inventory control system that will ensure compliance with Section 11250.

(7) Any other information regarding the developer, time-share plan, or managing entities as established by regulation.

(d) An applicant for a public report for a time-share plan shall present evidence of the following for each accommodation in each time-share property that is, or will be, offered for sale in this state pursuant to the registration:

(1) That the accommodation is presently suitable for human occupancy or that financial arrangements have been made to complete construction

or renovation of the accommodation to make it suitable for human occupancy on or before the first date for occupancy by a time-share interest owner.

(2) That the accommodation is owned or leased by the developer of the time-share plan or is the subject of an enforceable option or contract under which the developer will build, purchase, or lease the accommodation. Notwithstanding this subdivision, the developer shall present evidence prior to the receipt of a final public report that the accommodation to be sold is owned or leased by the developer and that the accommodation is free and clear of encumbrances in accordance with Sections 11244 and 11255.

(e) If an accommodation in a time-share plan is located within a local governmental jurisdiction or subdivision of real property in which the dedication of accommodations to time-sharing is expressly prohibited by ordinance or recorded restriction, either absolutely or without a permit or other entitlement from the governing body, the applicant for a public report shall present evidence of a permit or other entitlement by the appropriate authority for the local government or the subdivision.

(f) (1) The developer shall amend or supplement its disclosure documents and registration information, to reflect any material change in any information required by this chapter or the regulations implementing this chapter. The developer shall notify the commissioner of the material change prior to implementation of the change, unless the change is beyond the control of the developer; in which event, the developer shall provide written notice to the commissioner as soon as reasonably practicable after the occurrence of the event necessitating the change. All amendments, supplements, and facts relevant to the material change shall be filed with the commissioner within 20 calendar days of the material change.

(2) The developer may continue to sell time-share interests in the time-share plan so long as, prior to closing, the developer provides a notice to each purchaser that describes the material change and provides to each purchaser the previously approved public report.

(A) If the change is material and adverse to the purchaser, all purchaser funds shall be held in escrow, or pursuant to alternative assurances permitted by subdivision (c) of Section 11243, and no closing shall occur until the amendment relating to the material and adverse change has been approved by the commissioner. After the amendment relating to the material and adverse change has been approved and the amended public report has been issued, the amended public report shall be sent to the purchaser, and an additional seven-day rescission period shall commence. The developer shall be required to maintain evidence of the receipt by each purchaser of the amended public report.

(B) If the commissioner refuses to approve the amendment relating to the material and adverse change, all sales made using the notice shall be subject to rescission and all funds returned.

(3) The developer shall update the public report to reflect any changes to the time-share plan that are not material and adverse, including the addition of any component sites, within a reasonable time, and may continue to sell and close time-share interests prior to the date that the amended public report is approved.

(g) An applicant for a public report for a multisite, time-share plan consisting of specific time-share interests, as defined in subparagraph (A) of paragraph (2) of subdivision (z) of Section 11212, affiliated with sites operated through the time-share plan's reservation system, shall certify both of the following:

(1) That a purchaser has, or will have, contractual or membership rights to use accommodations at each affiliated site and that, if an accommodation or promised improvement is, or may become, subject to a blanket encumbrance, that the blanket encumbrance is, or will be, subordinate to these rights.

(2) That a certificate of occupancy has been issued with respect to the accommodations at each affiliated site or that adequate provisions exist or will exist for the completion of all such accommodations. For any affiliated site accommodations that are not complete, the public report shall clearly identify in conspicuous type that those accommodations are not completed. For any accommodations that are not complete and for which adequate provisions for completion do not exist at the time the public report is issued, the public report shall also provide in conspicuous type that those accommodations might not be built, provided, however, that a developer's failure to build the accommodations shall not relieve the developer of any obligations created by the certification made pursuant to this subdivision.

(h) For purposes of subdivision (d) of this section, the "time-share property being offered for sale in this state" shall mean the following:

(1) With respect to a single site time-share plan, the time-share property being registered pursuant to this chapter.

(2) With respect to a specific time-share interest multisite time-share plan, the specific time-share property being registered pursuant to this chapter.

(3) With respect to a nonspecific time-share interest multisite time-share plan, all time-share properties in the time-share plan.

SEC. 3. Section 11226.1 is added to the Business and Professions Code, to read:

11226.1. Any person offering to sell or lease any interest subject to the requirements of Section 11226 shall make a copy of each of the

following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy of those documents to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the time-share plan.

(b) Articles of incorporation or association for the time-share owners' association.

(c) Bylaws of the owners' association.

(d) Any other instrument that establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interest in the time-share plan as members of the owners' association or otherwise.

(e) The current budget and financial statements for the time-share plan.

SEC. 4. Section 11238 of the Business and Professions Code is amended to read:

11238. (a) The purchase contract entered into by any person who has made an offer to purchase a time-share interest or interests, any incidental benefit, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, or any right under an exchange program, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, shall be voidable by the purchaser, without penalty, within seven calendar days, or a longer period as provided in the contract, after the receipt of the public report or the execution of the purchase contract, whichever is later.

(1) The purchase contract for the time-share interest shall provide notice of the seven-day cancellation period, together with the name and mailing address to which any notice of cancellation shall be delivered.

(2) Notice of cancellation shall be deemed timely if given not later than midnight of the seventh calendar day.

(b) A person who has made an offer to purchase a time-share interest, incidental benefit, or rights under an exchange program as described above may exercise the right of cancellation granted by this section by giving written notification of the notice to cancel to the developer at the place of business designated by the developer in the purchase contract.

(c) If the notice of cancellation is by United States mail, a rebuttable presumption shall exist that notice was given on the date that it is postmarked. If the notice is sent by facsimile, it shall be considered given on the date of a confirmed transmission. If the notice is by means of a writing sent other than by United States mail or telegraph, it shall be

considered as given at the time of delivery at the place of business designated by the developer. Exercising the rescission rights of the time-share interest shall also automatically rescind any agreement for the purchase of an incidental benefit or an enrollment into an exchange program where the agreements were entered into in conjunction with the purchase of the time-share interest.

(d) Each developer shall utilize and furnish each purchaser with a fully completed and executed copy of a contract pertaining to the sale of a time-share interest, which contract shall include the following information:

(1) The actual date the contract is executed by each party.

(2) The names and addresses of the developer and time-share plan.

(3) The initial purchase price and any additional recurring or nonrecurring charges, or a good faith estimate if the amount of those charges cannot then be determined, that the purchaser will be required to pay in connection with the purchase of the time-share interest, including, but not limited to, the current year's annual assessment for common expenses and financing charges.

(4) The estimated date of completion of construction of each accommodation promised to be completed which is not completed at the time the contract is executed.

(5) A brief description of the nature and duration of the time-share interest being sold, including whether any interest in real property is being conveyed.

(6) The specific number of years of the term of the time-share plan.

(7) Immediately prior to the space reserved in the contract for the signature of the purchaser, the developer shall disclose, in conspicuous type, substantially the following notice of cancellation:

> You may cancel this contract without any penalty or obligation within seven calendar days of receipt of the public report or after the date you sign this contract, whichever date is later. If you decide to cancel this contract, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (name of developer) at (address of developer). Your notice of cancellation may also be sent by facsimile to (facsimile number of the developer) or by hand-delivery. Any attempt to obtain a waiver of your cancellation right is void and of no effect.

(8) The purchase contract for an interest in a single site or specific time-share interest multisite time-share plan without an accommodation in this state shall include the following additional disclosure in conspicuous type:

The accommodations of this time-share plan are located outside of California. As such, the management (including all matters relating to the association, the association budget, and any management contract) of this time-share plan is not governed by California law, but by the applicable law, if any, of the jurisdiction in which the accommodations are located as stated in the public report. You should review the governing documents related to the association, the association's budget, and the management of the time-share plan.

(e) If rescission is sought by the purchaser in accordance with this section, and a court finds the developer denied the rescission in violation of this section, the court may also award reasonable attorneys' fees and costs to the prevailing purchaser.

SEC. 5. Section 11240 of the Business and Professions Code is amended to read:

11240. An estimated operating budget for the time-share plan shall be filed with the commissioner along with the other information required to be registered pursuant to this chapter, and shall contain the following information:

(a) The estimated annual expenses of the time-share plan along with the estimated revenue of the association from all sources, including the amounts collectible from purchasers as assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall be shown in a manner that enables the purchaser to calculate the annual expenses associated with the time-share interest being purchased. Expenses that are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the time-share plan documents may be excluded from this estimate.

(b) (1) The estimated items of expenses of the time-share plan and the association, except as excluded under subdivision (a), including, but not limited to, if applicable, the following items, that shall be stated either as association expenses collectible by assessments or as expenses of the purchaser payable to persons other than the association:

(2) Expenses for the association:

(A) Administration of the association.

(B) Management fees.

(C) Maintenance.

(D) Rent for accommodations.

(E) Taxes upon time-share property.

(F) Taxes upon leased areas.

(G) Insurance.

(H) Security provisions.

(I) Other expenses.

(J) Operating capital.

(K) Equitable apportionment of expenses between time-share and non-time-share uses of the common area, if applicable.

(L) Reserves for deferred maintenance and reserves for capital expenditures. All reserves for any accommodations and common areas of a time-share plan located in this state shall be based upon the estimated life and replacement cost of accommodations and common elements of the time-share plan. For any accommodations and common elements of a time-share plan located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance and capital expenditures required by the law of the situs state, if applicable, and maintained for those accommodations and common elements, which amount of reserves shall be based on the estimated life and replacement cost of each reserve item. The developer or the association shall include in the budget a reasonable reserve accumulation plan. A plan that (i) provides for reserves to be funded within five years at a level of 50 percent of the amount specified in the reserve study as fully funded, and (ii) requires those reserves collected in any given year to equal or exceed the amount of reserve expenditures estimated for that year shall be deemed to be a reasonable reserve accumulation plan. The funding of reserves may be based on collection of reserve amounts in conjunction with annual assessments, or on some alternative mechanism, including, but not limited to, a bond, letter of credit, or similar mechanism. Collection of required reserve amounts solely by one or more special assessments is not reasonable. If control of the association is in owners other than the developer, and such owners vote not to maintain reserves or to maintain reserves at less than 50 percent, the failure to maintain the required level of reserves shall not be cause for denying the developer a public report.

(c) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time that purchasers elect a majority of the board of administration and the period after that date.

(d) The budget of a phase time-share plan shall contain a note identifying the number of time-share interests covered by the budget, indicating the number of time-share interests, if any, estimated to be declared as part of the time-share plan during that calendar year, and projecting the common expenses for the time-share plan based upon the number of time-share interests estimated to be declared as part of the time-share plan during that calendar year.

(e) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the budget shall include the subject matter set forth in subdivisions (a) to (d), inclusive. The budget

shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if there is a conflict between the affirmative standards set forth in the laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the budget provides for the matters contained in subdivisions (a) to (d), inclusive, the budget shall be deemed to be in compliance with the requirements of this section, and the developer shall not be required to make revisions in order to comply with this section.

(f) The budget shall include a certification subscribed and sworn by an expert in the preparation of time-share plan budgets, who may be (1) an independent public accountant, (2) a certified public accountant, who is an employee of the developer, or (3) at the discretion of the commissioner, an individual or entity acceptable to the commissioner to conduct the review. Acceptance of the individual or entity shall not be considered an endorsement by the commissioner of a proposed budget. The budget certification shall also be signed by the developer or on behalf of the developer by an appropriate officer, if the developer is a corporation, or the managing member, if the developer is a limited liability company. The certification concerning the adequacy of the budget shall be in the following form:

On behalf of the developer of the captioned time-share plan, I/my firm has reviewed or prepared the budget containing projections of income and expenses for time-share operation. My/our experience in this field includes: [List experience.]

I/we have reviewed the budget and investigated the facts set forth in the budget and the facts underlying it with due diligence in order to form a basis for this certification.

I/we certify that the projections in the budget appear reasonable and adequate based on present prices (adjusted to reflect continued inflation and present levels of consumption for comparable units similarly situated) or, for an existing project, based on historical data for the project.

I/we certify that the budget:

(1) Sets forth in detail the terms of the transaction as it relates to the budget and is complete, current, and accurate.

(2) Affords potential purchasers an adequate basis upon which to found their judgment.

(3) Does not omit any material fact.

(4) Does not contain any untrue statement of a material fact.

(5) Does not contain any fraud, deception, concealment, or suppression.

(6) Does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances.

(7) Does not contain any representation or statement which is false, where I/we:

(A) Knew the truth.

(B) With reasonable effort could have known the truth and made no reasonable effort to ascertain the truth.

(C) Did not have knowledge concerning the representation or statement made.

I/we understand that a copy of this certification is intended to be incorporated into the public report so that prospective purchasers may rely on it.

This certification is made under the penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the laws of California.

The certification shall be dated within 90 days prior to the date of the submission of the budget to the commissioner. The expert's certification shall be based on experience in the management of hotel, resort, or time-share properties and disclose the approximate number of properties managed and length of time managed, together with other relevant real estate experience, qualifications, and licenses.

(g) Any budget that is not certified by an independent certified public accountant or an employee of the developer who is licensed as a certified public accountant may be reviewed by the commissioner to confirm the accuracy of the certification.

(h) The certified budget for the time-share plan shall be prepared and submitted by the developer to the commissioner annually for as long as the registration is in effect. If the budget is increased more than 20 percent in any year, the developer shall submit to the commissioner, along with the increased budget, evidence that the requirements of paragraph (5) of subdivision (a) of Section 11265 have been met. The budget shall be submitted at least 15 days prior to the first day of the period that it covers. Upon the submission of each annual budget, the exhibit to the public report specified in paragraph (8) of subdivision (a) of, and paragraph (16) of subdivision (c) of, Section 11234 shall be updated. The updating of the exhibit shall not be considered to constitute an amendment of the public report.

(i) The audited financial statements of the association prepared pursuant to paragraph (2) of subdivision (b) of Section 11272 shall be delivered to the commissioner upon request.

(j) At the time an application is submitted for renewal of the public report or any amendment of the public report that affects the budget for the time-share plan, the developer shall submit with the application a copy of the most recent audited financial statement for the time-share plan, along with a certified copy of the budget reflecting the amendment or renewal. If the commissioner, upon reasonable comparison of the budget and the prior year's audited financial statements, determines that the budget is deficient, the commissioner may subject the budget to a substantive review.

SEC. 6. Section 11241 of the Business and Professions Code is amended to read:

11241. (a) The developer is obligated for the expenses associated with unsold inventory held by the developer. The obligation can be fulfilled in either of the following ways:

(1) The developer shall pay the full maintenance fee for each of the interests owned by the developer.

(2) The developer shall enter into a subsidy agreement with the association to cover any shortfall between expenses incurred and assessments collected from other owners ("deficit subsidy"), and shall furnish the association with an executed copy of the agreement within 10 days after closing of escrow of the first sale or lease of a time-share interest. The department will not approve a deficit subsidy program unless provisions are made for the accumulation of reserves for replacement and major maintenance of the time-share property in accordance with accepted property management practices and the transfer of the reserve fund to the association on termination of the program.

(b) To assure the fulfillment of the obligations of the developer of a time-share plan to either pay assessments as an owner of time-share interests in the time-share plan or to pay a deficit subsidy, the commissioner shall require that the developer furnish a surety bond, cash deposit, letter of credit, or other alternate assurance enforceable by the association and acceptable to the commissioner, and that assurance shall be in compliance with either paragraph (1) or (2) of subdivision (c).

(c) The amount of the assurance shall be in such an amount as may be approved by the commissioner, but shall not exceed the lesser of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter. The security shall be delivered to a neutral escrow depository, or to the trustee if title to the time-share property has been

delivered to the trustee, along with instructions signed by the developer for the benefit of the association which shall provide as follows:

(1) Where the developer pays full maintenance fees on unsold inventory the security shall remain available to pay any assessments for which the developer is liable and delinquent until the depository or trustee has received both of the following:

(A) Written notice, from the developer that sales of 80 percent of the time-share interest in the time-share plan have been closed.

(B) Written notice from the association that the developer is not delinquent in the payment of assessments for which it is obligated.

(2) The amount of the assurance required by this section may be adjusted annually to an amount approved by the commissioner, but shall be not more than the smaller of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter.

(d) A deficit subsidy agreement entered into after July 1, 2005, shall provide that if there is a dispute between the developer and the association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under these rules.

SEC. 7. Section 11242 of the Business and Professions Code is amended to read:

11242. (a) In any time-share plan , the developer may undertake to pay a portion of the assessments otherwise payable by each purchaser ("buy down subsidy"). Any developer undertaking to pay a buy down subsidy shall do both of the following:

(1) Enter into a contract with the association that specifies in detail the obligations of the developer and the methods to be used in valuing the goods and services furnished under the time-share plan.

(2) Furnish the association with an executed copy of the subsidization contract within 10 days after closing of escrow of the first sale or lease of a time-share interest.

(b) If the developer is paying a buy down subsidy, the developer shall provide an assurance for its buy down subsidy obligation in an amount acceptable to the commissioner, but not more than the aggregate amount

by which annual assessments are to be reduced, for example, the number of interests to be sold in each unit type multiplied by the amount by which the annual assessment for such unit type is to be reduced, multiplied by the number of years in the term of the buy down subsidy.

(c) For any buy down subsidy agreements entered into after July 1, 2005, the subsidy agreements shall provide that if there is a dispute between the developer and the association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under those rules.

SEC. 8. Section 11242.1 is added to the Business and Professions Code, to read:

11242.1. (a) The assurance specified in Section 11241 and, if applicable, the assurance specified in Section 11242, shall be delivered to the trustee or an escrow depository acceptable to the department along with an executed copy of the subsidization contract and instructions to the escrow depository signed by the developer and on behalf of the association. The instructions shall provide for both of the following:

(1) The escrow agent shall not release or exonerate the security device until it has received written notice from the association that the developer has faithfully performed all of his or her obligations under the subsidization contract, if applicable, and the escrow agent has received the written notices specified in paragraph (1) of subdivision (c) of Section 11241.

(2) If there is a dispute between the developer and the association with respect to the questions of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(b) The fee payable to the American Arbitration Association to initiate arbitration shall be submitted by the developer. The costs of arbitration shall be borne by the party as determined by the arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

(c) The agreement for the deficit subsidy, described in subdivision (a) of Section 11241, and the agreement for the buy down subsidy, described in subdivision (a) of Section 11242 may, at the option of the developer, be contained in one instrument.

SEC. 9. Section 11265.1 is added to the Business and Professions Code, to read:

11265.1. (a) Regular and special assessments levied pursuant to the time-share instrument are delinquent 30 days after they become due, unless the time-share instrument provides a longer time period, in which case the longer time period shall apply. If an assessment is delinquent, the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars ($10), whichever is greater, unless the time-share instrument specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the governing instrument.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorneys' fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the time-share instrument specifies the recovery of interest at a lower rate, in which case, the lower rate of interest shall apply.

(b) Regular assessments imposed or collected to perform the obligations of an association under the governing documents of this title shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision. This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of the association, constituting a quorum, casting a majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

(c) The association shall provide notice by first-class mail to the owners of the time-share interests of any increase in the regular or special assessments of the association, not less than 30 days nor more than 60 days prior to the increased assessment becoming due.

(d) Associations are hereby exempted from interest rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

SEC. 10. Section 11267 of the Business and Professions Code is amended to read:

11267. (a) The time-share instruments shall require the employment of a managing entity for the time-share plan or component site pursuant

to a written management agreement that shall include all of the following provisions:

(1) Delegation of authority to the managing entity to carry out the duties and obligations of the association or the developer to the time-share interest owners.

(2) Authority of the managing entity to employ subagents, if applicable.

(3) A term of not more than five years with automatic renewals for successive three-year periods after expiration of the first term unless the association by the vote or written assent of a majority of the voting power residing in members other than the developer determines not to renew the contract and gives appropriate notice of that determination. However, in those time-share plans where the association is controlled by owners other than the developer, the management agreement shall not be subject to the term limitations set forth in this section, and any longer term shall not be grounds for denial of a public report, unless the longer term of the management contract is the result of the developer exercising control.

(4) Termination for cause at any time by the governing body of the association. If the single site time-share plan or the component site of a multisite time-share plan is located within the state, then that termination provision shall include a provision for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association if requested by or on behalf of the managing entity.

(5) Not less than 90 days' written notice to the association of the intention of the managing entity to resign.

(6) Enumeration of the powers and duties of the managing entity in the operation of time-share plan and the maintenance of the accommodations comprising the time-share plan.

(7) Compensation to be paid to the managing entity.

(8) Records to be maintained by the managing entity.

(9) A requirement that the managing entity provide a policy for fidelity insurance or bond for the activities of the managing entity, payable to the association, which shall be in an amount no less than the sum of the largest amount of funds expected to be held or controlled by the managing entity at any time during the year, pursuant to the budget. The commissioner may provide a reduction in the insurance policy or bond amounts required by this paragraph.

(10) Errors and omissions insurance coverage for the managing entity, if available.

(11) Delineation of the authority of the managing entity and persons authorized by the managing entity to enter into accommodations of the time-share plan for the purpose of cleaning, maid service, maintenance and repair including emergency repairs, and for the purpose of abating

a nuisance or dangerous, unlawful, or prohibited activity being conducted in the accommodation.

(12) Description of the duties of the managing entity, including, but not limited to, the following:

(A) Collection of all assessments as provided in the time-share instruments.

(B) Maintenance of all books and records concerning the time-share plan.

(C) Scheduling occupancy of accommodations, when purchasers are not entitled to use specific time-share periods, so that all purchasers will be provided the opportunity for use and possession of the accommodations of the time-share plan, that they have purchased.

(D) Providing for the annual meeting of the association of owners.

(E) Performing any other functions and duties related to the maintenance of the accommodations or that are required by the time-share instrument.

(b) Any written management agreement in existence as of the effective date of this chapter shall not be subject to the term limitations set forth above.

(c) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the time-share instruments shall include the subject matter set forth in subdivision (a). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in subdivision (a), the time-share instruments shall be deemed to be in compliance with the requirements of subdivision (a) and the developer shall not be required to make revisions in order to comply with subdivision (a) and this subdivision.

SEC. 11. Section 11275 of the Business and Professions Code is amended to read:

11275. (a) Any contractual provision or other provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute or claim between a time-share interest owner and a developer, or any provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute of a claim between an association and the developer, shall, at a minimum, provide that the dispute or claim resolution process, proceeding, hearing, or trial be conducted in accordance with the following rules:

(1) For the developer to advance the fees necessary to initiate the dispute or claim resolution process, with the costs and fees, including ongoing costs and fees, if any, to be paid as agreed by the parties and if they cannot agree then the costs and fees are to be paid as determined by the person or persons presiding at the dispute or claim resolution proceeding or hearing.

(2) For a neutral or impartial person to administer and preside over the claim or dispute resolution process.

(3) For the appointment or selection, as designation, or assignment of the person to administer and preside over the claim or dispute resolution process within a specific period of time, which in no event shall be more than 60 days from initiation of the claim or dispute resolution process or hearing. The person appointed, selected, designated, or assigned to preside may be challenged for bias.

(4) For the venue of the claim or dispute resolution process to be in the county where the time-share is located unless the parties agree to some other location.

(5) For the prompt and timely commencement of the claim or dispute resolution process. When the contract provisions provide for a specific type of claim or dispute resolution process, the process shall be deemed to be promptly and timely commenced if it is to be commenced in accordance with the rules applicable to that process. If the rules do not specify a date by which the proceeding or hearing is required to commence, then commencement shall be by a date agreed upon by the parties, and if they cannot agree, a date shall be determined by the person presiding over the dispute resolution process.

(6) For the claim or dispute resolution process to be conducted in accordance with rules and procedures that are reasonable and fair to the parties.

(7) For the prompt and timely conclusion of the claim or dispute resolution process, including the issuance of any decision or ruling following the proceeding or hearing.

(8) For the person presiding at the claim or dispute resolution process to be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the proceeding or hearing. The parties may authorize the limitation or prohibition of punitive damages.

(b) A copy of the rules applicable to the claim or dispute resolution process shall be submitted as part of the application for a public report.

(c) If the claim or dispute resolution process provides or allows for a judicial remedy in accordance with the laws of this state, it shall be presumed that the proceeding or hearing satisfies the provisions of subdivision (a).

SEC. 12. The amendments to Sections 11211.5, 11226, 11238, 11240, 11241, 11242, 11267, and 11275 of, and the addition of Sections 11226.1 and 11242.1 to, the Business and Professions Code by Sections 1 to 8, inclusive, Section 10, and Section 11, respectively, of this act shall become operative on January 1, 2007.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that essential fiscal resources are maintained at a sufficient level to avoid a fiscal crisis for time-share homeowner associations, it is necessary that this bill take effect immediately.

CHAPTER 430

An act to amend Sections 597b and 597j of, and to repeal and add Section 597c of, the Penal Code, relating to animal fighting exhibitions.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Cockfighting has played a significant role in the spread of avian influenza throughout Southeast Asia and other parts of the world. It is estimated that a worldwide outbreak of avian influenza could kill up to 150 million people. In a 2004 study of the avian flu outbreak in Thailand, the United States Centers for Disease Control and Prevention (CDC) concluded that illegal transportation and cockfighting may have worsened the highly pathogenic avian influenza (HPAI) situation. According to the World Health Organization, infected fighting cocks may have caused at least eight confirmed human cases of avian influenza in Thailand and Vietnam since the beginning of 2004.

(b) The presence of cockfighting in California makes the state vulnerable to an outbreak of avian flu. In late 2002 and early 2003, cockfighting played a major role in the spread of Exotic Newcastle Disease (END) throughout southern California. By the time the state was able to get that virus under control, END had devastated much of California's egg and poultry industry. More than 3.5 million birds died or were euthanized. END cost the United States taxpayers $200 million

to eradicate. It cost the poultry industry millions more in lost overseas exports as it spread across the southwestern United States.

(c) By encouraging cockfighters from other states to come to California, the state's current penalties on cockfighting have made California more vulnerable to an outbreak of the avian flu. Arizona, Nevada, and Oregon all have felony-level penalties for cockfighting, making California, with its simple misdemeanor-level penalties, a regional refuge for illegal cockfighting activity.

(d) The cost of an outbreak of avian flu in California would far surpass the cost of enacting felony-level penalties against cockfighting. An avian flu outbreak that occurred during 1983 and 1984 in the northeastern United States took two years to control and resulted in the destruction of more than 17 million birds at a cost of nearly $65 million. This outbreak also caused retail egg prices to increase by more than 30 percent.

(e) It is therefore the intent of the Legislature in enacting this act to put penalties in place that deter cockfighting and thereby diminish risks to California's public health, safety and legitimate multi-million-dollar poultry and egg industries.

SEC. 2. Section 597b of the Penal Code is amended to read:

597b. (a) Except as provided in subdivisions (b) and (c), any person who, for amusement or gain, causes any bull, bear, or other animal, not including any dog, to fight with like kind of animal or creature, or causes any animal, including any dog, to fight with a different kind of animal or creature, or with any human being, or who, for amusement or gain, worries or injures any bull, bear, dog, or other animal, or causes any bull, bear, or other animal, not including any dog, to worry or injure each other, or any person who permits the same to be done on any premises under his or her charge or control, or any person who aids or abets the fighting or worrying of an animal or creature, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(b) Any person who, for amusement or gain, causes any cock to fight with another cock or with a different kind of animal or creature or with any human being; or who, for amusement or gain, worries or injures any cock, or causes any cock to worry or injure another animal; and any person who permits the same to be done on any premises under his or her charge or control, and any person who aids or abets the fighting or worrying of any cock is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(c) A second or subsequent conviction of this section is a misdemeanor or a felony punishable by imprisonment in a county jail for a period not to exceed one year or the state prison for 16 months, two, or three years, by a fine not to exceed twenty-five thousand dollars ($25,000), or by both that imprisonment and fine, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.

(d) For the purposes of this section, aiding and abetting a violation of this section shall consist of something more than merely being present or a spectator at a place where a violation is occurring.

SEC. 3. Section 597c of the Penal Code is repealed.

SEC. 4. Section 597c is added to the Penal Code, to read:

597c. Any person who is knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or who is knowingly present at that exhibition or is knowingly present where preparations are being made for the acts described in subdivision (a) or (b) of Section 597b, is guilty of a misdemeanor.

SEC. 5. Section 597j of the Penal Code is amended to read:

597j. (a) Any person who owns, possesses, keeps, or trains any bird or other animal with the intent that it be used or engaged by himself or herself, by his or her vendee, or by any other person in an exhibition of fighting as described in Section 597b is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(b) This section shall not apply to an exhibition of fighting of a dog with another dog.

(c) A second or subsequent conviction of this section is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both that imprisonment and fine, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.

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 431

An act to add Section 597.7 to the Penal Code, relating to animals.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

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

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

(a) Leaving companion animals unattended inside closed vehicles in the heat, even for short periods of time, has caused severe injury and death to animals.

(b) Moderately warm temperatures outside can quickly lead to deadly temperatures inside a closed car, for example, within one hour an outside temperature of 72 degrees Fahrenheit can cause unhealthful conditions inside a vehicle that can adversely affect the health, safety, or well-being of an animal.

(c) With the vehicle windows left slightly open, an outside temperature of 85 degrees can cause a temperature of 102 degrees inside a vehicle within 10 minutes, and 120 degrees within half of an hour. A healthy dog, whose normal body temperature ranges from 101 to 102.5 degrees, can withstand a body temperature of 107 to 108 for only a short time before suffering brain damage or death.

(d) Numerous organizations and individuals have worked to educate pet owners of the dangers of leaving animals unattended in vehicles in the heat, however, it is well established that educational approaches by themselves do not improve safety behavior. To be effective, educational approaches must be integrated with enforcement activities.

(e) It is, therefore, the intent of the Legislature to improve animal health and safety by both encouraging continued public education as well as discouraging this activity by imposing a penalty upon persons who leave or confine an animal in an unattended motor vehicle.

SEC. 2. Section 597.7 is added to the Penal Code, to read

597.7. (a) No person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

(b) Unless the animal suffers great bodily injury, a first conviction for violation of this section is punishable by a fine not exceeding one hundred dollars ($100) per animal. If the animal suffers great bodily injury, a violation of this section is punishable by a fine not exceeding

five hundred dollars ($500), imprisonment in a county jail not exceeding six months, or by both a fine and imprisonment. Any subsequent violation of this section, regardless of injury to the animal, is also punishable by a fine not exceeding five hundred dollars ($500), imprisonment in a county jail not exceeding six months, or by both a fine and imprisonment.

(c) (1) Nothing in this section shall prevent a peace officer, humane officer, or an animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

(2) A peace officer, humane officer, or animal control officer who removes an animal from a motor vehicle shall take it to an animal shelter or other place of safekeeping or, if the officer deems necessary, to a veterinary hospital for treatment.

(3) A peace officer, humane officer, or animal control officer is authorized to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle, including, but not limited to, breaking into the motor vehicle, after a reasonable effort to locate the owner or other person responsible.

(4) A peace officer, humane officer, or animal control officer who removes an animal from a motor vehicle shall, in a secure and conspicuous location on or within the motor vehicle, leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. The animal may be claimed by the owner only after payment of all charges that have accrued for the maintenance, care, medical treatment, or impoundment of the animal.

(5) This section does not affect in any way existing liabilities or immunities in current law, or create any new immunities or liabilities.

(d) Nothing in this section shall preclude prosecution under both this section and Section 597 or any other provision of law, including city or county ordinances.

(e) Nothing in this section shall be deemed to prohibit the transportation of horses, cattle, pigs, sheep, poultry or other agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

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 432

An act to add Sections 23105 and 23109.1 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 23, 2006. Filed with Secretary of State September 23, 2006.]

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

SECTION 1. Section 23105 is added to the Vehicle Code, to read:

23105. (a) A person convicted of reckless driving in violation of Section 23103 that proximately causes one or more of the injuries specified in subdivision (b) to a person other than the driver, shall be punished by imprisonment in the state prison, or by imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than two hundred twenty dollars ($220) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) This section applies to all of the following injuries:

(1) A loss of consciousness.

(2) A concussion.

(3) A bone fracture.

(4) A protracted loss or impairment of function of a bodily member or organ.

(5) A wound requiring extensive suturing.

(6) A serious disfigurement.

(7) Brain injury.

(8) Paralysis.

(c) This section does not preclude or prohibit prosecution under any other provision of law.

SEC. 2. Section 23109.1 is added to the Vehicle Code, to read:

23109.1. (a) A person convicted of engaging in a motor vehicle speed contest in violation of subdivision (a) of Section 23109 that proximately causes one or more of the injuries specified in subdivision (b) to a person other than the driver, shall be punished by imprisonment in the state prison, or by imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) This section applies to all of the following injuries:
(1) A loss of consciousness.
(2) A concussion.
(3) A bone fracture.
(4) A protracted loss or impairment of function of a bodily member or organ.
(5) A wound requiring extensive suturing.
(6) A serious disfigurement.
(7) Brain injury.
(8) Paralysis.
(c) This section does not preclude or prohibit prosecution under any other provision of law.

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

CHAPTER 433

An act to add Section 9954 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 23, 2006. Filed with Secretary of State September 23, 2006.]

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

SECTION 1. The Legislature hereby finds and declares all of the following:
(a) There are over 28 million registered motor vehicles in California, and those vehicles are an essential part of California residents' work and mobility.
(b) A key or functionally similar device that will allow a registered vehicle's owner to enter, start, and operate his or her vehicle is a critical and necessary part of motor vehicle ownership, without which a person cannot perform the basic functions of gaining entry to a motor vehicle or starting its engine.
(c) It is the intent of the Legislature, in enacting this act, to give motorists better access to this necessary information, while at the same

time protecting the security of that information and the vehicle. This act is intended to allow appropriate vehicle security while providing essential and necessary consumer access.

SEC. 2. Section 9954 is added to the Vehicle Code, to read:

9954. (a) This section applies only to new vehicles sold or leased in this state on or after January 1, 2008, except as provided in subdivision (d) or (e).

(b) A motor vehicle manufacturer of a motor vehicle sold or leased in this state shall provide the means whereby the registered owner of that motor vehicle, through a registered locksmith, can access the information, and only that information, that is necessary to permit the production of a replacement key or other functionally similar device by the registered locksmith that will allow the registered vehicle's owner to enter, start, and operate his or her vehicle. The means to access this information shall be available by telephone or electronically 24 hours a day and seven days a week, as follows:

(1) When a registered locksmith is requested by the motor vehicle's registered owner or the registered owner's family member, to produce a replacement key or other functionally similar device that will allow the vehicle to be entered, started, and operated, and the information is needed from the vehicle manufacturer in order to produce the requested key or other functionally similar device, in addition to the requirement in Section 466.6 of the Penal Code, the registered locksmith shall visually verify the identity of the requesting party through that party's driver's license; shall visually verify that the registration of the vehicle matches the requesting party's identity and address (or last name and address if the requesting party is a family member of the registered owner); and shall visually verify that the vehicle identification number of the vehicle matches with the vehicle identification number on the registration. Upon satisfactory verification of all three requirements, the registered locksmith shall sign an affidavit that he or she has visually verified the information and file the affidavit along with, and for the same time period as, the work order required by Section 466.6 of the Penal Code, and proceed to access the needed information from the vehicle manufacturer.

(2) Upon completing the services, the registered locksmith shall give any key code information obtained from the vehicle manufacturer to the registered owner, or if applicable, the owner's family member, and shall destroy all information accessed from the vehicle manufacturer in his or her possession.

(3) Except in cases of fraud or misappropriation, a registered locksmith who follows these procedures shall incur no liability for theft of the vehicle related to the locksmith's production of a replacement key or

functionally similar device that will allow the vehicle to be entered, started, and operated.

(4) When a vehicle manufacturer receives a request from a registered locksmith for information to enable the locksmith to produce a replacement key or other functionally similar device that will allow the vehicle to be entered, started, and operated, and that request is made at the behest of the vehicle's registered owner or the registered owner's family member, the vehicle manufacturer shall require the registered locksmith to confirm the locksmith's registration with the manufacturer's registry; provide the security password issued by the manufacturer; and comply with any other reasonable authentication procedure. The manufacturer shall also require the registered locksmith to confirm the locksmith's visual identity and vehicle verifications, pursuant to paragraph (1). Upon satisfactory verification of these requirements, and upon presentation of the vehicle identification number and model number, the vehicle manufacturer shall provide to the registered locksmith, for the vehicle identified by the vehicle identification number and model number, the information necessary to enable production of a replacement key or other functionally similar device that allows the vehicle to be entered, started, and operated.

(5) A motor vehicle manufacturer subject to this section shall retain and make the information available in accordance with this section for at least 25 years from the date of manufacture.

(6) A vehicle manufacturer that follows these procedures shall incur no liability for theft of the vehicle related to furnishing the information to a registered locksmith for the production of a replacement key or functionally similar device that will allow the vehicle to be entered, started, and operated.

(c) For purposes of this section the following definitions apply:

(1) "Information" includes, but is not limited to, the vehicle's key code and, if applicable, immobilizer or access code, and its successor technology and terminology.

(2) "Motor vehicle" is a passenger vehicle as defined in Section 465 and pickup truck as defined in Section 471, and does not include a housecar, a motorcycle, or other two-wheeled motor vehicle.

(3) A "registered locksmith" means a locksmith licensed and bonded in California that has registered with a motor vehicle manufacturer, and has been issued a registry number and security password by the manufacturer.

(4) A registered owner, as defined in Section 505, also includes a lessee of the vehicle when the lessee's name appears on the vehicle registration.

(d) (1) This section does not apply to a vehicle line of a motor vehicle manufacturer that on January 1, 2006, does not provide for the production of a replacement key or other functionally similar device that allows the vehicle to be entered, started, and operated, by anyone other than the vehicle manufacturer itself and only itself, provided that the vehicle manufacturer operates a telephone or electronic request line 24 hours a day and seven days a week, and upon a request of the registered owner or family member of the registered owner of the vehicle, a replacement key or other functionally similar device that will allow the vehicle to be entered, started, and operated, is furnished to the registered owner at a reasonable cost within one day of the request or via the next overnight delivery.

(2) If subsequent to January 1, 2008, a vehicle line of the manufacturer exempted by this subdivision provides for the production of a replacement by anyone, other than the vehicle manufacturer itself, of a key or other functionally similar device that will allow the vehicle to be entered, started, and operated, this section shall apply to that vehicle line.

(3) This subdivision shall remain operative until January 1, 2013, and as of that date shall become inoperative, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(e) (1) This section does not apply to a vehicle line of a motor vehicle manufacturer that sold between 2,500 and 5,000 vehicles of that line in the prior calendar year in the state.

(2) This subdivision shall remain operative until January 1, 2013, and as of that date shall become inoperative, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(f) This section shall not apply to a make that sold fewer than 2,500 vehicles in the prior calendar year in the state.

(g) The duties imposed on a manufacturer pursuant to this section may be performed either by the manufacturer or by an agent through a contract.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. 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 434

An act to amend Section 13202.6 of the Vehicle Code, relating to crimes.

[Approved by Governor September 24, 2006. Filed with Secretary of State September 24, 2006.]

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

SECTION 1. Section 13202.6 of the Vehicle Code is amended to read:

13202.6. (a) (1) For every conviction of a person for a violation of Section 594, 594.3, or 594.4 of the Penal Code, committed while the person was 13 years of age or older, the court shall suspend the person's driving privilege for not more than two years, except when the court finds that a personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's, employment, school, or medically related purposes. If the person convicted does not yet have the privilege to drive, the court shall order the department to delay issuing the privilege to drive for not less than one year nor more than three years subsequent to the time the person becomes legally eligible to drive. However, if there is no further conviction for violating Section 594, 594.3, or 594.4 of the Penal Code in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

(2) A person whose driving privilege is suspended or delayed for an act involving vandalism in violation of Section 594, 594.3, or 594.4 of the Penal Code, may elect to reduce the period of suspension or delay imposed by the court by performing community service under the supervision of the probation department. The period of suspension or delay ordered under paragraph (1) shall be reduced at the rate of one day for each hour of community service performed. If the jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594 of the Penal Code, the period of suspension or delay ordered

under paragraph (1) shall be reduced at the rate of one day for each day of community service performed in the graffiti abatement program when the defendant and his or her parents or legal guardians are responsible for keeping a specified property in the community free of graffiti for a specified period of time. The suspension shall be reduced only when the specified period of participation has been completed. Participation of a parent or legal guardian is not required under this paragraph if the court deems this participation to be detrimental to the defendant, or if the parent or legal guardian is a single parent who must care for young children. For purposes of this paragraph, "community service" means cleaning up graffiti from any public property, including public transit vehicles.

(3) As used in this section, the term "conviction" includes the findings in juvenile proceedings specified in Section 13105.

(b) (1) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require all drivers' licenses held by the person to be surrendered to the court. The court shall, within 10 days following the conviction, transmit a certified abstract of the conviction, together with any drivers' licenses surrendered, to the department.

(2) Violations of restrictions imposed pursuant to this section are subject to Section 14603.

(c) The suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of a violation of Section 594, 594.3, or 594.4 of the Penal Code.

CHAPTER 435

An act to amend Sections 85, 86, and 88 of the Penal Code, relating to bribery, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2006. Filed with Secretary of State September 24, 2006.]

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

SECTION 1. Section 85 of the Penal Code is amended to read:

85. Every person who gives or offers to give a bribe to any Member of the Legislature, any member of the legislative body of a city, county, city and county, school district, or other special district, or to another person for the member, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or

withholding his or her vote, or in not attending the house or any committee of which he or she is a member, is punishable by imprisonment in the state prison for two, three or four years.

SEC. 2. Section 86 of the Penal Code is amended to read:

86. Every Member of either house of the Legislature, or any member of the legislative body of a city, county, city and county, school district, or other special district, who asks, receives, or agrees to receive, any bribe, upon any understanding that his or her official vote, opinion, judgment, or action shall be influenced thereby, or shall give, in any particular manner, or upon any particular side of any question or matter upon which he or she may be required to act in his or her official capacity, or gives, or offers or promises to give, any official vote in consideration that another Member of the Legislature, or another member of the legislative body of a city, county, city and county, school district, or other special district shall give this vote either upon the same or another question, is punishable by imprisonment in the state prison for two, three, or four years and, in cases in which no bribe has been actually received, by a restitution fine of not less than two thousand dollars ($2,000) or not more than ten thousand dollars ($10,000) or, in cases in which a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars ($2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars ($10,000), whichever is greater.

In imposing a fine under this section, the court shall consider the defendant's ability to pay the fine.

SEC. 3. Section 88 of the Penal Code is amended to read:

88. Every Member of the Legislature, and every member of a legislative body of a city, county, city and county, school district, or other special district convicted of any crime defined in this title, in addition to the punishment prescribed, forfeits his or her office and is forever disqualified from holding any office in this state or a political subdivision thereof.

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.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to halt an existing and ongoing misuse of power by county officials with regard to control over local officials it is necessary that this act take effect immediately.

CHAPTER 436

An act to amend and repeal Section 52244 of the Education Code, relating to pupil instruction.

[Approved by Governor September 24, 2006. Filed with Secretary of State September 24, 2006.]

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

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

52244. (a) There is hereby established a grant program for the purpose of awarding grants to cover the costs of advanced placement fees or International Baccalaureate examination fees, or both, for eligible economically disadvantaged high school pupils. The department shall administer this program.

(b) An "eligible economically disadvantaged high school pupil" means a pupil who is either from a family whose household annual income is below 200 percent of the federal poverty level or a pupil who is eligible for a federal free or reduced price meal program.

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

(d) Any eligible economically disadvantaged high school pupil who is enrolled in an advanced placement or International Baccalaureate course, or both, may apply to the designated school district staff for a

grant pursuant to this section. A pupil who receives a grant shall pay five dollars ($5) of the examination fee.

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

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

(g) If the total school district applications exceed the total funds available pursuant to this section, the department shall prorate the grants based upon the ratio of the total amount requested to the total amount budgeted by the state for this purpose. Funding priority shall be given to advanced placement examination fees if there is insufficient funding allocated for the grant program in a given fiscal year.

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

(i) The department shall make every effort to obtain and allocate federal funding for the purposes of this program prior to expending any state funds. All state and federal funds obtained by the department for the purposes of this program shall be expended for these purposes only and are prohibited from being used to fund any other program.

(j) 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.

CHAPTER 437

An act to amend Sections 51795 and 51796 of, to add Sections 51796.2 and 51796.5 to, and to repeal Section 51798 of, the Education Code, relating to school gardens, and making an appropriation therefor.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 51795 of the Education Code is amended to read:

51795. The Legislature finds and declares all of the following:

(a) School gardens provide an interactive, hands-on learning environment in which pupils learn composting and waste management techniques, fundamental concepts about nutrition and obesity prevention, and the cultural and historical aspects of our food supply. School gardens also foster a better understanding and appreciation of where food comes from, how food travels from the farm to the table, and the important role of agriculture in the state, national, and global economy.

(b) Encouraging and supporting school gardens creates opportunities for children to learn to make healthier food choices, participate more successfully in their education experiences, and develop a deeper appreciation of their community.

(c) School garden programs can equally enhance any subject area including science, environmental education, mathematics, reading, writing, art, nutrition, physical education, history, and geography. School gardens provide a unique setting in which improved pupil performance can be achieved.

SEC. 2. Section 51796 of the Education Code is amended to read:

51796. (a) The Instructional School Gardens Program is hereby established for the promotion, creation, and support of instructional school gardens through the allocation of grants, and through technical assistance provided, to school districts, charter schools, or county offices of education. The program shall be administered by the State Department of Education.

(b) The Superintendent shall convene an interagency working group on instructional school gardens that shall include, but not be limited to, representatives of the State Department of Education, the Department of Food and Agriculture, the State Department of Health Services, and the California Integrated Waste Management Board. The working group shall advise the Superintendent on all of the following:

(1) Effective and efficient means of encouraging school districts, charter schools, and county offices of education to develop and maintain a quality instructional school garden program.

(2) The availability of state and nonstate resources and technical assistance to help school districts, charter schools, and county offices of education in establishing and maintaining instructional school gardens.

(3) Public and private partnerships available to assist school districts, charter schools, and county offices of education in using instructional

school gardens to complement the academic program of participating schools.

(c) The Superintendent may establish an advisory group involving other agencies and groups with expertise in instructional school gardens, including, but not limited to, the California Environmental Education Interagency Network. The purpose of the advisory group is to support program efforts through technical assistance, resources, in-kind support, site visits, and other related efforts.

(d) (1) The Superintendent shall use existing resources to comply with subdivisions (b) and (c).

(2) The Department of Food and Agriculture, the State Department of Health Services, and the California Integrated Waste Management Board shall use existing resources to comply with subdivision (b).

SEC. 3. Section 51796.2 is added to the Education Code, to read:

51796.2. (a) A school district, charter school, or county office of education may apply to the Superintendent for funding for a three-year grant under this article in a manner determined by the Superintendent, in order to develop and maintain an instructional school garden. The application, at a minimum, shall indicate the school or schools at which the instructional school gardens are, or are to be, located; the grade level or grade levels to be targeted; the potential number of classes within the grade levels and number of pupils who would use the instructional school gardens; and the intended items of expenditure for any funds received. The application also shall include an explanation of the six-month reporting requirement specified in Section 51796.5.

(b) The Superintendent shall distribute the grants applied for pursuant to subdivision (a) to school districts, charter schools, or county offices of education as follows:

(1) Each grant shall be not more than two thousand five hundred dollars ($2,500) per schoolsite, except that a district, charter school, or county office of education that applies on behalf of at least one schoolsite with an enrollment of 1,000 or more pupils may receive a grant of not more than five thousand dollars ($5,000) per schoolsite with an enrollment of 1,000 or more pupils.

(2) The receipt of a grant during the period from the 2006–07 fiscal year to the 2008–09 fiscal year, inclusive, for instructional school garden equipment or supplies by a school district, charter school, or county office of education shall not be dependent on the receipt of a grant for instructional school garden professional development by the same district, charter school, or county office.

SEC. 4. Section 51796.5 is added to the Education Code, to read:

51796.5. As a condition of the receipt of funds pursuant to this article, a school district, charter school, or county office of education, within

six months of the final expenditure of funds received, shall report to the Superintendent, in conjunction with the interagency working group convened pursuant to subdivision (b) of Section 51796, in a manner prescribed by the Superintendent, regarding the use of funds and the manner in which the instructional school garden or gardens are used to complement the academic program of the participating school or schools. A school district or county office of education may submit one report for all of the schools that have received grants that are under the jurisdiction of the district or county office.

SEC. 5. Section 51798 of the Education Code is repealed.

SEC. 6. Notwithstanding Provision (19) of Item 6110-485 of Section 2.00 of the Budget Act of 2006 (Ch. 47, Stats. 2006), the funds reappropriated in that provision shall be available to school districts, charter schools, and county offices of education for equipment, supplies, and professional development related to the establishment and operation of a three-year instructional school garden program pursuant to Article 8.5 (commencing with Section 51795) of Chapter 5 of Part 28 of the Education Code.

CHAPTER 438

An act to add Section 84204.5 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 84204.5 is added to the Government Code, to read:

84204.5. (a) In addition to any other report required by this title, a committee pursuant to subdivision (a) of Section 82013 that is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State each time it makes contributions totaling five thousand dollars ($5,000) or more or each time it makes independent expenditures totaling five thousand dollars ($5,000) or more to support or oppose the qualification or passage of a single state ballot measure. The report shall be filed within 10 business days of making the contributions or independent expenditures and shall contain all of the following:

(1) The full name, street address, and identification number of the committee.

(2) The number or letter of the measure if the measure has qualified for the ballot and has been assigned a number or letter; the title of the measure if the measure has not been assigned a number or letter but has been issued a title by the Attorney General; or the subject of the measure if the measure has not been assigned a number or letter and has not been issued a title by the Attorney General.

(3) In the case of a contribution, the date and amount of the contribution and the name, address, and identification number of the committee to whom the contribution was made. In addition, the report shall include the information required by paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211, regarding contributions or loans received from a person described in that subdivision, covering the period from the day after the closing date of the last campaign report filed to the date of the contribution requiring a report under this section, or if the committee has not previously filed a campaign statement, covering the period from the previous January 1 to the date of the contribution requiring a report under this section. No information described in paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211 that is required to be reported pursuant to this subdivision is required to be reported in more than one report provided for in this subdivision for each contribution or loan received from a person described in subdivision (f) of Section 84211.

(4) In the case of an independent expenditure, the date, amount, and a description of the goods or services for which the expenditure was made. In addition, the report shall include the information required by paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211 regarding contributions or loans received from a person described in that subdivision, covering the period from the day after the closing date of the last campaign report filed to the date of the expenditure, or if the committee has not previously filed a campaign statement, covering the period from the previous January 1 to the date of the expenditure. No information described in paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211 that is required to be reported pursuant to this subdivision is required to be reported in more than one report provided for in this subdivision for each contribution or loan received from a person described in subdivision (f) of Section 84211.

(b) Reports required by this section are not required to be filed by a committee primarily formed to support or oppose the qualification or passage of a state ballot measure for expenditures made on behalf of the ballot measure or measures for which it is formed.

(c) Independent expenditures that have been disclosed by a committee pursuant to Section 84204 or 85500 are not required to be disclosed 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.

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 439

An act to add Section 84310 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 84310 is added to the Government Code, to read:

84310. (a) A candidate, committee, or slate mailer organization may not expend campaign funds, directly or indirectly, to pay for telephone calls that are similar in nature and aggregate 500 or more in number, made by an individual, or individuals, or by electronic means and that advocate support of, or opposition to, a candidate, ballot measure, or both, unless during the course of each call the name of the organization that authorized or paid for the call is disclosed to the recipient of the call. Unless the organization that authorized the call and in whose name it is placed has filing obligations under this title, and the name announced in the call either is the full name by which the organization or individual is identified in any statement or report required to be filed under this title or is the name by which the organization or individual is commonly known, the candidate, committee, or slate mailer organization that paid for the call shall be disclosed. This section shall not apply to telephone

calls made by the candidate, the campaign manager, or individuals who are volunteers.

(b) Campaign and ballot measure committees are prohibited from contracting with any phone bank vendor that does not disclose the information required to be disclosed by subdivision (a).

(c) A candidate, committee, or slate mailer organization that pays for telephone calls as described in subdivision (a) shall maintain a record of the script of the call for the period of time set forth in Section 84104. If any of the calls qualifying under subdivision (a) were recorded messages, a copy of the recording shall be maintained for that period.

SEC. 2. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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 440

An act to amend Sections 47021 and 47026 of the Food and Agricultural Code, relating to farmers' markets.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 47021 of the Food and Agricultural Code is amended to read:

47021. (a) Every operator of a certified farmers' market shall remit to the department, within 30 days after the end of each quarter, a fee equal to the number of certified producer certificates and other agricultural producers participating on each market day for the entire previous quarter. The fee shall be established by January 1 of each year by the department upon the receipt of a budget recommendation from the advisory committee. The fee shall not exceed sixty cents ($0.60) for each certified producer certificate and other agricultural producers

participating on each market day. A certified farmers' market may directly recover all or part of the fee from the participating certified and other agricultural producers.

(b) Any operator of a certified farmers' market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to the department a monthly interest charge on the unpaid balance and a late penalty charge, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fees shall be used, upon appropriation by the Legislature, by the department, to carry out this chapter, including all of the following actions undertaken by the department:

(1) The coordination of the advisory committee.

(2) The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.

(3) The adoption of regulations to carry out this chapter.

(4) Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.

(5) The review of rules or procedures established by a certified farmers' market and the issuance of advisory opinions and the provision of informal hearings pursuant to Section 47004.1 as to whether the rules or procedures are consistent with this chapter and implementing regulations.

(6) The maintenance of a current statewide listing of certified farmers' markets with schedules of operations and locations.

(7) The maintenance of a current statewide listing of certified producers.

(8) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.

(9) Other actions, including the maintenance of special fund reserves, that are recommended by the advisory committee and approved by the department for the purpose of carrying out this chapter.

(d) 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 47026 of the Food and Agricultural Code is amended to read:

47026. This article shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

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 441

An act to add Article 3.7 (commencing with Section 92037) to Chapter 1 of Part 57 of the Education Code, relating to public postsecondary education.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Article 3.7 (commencing with Section 92037) is added to Chapter 1 of Part 57 of the Education Code, to read:

Article 3.7. Indemnification of Regents, Officers, Employees, and Contractors

92037. Notwithstanding any other provision of law, all of the following shall be indemnified from the state General Fund from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and indemnified against all liability, losses, and damages of any nature whatsoever that these persons may at any time sustain by reason of any decision of the regents not to invest in any firm or firms with business operations in Sudan or with the Sudanese government:

(a) Any current or former members of the regents, jointly and individually.

(b) Any current or former officers or employees of the University of California.

(c) Any current or former investment managers under contract, or formerly under contract, with the University of California.

(d) Any current or former officers, directors, trustees, agents, or employees of any University of California foundation.

CHAPTER 442

An act to add Sections 7513.6 and 16642 to the Government Code, relating to investments.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

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

(a) The Congress of the United States has declared that genocide is occurring in the Darfur region of Sudan.

(b) The National Black Caucus of State Legislators Resolution 05-144 declares that the atrocities unfolding in Darfur are genocide under Article 1, Article 2, and Article 3 of the United Nations Convention of 1948.

(c) The United Nations International Commission of Inquiry on Darfur found that government and militia forces of Sudan have conducted indiscriminate attacks, including, but not limited to, the killing of civilians, torture, forced disappearances, the destruction of villages, rape and other forms of sexual violence, pillaging, and forced displacement throughout Darfur.

(d) Sudanese government forces and government-supported militia forces have implemented a coordinated policy of ethnic cleansing.

(e) More than two and one-half million people are affected by the crisis in Sudan. According to the Intermediate Technology Development Group, two and one-half million people are displaced inside Sudan, 200,000 people are living as refugees, and more than 60 percent of the villages in northern Darfur have been destroyed or abandoned.

(f) According to the Report on Human Rights Practices in Sudan by the United States Department of State, Sudanese government forces have pursued a scorched earth policy aimed at removing populations from around a newly constructed oil pipeline and other oil production facilities.

(g) The United States Department of State Report on Human Rights Practices in Sudan found that 14,000 Dinka women and children have been abducted in Sudan.

(h) Christian Solidarity International reports that the government of Sudan is responsible for the revival of the evil institution of slavery.

(i) The Methodist Church of Southern Africa reports mass rapes of girls and women, the displacement of millions of people, and genocide and ethnic cleansing in Darfur.

(j) The Committee on Conscience of the United States Holocaust Memorial Museum has declared a genocide emergency in Sudan.

(k) Investing public retirement funds in business firms and institutions with ties to the repressive regime in Sudan is inconsistent with the moral and political values of the people of California.

(*l*) The Legislature acknowledges that divestment is a course of last resort that should be used sparingly and under extraordinary circumstances. This act is based on unique circumstances, specifically, the reprehensible and abhorrent genocide occurring in Sudan. This act is not intended to set precedent with regard to divestment policies and practices by public retirement and pension funds in California.

SEC. 2. Section 7513.6 is added to the Government Code, to read:

7513.6. (a) As used in this section, the following definitions shall apply:

(1) "Active business operations" means a company engaged in business operations that provide revenue to the government of Sudan or a company engaged in oil-related activities.

(2) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(3) "Business operations" means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan.

(4) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. "Company" also means a company owned or controlled, either directly or indirectly, by the government of Sudan, that is established or organized under the laws of or has its principal place of business in the Republic of the Sudan.

(5) "Government of Sudan" means the government of Sudan or its instrumentalities.

(6) "Invest" or "investment" means the purchase, ownership, or control of stock of a company, association, or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Sudan, corporate bonds or other debt instruments issued by a company, or the commitment of funds or other assets to a company, including a loan or extension of credit to that company.

(7) "Military equipment" means weapons, arms, or military defense supplies.

(8) "Oil-related activities" means, but is not limited to, the export of oil, extracting or producing oil, exploration for oil, or the construction or maintenance of a pipeline, refinery, or other oil field infrastructure.

(9) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(10) "Research firm" means a reputable, neutral third-party research firm.

(11) "Substantial action" means a boycott of the government of Sudan, curtailing business in Sudan until that time described in subdivision (m), selling company assets, equipment, or real and personal property located in Sudan, or undertaking significant humanitarian efforts in the eastern, southern, or western regions of Sudan.

(12) "Sudan" means the Republic of the Sudan, a territory under the administration or control of the Sudan, including but not limited to, the Darfur region, or an individual, company, or public agency located in Khartoum, northern Sudan, or the Nile River Valley that supports the Republic of the Sudan.

(b) The board shall not invest public employee retirement funds in a company with business operations in Sudan that meets all of the following criteria:

(1) The company is engaged in active business operations in Sudan. If that company is not engaged in oil-related activities, that company also lacks significant business operations in the eastern, southern, and western regions of Sudan.

(2) Either of the following apply:

(A) The company is engaged in oil-related activities or energy or power-related operations, or contracts with another company with business operations in the oil, energy, and power sectors of Sudan, and the company failed to take substantial action related to the government of Sudan because of the Darfur genocide.

(B) The company has demonstrated complicity in the Darfur genocide.

(c) Notwithstanding subdivision (b), the board shall not invest public employee retirement funds in a company that supplies military equipment within the borders of Sudan. If a company provides equipment within the borders of Sudan that may be readily used for military purposes, including, but not limited to, radar systems and military-grade transport vehicles, there shall also be a strong presumption against investing in that company unless that company implements safeguards to prevent the use of that equipment for military purposes.

(d) (1) The board shall, without regard to the provisions regarding competitive bidding, contract with a research firm or firms to determine those companies that have business operations in Sudan. Those research firms shall, in the aggregate, obtain data on a majority of companies with business operations in Sudan. On or before March 30, 2007, those research firms shall report any findings to the board and those research firms shall submit further findings to the board if there is a change of circumstances in Sudan.

(2) In addition to the reports described in paragraph (1), the board shall take all of the following actions no later than March 30, 2007:

(A) Review publicly available information regarding companies with business operations in Sudan.

(B) Contact other institutional investors that invest in companies with business operations in Sudan.

(C) Send written notice to a company with business operations in Sudan that the company may be subject to this section.

(e) (1) The board shall determine, by the next applicable board meeting and based on the information and reports described in subdivision (d), if a company meets the criteria described in subdivision (b) or (c). If the board plans to invest or has investments in a company that meets the criteria described in subdivision (b) or (c), that planned or existing investment shall be subject to subdivisions (g) and (h).

(2) Investments of the board in a company that does not meet the criteria described in subdivision (b) or (c) or does not have active business operations in Sudan are not subject to subdivision (h), provided that the company does not subsequently meet the criteria described in subdivision (b) or (c) or engage in active business operations. The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b) or (c) or does not engage in active business operations in the report to the Legislature described in subdivision (i).

(f) (1) Notwithstanding subdivision (e), if the board's investment in a company described in subdivision (b) or (c) is limited to investment via an externally and actively managed commingled fund, the board shall contact that fund manager in writing and request that the fund manager remove that company from the fund as described in subdivision (h). On or before June 30, 2007, if the fund or account manager creates a fund or account devoid of companies described in subdivision (b) or (c), the transfer of board investments from the prior fund or account to the fund or account devoid of companies with business operations in Sudan shall be deemed to satisfy subdivision (h).

(2) If the board's investment in a company described in subdivision (b) or (c) is limited to an alternative fund or account, the alternative fund or account manager creates an actively managed commingled fund that

excludes companies described in subdivision (b) or (c), and the new fund or account is deemed to be financially equivalent to the existing fund or account, the transfer of board investments from the existing fund or account to the new fund or account shall be deemed to satisfy subdivision (h). If the board determines that the new fund or account is not financially equivalent to the existing fund, the board shall include the reasons for that determination in the report described in subdivision (i).

(3) The board shall make a good faith effort to identify any private equity investments that involve companies described in subdivision (b) or (c) or are linked to the government of Sudan. If the board determines that a private equity investment clearly involves a company described in subdivision (b) or (c) or is linked to the government of Sudan, the board shall consider, at its discretion, if those private equity investments shall be subject to subdivision (h). If the board determines that a private equity investment clearly involves a company described in subdivision (b) or (c) or is linked to the government of Sudan and the board does not take action as described in subdivision (h), the board shall include the reasons for its decision in the report described in subdivision (i).

(g) Except as described in subdivision (f) or paragraph (2) of subdivision (e), the board, in the board's capacity of shareholder or investor, shall notify any company described in paragraph (1) of subdivision (e) that the company is subject to subdivision (h) and permit that company to respond to the information and reports described in subdivision (d). The board shall request that the company take substantial action no later than 90 days from the date the board notified the company under this subdivision. If the board determines that a company has taken substantial action or has made sufficient progress towards substantial action before the expiration of that 90-day period, that company shall not be subject to subdivision (h). The board shall, at intervals not to exceed 90 days, continue to monitor and review the progress of the company until that company has taken substantial action in Sudan. A company that fails to complete substantial action or continue to make sufficient progress towards substantial action by the next time interval shall be subject to subdivision (h).

(h) If a company described in paragraph (1) of subdivision (e) fails to complete substantial action by the time described in subdivision (g), the board shall take the following actions:

(1) The board shall not make additional or new investments or renew existing investments in that company.

(2) The board shall liquidate the investments of the board in that company no later than 18 months after this subdivision applies to that company. The board shall liquidate those investments in a manner to address the need for companies to take substantial action in Sudan and

consistent with the board's fiduciary responsibilities as described in Section 17 of Article XVI of the California Constitution.

(i) On or before January 1, 2008, and every year thereafter, the board shall file a report with the Legislature. The report shall describe the following:

(1) A list of investments the board has in companies with business operations in Sudan, including, but not limited to, the issuer, by name, of the stock, bonds, securities, and other evidence of indebtedness.

(2) A detailed summary of the business operations a company described in paragraph (1) has in Sudan and whether that company satisfies all of the criteria in subdivision (b) or (c).

(3) Whether the board has reduced its investments in a company that satisfies the criteria in subdivision (b) or (c).

(4) If the board has not completely reduced its investments in a company that satisfies the criteria in subdivision (b) or (c), when the board anticipates that the board will reduce all investments in that company or the reasons why a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(5) Any information described in subdivision (e).

(6) A detailed summary of investments that were transferred to funds or accounts devoid of companies with business operations in Sudan as described in subdivision (f).

(j) If the board voluntarily sells or transfers all of its investments in a company with business operations in Sudan, this section shall not apply except that the board shall file a report with the Legislature related to that company as described in subdivision (i).

(k) Nothing in this section shall require the board to take action as described in this section unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(*l*) Subdivision (h) shall not apply to any of the following:

(1) Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Sudan.

(2) Investments in a company that promotes health, education, journalistic, or religious activities in or welfare in the western, eastern, or southern regions of Sudan.

(3) Investments in a United States company that is authorized by the federal government to have business operations in Sudan.

(m) This section shall remain in effect only until one of the following occurs, and as of the date of that action, is repealed:

(1) The government of Sudan halts the genocide in Darfur for 12 months as determined by both the Department of State and the Congress of the United States.

(2) The United States revokes its current sanctions against Sudan.

SEC. 3. Section 16642 is added to the Government Code, to read:

16642. Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Section 7513.6

CHAPTER 443

An act to add Section 354.45 to the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

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

(a) During the period from 1915 to 1923, many persons of Armenian ancestry residing in the historic Armenian homeland then situated in the Ottoman Empire were victims of massacre, torture, starvation, death marches, and exile. This period is known as the Armenian Genocide.

(b) Thousands of Armenian Genocide survivors and the heirs of Armenian Genocide victims are residents or citizens of the State of California. These people have, too often, been deprived of their entitlement to bank deposits and assets held by banks and financial institutions that did business in the Ottoman Empire. California has an overwhelming public policy interest in ensuring that its residents and citizens who are claiming entitlement to bank deposits and assets that

remain unreturned to Armenian Genocide victims are treated reasonably and fairly, and that those legal obligations are honored.

(c) It is the specific intent of the Legislature to ensure that Armenian Genocide victims and their heirs be permitted to have an expeditious, inexpensive, and fair forum in which to resolve their claims for bank deposits and assets by allowing actions to be brought in California irrespective of any contrary forum selection provision contained in the banking agreements. It is the finding of the Legislature that enforcement of forum selection provisions in those agreements would work an undue, unreasonable, and unjust hardship on Armenian Genocide victims and their heirs who are residents of California, and that those provisions are against public policy and are hereby made unenforceable with respect to the claims as to which this act applies.

(d) To the extent that the statute of limitations regarding contractual or tort claims arising from the failure to return bank deposits and assets is extended by this act, that extension of the limitations period is intended to be applied retroactively, irrespective of whether the claims were otherwise barred by any applicable statute of limitations under any other provision of law prior to the enactment of this act.

SEC. 2. Section 354.45 is added to the Code of Civil Procedure, to read:

354.45. (a) For purposes of this section, the following terms have the following meanings:

(1) "Armenian Genocide victim" means any person of Armenian or other ancestry living in the Ottoman Empire during the period of 1890 to 1923, inclusive, who died, was injured in person or property, was deported, or escaped to avoid persecution during that period.

(2) "Bank" means any banking or financial institution, including any institution that issued bonds, that conducted business in Ottoman Turkey at any time during the period of 1890 to 1923, inclusive.

(3) "Deposited assets" means any and all cash, securities, bonds, gold, jewels or jewelry, or any other tangible or intangible items of personal property, or any documents indicating ownership or possessory interests in real, personal, or intangible property, that were deposited with and held by a bank.

(4) "Looted assets" means any and all personal, commercial, real, and intangible property, including cash, securities, gold, jewelry, businesses, artwork, equipment, and intellectual property, that was taken from the ownership or control of an individual, organization, or entity, by theft, forced transfer, or exploitation, during the period of 1890 to 1923, inclusive, by any person, organization, or entity acting on behalf of, or in furtherance of the acts of, the Turkish Government, that were received by and deposited with a bank.

(b) Notwithstanding any other law, any Armenian Genocide victim, or heir or beneficiary of an Armenian Genocide victim, who resides in this state and has a claim arising out of a failure of a bank to pay or turn over deposited assets, or to turn over looted assets, may bring an action or may continue a pending action, to recover on that claim in any court of competent jurisdiction in this state, which court shall be deemed the proper forum for that action until its completion or resolution.

(c) Any action, including any pending action brought by an Armenian Genocide victim, or the heir or beneficiary of an Armenian Genocide victim, who resides in this state, seeking payment for, or the return of, deposited assets, or the return of looted assets, shall not be dismissed for failure to comply with the applicable statute of limitation, if the action is filed on or before December 31, 2016.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 444

An act to amend, repeal, and add Section 70301 of, to add Section 70351.5 to, and to add and repeal Section 70324 of, the Government Code, relating to trial court facilities.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 70301 of the Government Code is amended to read:

70301. This chapter shall be known and may be cited as the "Trial Court Facilities Act of 2002."

As used in this chapter:

(a) "Bonded indebtedness" includes any financial encumbrance, including, but not limited to, bonds, lease revenue bonds, certificates of participation, mortgages, liens, or loans, on a building.

(b) "Building" means a single structure or connected structures. A building may include related structures.

(c) "County facilities payment" means the amount established by Article 5 of this chapter to be paid by a county in partial exchange for relief from the responsibility for providing court facilities.

(d) "Court facilities" consist of all of the following:

(1) Rooms for holding superior court.

(2) The chambers of the judges of the court.

(3) Rooms for the attendants of the court, including, but not limited to, rooms for accepting and processing documents filed with the court.

(4) Heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers.

(5) Common and connecting space to permit proper and convenient use of the rooms.

(6) Rooms for secure holding of a prisoner attending court sessions, together with secure means of transferring the prisoner to the courtroom.

(7) Any other area within a building required or used for court functions.

(8) Grounds appurtenant to the building containing the rooms.

(9) Parking spaces historically made available to one or more users of court facilities.

(e) "Deferred maintenance" means a backlog of projects that occurs when ongoing maintenance and repair of court facilities or a building is not sustained at an appropriate level in quality, quantity, or frequency to support the designed level of service of the building or special repair projects are not accomplished as needed.

(f) "Historical building" means a building that is identified as a historical building by the county board of supervisors and is either a "qualified historical building or structure," as defined in Section 18955 of the Health and Safety Code, or is a building eligible for inclusion on the National Register of Historic Places under Section 470a of Title 16 of the United States Code.

(g) "Level IV or lower seismic rating" means a rating of level I, level II, level III, or level IV under the Seismic Risk Table.

(h) "Level V seismic rating" means a rating of substantial risk (level V) under the Seismic Risk Table, using the engineering evaluating criteria that are in effect on September 1, 2005. That rating will not in itself be considered a significant threat to life, safety, or health.

(i) "Maintenance" means the ongoing upkeep of buildings, equipment, grounds, and utilities required to keep a building and its systems in a condition adequate to support its designed level of service.

(j) "Responsibility for facilities" means the obligation of providing, operating, maintaining, altering, and renovating a building that contains the facilities.

(k) "Seismic Risk Table" means the Risk Acceptability Table of the State Building Seismic Program as developed by the Division of the State Architect, as of April 1994, p. II-2.

(*l*) "Shared use" refers to a building that is used for both court and noncourt purposes.

(m) "Special improvement" means any modification that increases the designed level of services of a building, or a one-time modification of a building that is not expected to be repeated during the lifetime of the building.

(n) "Special repair" means modifications that maintain the designed level of services of a building and does not include a special improvement.

(o) "Unacceptable seismic safety rating" means a rating of either "extensive but not imminent risk" (level VI) or "imminent risk" (level VII) under the Seismic Risk Table.

(p) "Usable space" means space that an occupier of a facility can actually use and may allocate to house personnel and furniture.

(q) "User rights" means the right to exclusive use of the noncommon area within a building allocated to that use as well as shared use of the common areas of the building and the appurtenant grounds and parking.

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. 1.5. Section 70301 is added to the Government Code, to read:

70301. This chapter shall be known and may be cited as the "Trial Court Facilities Act of 2002."

As used in this chapter:

(a) "Bonded indebtedness" includes any financial encumbrance, including, but not limited to, bonds, lease revenue bonds, certificates of participation, mortgages, liens, or loans, on a building.

(b) "Building" means a single structure or connected structures. A building may include related structures.

(c) "County facilities payment" means the amount established by Article 5 of this chapter to be paid by a county in partial exchange for relief from the responsibility for providing court facilities.

(d) "Court facilities" consist of all of the following:

(1) Rooms for holding superior court.

(2) The chambers of the judges of the court.

(3) Rooms for the attendants of the court, including, but not limited to, rooms for accepting and processing documents filed with the court.

(4) Heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers.

(5) Common and connecting space to permit proper and convenient use of the rooms.

(6) Rooms for secure holding of a prisoner attending court sessions, together with secure means of transferring the prisoner to the courtroom.

(7) Any other area within a building required or used for court functions.

(8) Grounds appurtenant to the building containing the rooms.

(9) Parking spaces historically made available to one or more users of court facilities.

(e) "Deferred maintenance" means a backlog of projects that occurs when ongoing maintenance and repair of court facilities or a building is not sustained at an appropriate level in quality, quantity, or frequency to support the designed level of service of the building or special repair projects are not accomplished as needed.

(f) "Historical building" means a building that is identified as a historical building by the county board of supervisors and is either a "qualified historical building or structure," as defined in Section 18955 of the Health and Safety Code, or is a building eligible for inclusion on the National Register of Historic Places under Section 470a of Title 16 of the United States Code.

(g) "Maintenance" means the ongoing upkeep of buildings, equipment, grounds, and utilities required to keep a building and its systems in a condition adequate to support its designed level of service.

(h) "Responsibility for facilities" means the obligation of providing, operating, maintaining, altering, and renovating a building that contains the facilities.

(i) "Shared use" refers to a building which is used for both court and noncourt purposes.

(j) "Special improvement" means any modification that increases the designed level of services of a building, or a one-time modification of a building that is not expected to be repeated during the lifetime of the building.

(k) "Special repair" means modifications that maintain the designed level of services of a building and does not include a special improvement.

(*l*) "Unacceptable seismic safety rating" means a rating of either "substantial risk" (level V), "extensive but not imminent risk" (level VI), or "imminent risk" (level VII) under the Risk Acceptability Table of the State Building Seismic Program as developed by the Division of the State Architect, April 1994, p. II-2.

(m) "Usable space" means space that an occupier of a facility can actually use and may allocate to house personnel and furniture.

(n) "User rights" means the right to exclusive use of the noncommon area within a building allocated to that use as well as shared use of the common areas of the building and the appurtenant grounds and parking.

This section shall become operative on January 1, 2010.

SEC. 2. Section 70324 is added to the Government Code, to read:

70324. (a) If responsibility for court facilities is transferred from the county to the state pursuant to a negotiated agreement, and the building containing those court facilities is rated as a level V seismic rating, the following provisions shall apply to the transfer.

(1) Except as provided in paragraph (3), the county shall be responsible for any seismic-related damage and injury, including, but not limited to, damage and injury to real property, personal property, and persons, only to the same extent that the county would be liable for that damage and injury if responsibility was not transferred to the state, and the county shall indemnify, defend, and hold the state harmless from those claims.

(2) Except as provided in paragraph (3), in the event that seismic-related damage occurs to a building containing court facilities for which the county retains liability under this section, the county either shall make repairs to the damage or provide funds to the state sufficient to make those repairs, in order to bring the damaged portions of the building containing court facilities back to the condition in which they existed before the seismic-related event. The county may postpone the making of repairs to the damage or providing funds to the state for those repairs, if it provides the court, at county expense, with necessary and suitable temporary facilities, subject to the agreement of the Judicial Council.

(3) The county shall not be liable for any damage or injury sustained in a seismic event to the extent the damage or injury is attributable to actions or conditions created by or under the control of the state. The state shall indemnify, defend, and hold the county harmless from any liability resulting from that damage or injury. The state does not have a duty to make changes or repairs to improve the seismic condition of the building.

(4) As part of, or subsequent to, the transfer agreement, the county and the Judicial Council may agree on a method to address the seismic issue so that the state does not have a financial burden greater than it would have had if the court facilities initially transferred were court facilities in buildings rated as a level IV seismic rating.

(b) This section shall not apply to events occurring on or after the earliest of the following dates:

(1) The facilities covered by this section are seismically-rated at any level lower than level V.

(2) The facilities are no longer used as court facilities.

(3) Thirty-five years from the date of transfer of the facilities.

(4) The county has complied with the conditions for relief from liability contained in an agreement pursuant to paragraph (4) of

subdivision (a) addressing the seismic issue with regard to the facility, and the agreement has been approved by the Director of Finance.

(c) The provisions of this section shall prevail over any conflicting provisions of this chapter in regard to transfer of responsibility for court facilities in buildings rated as a level V seismic rating.

(d) This section shall not be deemed to impose greater liability on a county for seismic-related damage to third parties other than it would have if the responsibility for court facilities had not transferred to the state.

(e) Nothing in this chapter shall require the transfer of responsibility for court facilities in a building that is rated as a level V seismic rating.

(f) The terms of this section in effect at the time an agreement is executed for transfer of responsibility shall continue to govern that agreement for transfer, notwithstanding any subsequent repeal of this section.

(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 70351.5 is added to the Government Code, to read:

70351.5. Notwithstanding any other provision of this chapter, the California State Association of Counties, the Judicial Council, and the Director of Finance may agree to alternative methods for calculating the county facilities payment amount to be used by any county meeting the criteria set forth in those alternative methods. In the absence of an agreement, the other provisions of this article shall apply.

CHAPTER 445

An act to amend Section 19613.3 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 19613.3 of the Business and Professions Code is amended to read:

19613.3. (a) Except as provided in subdivision (b), (c), (d), (e), (f), and (g) relating to thoroughbred horsemen's organizations, each horsemen's organization, except an organization that solely represents owners or an organization that solely represents trainers, shall provide

for the representation of owners and trainers on its board of directors. The provisions setting forth the composition of the board of directors of each organization shall be in the bylaws of the organization and shall be submitted to the board. The bylaws and any changes thereto shall be approved by the board.

(b) Each thoroughbred horsemen's organization, except an organization that solely represents trainers, shall provide for the representation of owners and owner-trainers, as defined in subdivision (c), on its board of directors. The provisions setting forth the composition of the board of directors of each organization shall be in the bylaws of the organization and shall be submitted to the board. The bylaws and any changes thereto shall be approved by the board.

(c) The organization representing owners shall provide in its bylaws that owners who are also licensed as trainers, and their spouses who are licensed as owners, shall comprise the membership class of owner-trainers. Three members of this class shall be elected to the board of directors of the organization representing owners. All other directors shall be owners as defined in Section 19613, and shall not be members of the class of owner-trainers.

(d) The organization representing owners shall provide in its bylaws that all members of the organization, including owners who are trainers and their spouses who are licensed as owners, shall have the right to vote in the election of all members of the organization's board of directors.

(e) The organization representing owners shall provide in its bylaws that at least three of the 12 directors who represent the membership class of licensed owners, and at least one of the three directors who represent the membership class of owner-trainers, shall both reside and race in the northern zone. In order to qualify for election to these board positions, individuals must have at least six race starts in horse races in the northern zone during the previous calendar year.

(f) The organization representing owners shall provide in its bylaws that a subcommittee be formed specifically to address purse schedules in the northern zone. This subcommittee shall be comprised of three of the four board members from the northern zone, including the one owner-trainer member, one additional owner-trainer who resides and races in the northern zone designated by the organization representing trainers and other owners who both reside and race in the northern zone as deemed necessary by the board members from the northern zone. The organization shall make at least one staff person available in the northern zone to support the activities of this subcommittee. In order to serve as a member of the subcommittee individuals must have owned thoroughbreds making at least six race starts in horse races in the northern zone in the preceding calendar year. The bylaws shall be consistent with

the provisions of this subdivision so as to provide comprehensive representation of thoroughbred owners and owner-trainers in the northern zone.

(g) The board of directors of the thoroughbred owners' organization shall not exceed 15 persons, and all members of the board shall have equal standing. No person other than a duly elected or appointed member of the board of directors shall be entitled to vote on matters that are subject to the vote of the board.

(h) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

CHAPTER 446

An act to add Section 143.1 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 143.1 is added to the Streets and Highways Code, to read:

143.1. (a) Notwithstanding any other provision of law, the demonstration toll road project known as State Highway Route 125 (SR 125) in the County of San Diego, authorized pursuant to authority granted to the department by Chapter 107 of the Statutes of 1989, as subsequently amended by Chapter 1115 of the Statutes of 1990 and Chapter 688 of the Statutes of 2002, shall be subject to tolls for a period of up to 45 years under the following additional terms and conditions:

(1) If agreed to by the private entity and the department, and subject to concurrence by the San Diego Association of Governments (SANDAG), the County of San Diego, the City of San Diego, and the City of Chula Vista, by January 2010, all of whom shall exercise their good faith efforts to reach that agreement and concurrence, the SR 125 franchise agreement shall be amended to provide for a lease period of up to 45 years, which shall be reflected in the SR 125 Development Franchise Agreement, dated January 30, 1991, as amended. If an amendment to extend the lease period is agreed to by the parties, the tolls collected during any extension period shall be used for one or more

of the following purposes, as specified in the amendment to the agreement:

(A) By the private entity to reimburse it for project costs incurred on behalf of the department or SANDAG.

(B) By the private entity to compensate or reimburse it for project costs or other impacts for which it is entitled to compensation pursuant to the development franchise agreement or other agreements in effect as of June 30, 2006, with or between the private entity and SANDAG concerning SR 125.

(C) By the private entity to reimburse the department or SANDAG for project costs permitted under the development franchise agreement in effect as of June 30, 2006.

(D) By the private entity for one or more of the following purposes: the private entity's capital outlay costs for the project; the costs associated with operations, toll collection, and administration of the facility; reimbursement of the state for the costs of maintenance and police services; or a reasonable return on investment to the private entity.

(E) The development franchise agreement or any amendment thereto shall require that any excess toll revenue either be applied to repayment of the indebtedness incurred by the private entity with respect to the project, or payment into the State Highway Account for the benefit of the San Diego region, or both.

(2) If an amendment to the SR 125 Development Franchise Agreement is not executed by January 31, 2010, or if an amendment to the agreement is executed by January 31, 2010, that extends the lease period for less than 10 additional years, the department and SANDAG may agree, subject to concurrence by the County of San Diego, the City of San Diego, and the City of Chula Vista, to operate and maintain the toll road for any remaining period of time up to a maximum of 10 years following expiration of the agreement. Tolls collected by the department or SANDAG shall be used to reimburse the department or SANDAG, as applicable, for the SR 125 project costs permitted under the development franchise agreement in effect as of June 30, 2006.

(3) Except as specifically amended consistent with this section, the SR 125 Development Franchise Agreement shall remain in full force and effect as set forth therein, and this section shall not be deemed to modify any rights or obligations of the parties thereto.

(b) SANDAG may operate the SR 125 facility and continue the collection of tolls upon the expiration of the SR 125 Development Franchise Agreement or the up to 10-year period specified in paragraph (2) of subdivision (a), as applicable, subject to a $\frac{2}{3}$ vote of the SANDAG board, pursuant to a plan that specifies the expenditure of toll revenues for projects within the SR 125 corridor. The operation and toll collection

may be done in cooperation with the department or solely by SANDAG, with toll revenues to be available for the costs associated with operations, toll collection, and administration of the facility, and reimbursement of the state for the costs of maintenance and police services. Projects eligible for funding from excess toll revenues shall be limited to projects that improve the operation of SR 125, including highway and street projects, truck-only lanes, and transit services and facilities. Any changes to the plan shall require a ⅔ vote of the SANDAG board.

CHAPTER 447

An act to amend Sections 5076 and 5134 of the Business and Professions Code, relating to accountants, and making an appropriation therefor.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 5076 of the Business and Professions Code is amended to read:

5076. (a) In order to renew its registration, a firm providing attest services, other than a sole proprietor or a small firm as defined in Section 5000, shall complete a peer review within three years of the commencement of the peer review program and no less frequently than every three years thereafter.

(b) For purposes of this article, the following definitions apply:

(1) "Peer review" means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a licensee or registered firm by another licensee unaffiliated with the licensee or registered firm being reviewed. The peer review shall include, but not be limited to, a review of at least one attest engagement representing the highest level of service performed by the firm and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) "Attest services" include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, "attest services" shall not include the issuance of compiled financial statements.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section,

including, but not limited to, regulations specifying the requirements for the approval of peer review providers, and regulations establishing a peer review oversight committee.

(d) The board shall review and evaluate whether to implement the program specified in this section, and shall report its findings and recommendations to the Legislature and the department no later than September 1, 2011. If the board determines that the program specified in this section should be implemented, the board shall identify the resources necessary for implementation and recommend a date when the program shall commence.

SEC. 2. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600). The board may charge a reexamination fee not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) (1) On and after January 1, 2007, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars ($125).

(2) On and after January 1, 2007, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

(k) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(*l*) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

SEC. 3. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600). The board may charge a reexamination fee not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars ($125).

(2) On and after enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest

reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

(k) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(*l*) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

SEC. 4. Section 3 of this bill incorporates amendments to Section 5134 of the Business and Professions Code proposed by this bill and AB 1868. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 5134 of the Business and Professions Code, and (3) this bill is enacted after AB 1868, in which case Section 5134 of the Business and Professions Code, as amended by AB 1868, shall remain operative only until the operative date of this bill, at which time Section 3 of this bill shall become operative, and Section 2 of this bill shall not become operative.

CHAPTER 448

An act to add Section 7311.5 to the Labor Code, relating to safety in employment.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 7311.5 is added to the Labor Code, to read:

7311.5. (a) A person, firm, or corporation that maintains and repairs solely special purpose personnel elevators on cranes that utilize a rack and pinion system in marine terminals as part of crane maintenance

activities qualifies as a certified qualified conveyance company under Section 7311.1 if the individual qualifying individually or on behalf of the firm or corporation has five years' work experience at a journeyperson level in the crane maintenance industry, including experience in the maintenance and repair of crane elevators. This experience shall be verified by a person, firm, or corporation in the business of maintaining and repairing cranes in marine terminals.

(b) A person qualifies as a certified competent conveyance mechanic under Section 7311.2 if the person has three years' work experience in the crane maintenance industry, including experience in the maintenance and repair of crane elevators, as a journey-level mechanic without direct and immediate supervision. This experience shall be verified by a crane maintenance company approved as a certified qualified conveyance company pursuant to subdivision (a).

(c) The certifications obtained pursuant to this section may only be used for the limited purposes of maintaining and repairing special purpose personnel elevators on cranes that utilize a rack and pinion system in marine terminals.

(d) A person, firm, or corporation that qualifies for certification as a certified qualified conveyance company or certified competent conveyance mechanic is not authorized to perform any of the following procedures:

(1) Any work on a conveyance other than a special purpose personnel elevator on cranes that utilize a rack and pinion system in marine terminals.

(2) Any work related to new elevator installations.

(3) Any modifications or alterations of existing elevator systems.

(4) Testing or replacing of emergency brakes, centrifugal brakes, emergency safety devices, or electrical systems.

(5) Annual certifications of any type of conveyance or elevator.

(e) The certifications authorized by this section require experience but do not require an examination because the general examination given pursuant to this chapter is inapplicable to the work described in this section. The division is not required to set up specialty examinations to certify persons pursuant to this chapter.

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

(1) "Special purpose personnel elevators" shall have the same meaning as defined in Section 3085 of Title 8 of the California Code of Regulations.

(2) "Marine terminal" shall have the same meaning as used in Section 3460 of Title 8 of the California Code of Regulations.

(g) Nothing in this section exempts a person, firm, or corporation applying for certification as a certified qualified conveyance company or a certified competent conveyance mechanic under this section from paying the administration fees required under this chapter.

CHAPTER 449

An act to amend Section 35401.7 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 35401.7 of the Vehicle Code is amended to read:

35401.7. (a) The limitations of access specified in subdivision (d) of Section 35401.5 do not apply to licensed carriers of livestock when those carriers are directly en route to or from a point of loading or unloading of livestock on those portions of State Highway Route 101 located in the Counties of Del Norte, Humboldt, and Mendocino from its junction with State Highway Route 1 near Leggett north to the Oregon border, if the travel is necessary and incidental to the shipment of the livestock.

(b) The exemption allowed under this section does not apply unless both of the following conditions are met:

(1) The length of the truck tractor, in combination with the semitrailer used to transport the livestock, does not exceed a total of 70 feet.

(2) The distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet.

(c) The exemption allowed under this section does not apply to travel conducted on the day prior to, or on the day of, any federally recognized holiday.

(d) The Department of the California Highway Patrol, in consultation with the Department of Transportation and in accordance with recommendations from the Department of the California Highway Patrol's study issued on March 20, 2006, of the effect of the statutory exemption, shall continue the comprehensive study of the effect that the exemption provided by this section has on the public safety during the extended effective period of the exemption, and make recommendations on future exemptions, including the creation of a permitting system for

cattle truck and trailer combinations meeting applicable provisions of the federal Surface Transportation Assistance Act of 1982 (Public Law 97-424), and appropriate safety improvements. Notwithstanding Section 7550.5 of the Government Code, the Department of the California Highway Patrol shall report the findings of this additional study and recommendations to the Governor and the Legislature on or before January 1, 2011.

(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.

CHAPTER 450

An act to amend, repeal, and add Section 35401 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 35401 of the Vehicle Code 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, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. Section 35401 is added to the Vehicle Code, 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, 2009.

SEC. 3. Due to the unique circumstances occurring in the Counties of San Luis Obispo and Santa Barbara, with respect to the transportation of agricultural products from the fields to the handling of the products, 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 1 of this act is necessarily applicable only to the County of San Luis Obispo and the County of Santa Barbara, and cities within those counties.

CHAPTER 451

An act to add Section 164.1 to the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 164.1 is added to the Streets and Highways Code, to read:

164.1. (a) Federal funds derived from apportionments made to the state under Section 1101(a)(11) of the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU; P.L. 109-59) for the coordinated border infrastructure program established under Section 1303 of that act shall be included and separately identified in the fund estimates prepared pursuant to Sections 14524 and 14525 of the Government Code, the interregional transportation improvement program submitted by the department pursuant to Section 14526 of the Government Code, and the state transportation improvement program adopted by the commission pursuant to Section 14529 of the Government Code. Except as otherwise provided in subdivision (b), these funds shall be programmed, allocated, and expended in the same manner as other federal funds made available for capital improvement projects in the state transportation improvement program.

(b) Notwithstanding any other provision of law:

(1) The programming, allocation, and expenditure of the funds described in subdivision (a) may be for any purpose authorized under federal law, including projects in Mexico.

(2) The funds described in subdivision (a) shall not be subject to the distribution formulas and limitations described in Section 164.

(3) The nonfederal match for the funds described in subdivision (a) may be programmed from any available local source, or any available state transportation funding source, including other state transportation improvement program funding, if the regional transportation planning agency concurs.

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 establish a process for the programming and expenditure of federal border infrastructure funds as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 452

An act to amend Sections 1236 and 1237 of, to add Section 8546.2 to, to add Article 4 (commencing with Section 8548.7) to Chapter 6.5

of Division 1 of Title 2 of, and to add Part 3.5 (commencing with Section 13885) to Division 3 of Title 2 of, the Government Code, and to amend Sections 11752.5 and 11873 of the Insurance Code, relating to state audits.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 1236 of the Government Code is amended to read:

1236. (a) All city, county, city and county, and district employees that conduct audits or that conduct audit activities of those respective agencies shall conduct their work under the general and specified standards prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States, as appropriate. The standards generally provide as follows:

(1) That auditors should be independent of the activities they audit.

(2) That audits should be performed with proficiency and due professional care.

(3) That the scope of the audit should encompass the examination and evaluation of the adequacy and effectiveness of the organization's system of internal control and the quality of performance in carrying out assigned responsibilities.

(4) That audit work should include planning the audit, examining and evaluating information, communicating results, and following up.

(5) That the chief auditor should properly manage the auditing department.

(b) Nothing in this section is intended to limit the rights or obligations of auditors to conduct audits and audit activities in accordance with other laws and regulations that may apply to a particular entity, as appropriate.

SEC. 1.5. Section 1237 of the Government Code is amended to read:

1237. All state and local agencies with an aggregate spending of fifty million dollars ($50,000,000) or more annually shall consider establishing an ongoing audit function.

SEC. 2. Section 8546.2 is added to the Government Code, to read:

8546.2. (a) The State Auditor shall request that any state agency, as defined in Section 11000, whether created by the California Constitution or otherwise, any local governmental agency, including any city, county, city and county, school, or special district, or any publicly created entity, that is the subject of an audit conducted pursuant to this chapter provide

updates on its progress in implementing the recommendations made by the State Auditor, at intervals prescribed by the State Auditor.

(b) Any state agency described in subdivision (a) shall provide the State Auditor, in the form prescribed by the State Auditor, with updates on implementation of recommendations as described in subdivision (a).

SEC. 3. Article 4 (commencing with Section 8548.7) is added to Chapter 6.5 of Division 1 of Title 2 of the Government Code, to read:

Article 4. Omnibus Audit Accountability Act of 2006

8548.7. This article shall be known and may be cited as the Omnibus Audit Accountability Act of 2006.

8548.9. (a) The State Auditor shall, by January 15th of each year, report to the Joint Legislative Budget Committee, the Joint Legislative Audit Committee, and the Department of Finance with respect to each state agency audit recommendation it has made that is more than one year old and that has not been implemented by the affected agency.

(b) The report shall clearly identify the state agency audited, the audit that contained the recommendation, a brief description of the recommendation, the date it was issued, and the most recent explanation provided by the agency to the State Auditor on the status of the recommendation.

(c) Any state agency that is notified by the State Auditor that it has not implemented a recommendation made pursuant to this chapter more than one year prior, shall do either of the following:

(1) Provide a written report to the State Auditor, the respective policy committees and budget subcommittees of the Assembly and Senate with oversight of the agency, and the Department of Finance, explaining why the audit recommendation has not been implemented.

(2) Notify all entities described in subdivision (a) that it will begin implementing the audit recommendation within 90 days of the notification by the State Auditor, and include the estimated date of implementation.

SEC. 4. Part 3.5 (commencing with Section 13885) is added to Division 3 of Title 2 of the Government Code, to read:

PART 3.5. INTERNAL AUDITS

13885. The Legislature finds and declares as follows:

(a) Recent corporate scandals and federal legislation, such as the Sarbanes-Oxley Act of 2002 (P.L. 107-204), focus attention on the importance of internal audit activity to public accountability and governance.

(b) Ensuring the independence of internal auditors of state agencies and that their findings are reported to the appropriate levels of government is critical to safeguarding public funds and the public trust.

13886. (a) Any governing body that oversees a state agency that performs or reviews internal audits shall establish an audit committee that generally meets the frameworks recommended by the American Institute of Certified Public Accountants, as set forth in the publication entitled "AICPA Audit Committee Toolkit: Government Organizations."

(b) For purposes of this chapter, "governing body" means a board, commission, board of trustees, council, or other similar body that oversees a state agency.

13886.5. (a) The Controller, the Director of Finance, and the respective staffs thereof, and all state agencies that have their own internal auditors or that conduct internal audits or internal audit activities, shall conduct internal audit activity under the general and specified standards of internal auditing prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States, as appropriate.

(b) Nothing in this article is intended to limit the rights or obligations of internal auditors to conduct internal audits and audit activities in accordance with other laws and regulations that may apply to a particular entity.

13887. (a) In order to achieve independence and objectivity pursuant to Section 13886, for any state agency that does not report to a governing body, the internal auditor operations shall meet all of the following requirements:

(1) The chief internal auditor shall be accountable to the head or deputy head of the state agency.

(2) The chief internal auditor shall report audit findings and recommendations made under his or her jurisdiction to the head or deputy head of the state agency and to the general counsel to the state agency, if applicable.

(3) The operations shall be organizationally outside the staff or line management function of the unit under audit.

(b) In order to achieve independence and objectivity as required by the standards identified in Section 13886, for any state agency that is overseen by a governing body, the internal audit operations shall meet all of the following requirements:

(1) The chief internal auditor shall be accountable to the audit committee of the governing body.

(2) The chief internal auditor shall report audit findings and recommendations made under his or her jurisdiction to the audit committee and the general counsel to the governing body.

(3) The operations shall be organizationally outside the staff or line management function of the unit under audit.

13887.5. (a) When the chief internal auditor of a state agency believes that senior management in the state agency has accepted a level of residual risk that may be unacceptable to the organization or that senior management has otherwise not taken appropriate action in response to a finding or recommendation by its internal auditors, the chief internal auditor shall discuss the matter with senior management and the general counsel to the state agency. If that decision regarding residual risk or the need for appropriate action in response to an audit finding or recommendation, or both, does not resolve the issue, the chief internal auditor and general counsel shall jointly report the matter to the next highest level of management as pertains to the state agency, including, but not limited to, the chair of the governing body overseeing the state agency, the agency secretary, the Governor's office, or the appropriate constitutional officer.

(b) If the decision regarding residual risk or the need for appropriate action in response to an audit finding or recommendation that could have a significant impact on the state's fiscal operations, the performance of a significant government program, or the delivery of a significant government service, or other similar significant or critical government services, as determined by the chief internal auditor, is still not resolved after making the disclosures required pursuant to subdivision (a), the chief internal auditor shall report the matter to the Joint Legislative Audit Committee and the State Auditor. At the direction of the Joint Legislative Audit Committee, the State Auditor shall investigate a disclosure made pursuant to subdivision (b) and report the results of the investigation in accordance with Chapter 6.5 (commencing with Section 8543) of Division 1. The disclosure requirements of this subdivision shall not apply to any chief internal auditor who reports and makes disclosures to an audit committee, as described in subdivision (b) of Section 13887.

(c) Any chief internal auditor who makes a disclosure pursuant to this section shall receive all protection available under the California Whistleblower Protection Act (Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1).

13888. (a) If an internal auditor employed by a state agency has a good faith belief that the agency management is interfering with the internal auditor's or auditors' ability to comply with the provisions of this part, that the internal auditor or auditors are under pressure to modify or limit findings or recommendations, or that senior management is not taking appropriate action in response to an audit finding or recommendation, the internal auditor may report the information supporting that good faith belief to the State Auditor.

(b) The State Auditor may investigate any report made pursuant to subdivision (a) and if the allegations are substantiated, shall report his or her findings pursuant to Chapter 6.5 (commencing with Section 8545) of Division 1.

(c) Any internal auditor making a report pursuant to this section shall receive all protection available under the California Whistleblower Protection Act (Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1).

SEC. 5. Section 11752.5 of the Insurance Code is amended to read:

11752.5. (a) Subject to subdivision (b), a licensed rating organization shall make available any policy information contained in its records to the following:

(1) The Department of Industrial Relations.

(2) Any other governmental agency if the Insurance Commissioner, after consultation with the licensed rating organization, approves the release of the policy information requested to the agency.

(b) The Department of Industrial Relations and any other governmental agency shall specify to the licensed rating organization, in writing, the information requested, that the information requested is to be used to facilitate the agency's performance of its constitutional or statutory duties, and that the information received will not be released to others, except in the discharge of a specific statutory or constitutional duty, or published without the prior written consent of the licensed rating organization. In addition, if the Insurance Commissioner's approval is required for the release of the policy information requested, a written copy of the approval shall be submitted to the licensed rating organization.

(c) As used in this section, "policy information" means information which is contained in a workers' compensation policy, including, but not limited to, the identity and address of the employer, the identity of the insurer, the policy number, and the policy period.

(d) Information obtained by a governmental agency pursuant to this section shall be confidential and not subject to public disclosure under any other law of this state.

(e) No licensed rating organization or member thereof, or member of a committee of a licensed rating organization when acting in its capacity as a member of the committee, or officer or employee of a licensed rating organization, when acting within the scope of his or her employment, shall be liable to any person for injury, personal or otherwise, or damages caused or alleged to have been caused, either directly or indirectly, by the disclosure of information to a governmental agency pursuant to this section, or for the accuracy or completeness of the information so disclosed.

(f) This section shall not be construed as implying the existence of liability in circumstances not defined in this section, nor as implying a legislative recognition that, except for enactment of this section, a liability has existed or would exist in the circumstances stated in this section.

(g) This section shall not be construed as limiting any authority of a licensed rating organization to disclose information contained in its records to others.

SEC. 6. Section 11873 of the Insurance Code is amended to read:

11873. (a) Except as provided by subdivision (b), the fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the section specifically names the fund as an agency to which the provision applies.

(b) The fund shall be subject to the provisions of Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of, and Chapter 6.5 (commencing with Section 8543) of Division 1 of Title 2 of, the Government Code, and Division 5 (commencing with Section 18000) of Title 2 of the Government Code, with the exception of all of the following provisions of that division:

(1) Article 1 (commencing with Section 19820) and Article 2 (commencing with Section 19823) of Chapter 2 of Part 2.6 of Division 5.

(2) Sections 19849.2, 19849.3, 19849.4, and 19849.5.

(3) Chapter 4.5 (commencing with Section 19993.1) of Part 2.6 of Division 5.

(c) Notwithstanding any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law. This subdivision is declaratory of existing law.

CHAPTER 453

An act to amend Section 10295.1 of the Public Contract Code, relating to the California State University.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 10295.1 of the Public Contract Code is amended to read:

10295.1. (a) A state department or agency shall not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller's permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code. A vendor or contractor that sells tangible personal property to a state department or agency, and each affiliate of that vendor or contractor that makes sales for delivery into California, shall be regarded as a "retailer engaged in business in this state," and shall be required to collect the California sales or use tax on all its sales into the state in accordance with Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(b) Beginning on and after January 1, 2004, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a state department or state agency shall submit to that state department or agency a copy, as applicable, of that retailer's seller's permit or certificate of registration, and a copy of each of the retailer's applicable affiliate's seller's permit or certificate of registration, as described in subdivision (a). This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(c) A state department or state agency is exempted from the provisions of subdivision (a) if the executive director of that state department or agency, or his or her designee, makes a written finding that the contract is necessary to meet a compelling state interest.

(d) For the purposes of this section:

(1) "Affiliate of the vendor or contractor" means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.

(2) "Compelling state interest" includes, but is not necessarily limited to, the following:

(A) Ensuring the provision of essential services.

(B) Ensuring the public health, safety, and welfare.

(C) Responding to an emergency, as defined in Section 1102.

(3) "State department or agency" means every state office, department, division, bureau, board, and commission, but does not include the

University of California, the California State University, the Legislature, the courts, and any agency in the judicial branch of government.

CHAPTER 454

An act to add Section 5060.1 to, and to add Article 8.6 (commencing with Section 5151) to Chapter 1 of Division 1 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

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

(a) The United States District Court for the Eastern District of California in The Women's Resource Network v. Steven Gourley (2004) 305 F. Supp. 2d 1145 permanently enjoined the Director of the California Department of Motor Vehicles from issuing any new special interest license plate to private, nonprofit organizations under the current provisions of Section 5060 of the California Vehicle Code, unless the state establishes "neutral criteria to insure that the [plate] licensing decision is not based on the content or viewpoint of the speech being considered."

(b) The court did not enjoin the Director of the Department of Motor Vehicles from issuing a special interest license plate that is government speech that promotes California's state policies.

(c) This bill intends to clarify the framework for specialized license plates that contain only government speech, leaving the issue of special interest license plates designed for the benefit of private entities to other legislation.

(d) Revenue generated from special license plate programs provides a positive way to supplement funding for important governmental programs without cost to the General Fund or an increase in taxes.

SEC. 2. Section 5060.1 is added to the Vehicle Code, to read:

5060.1. Notwithstanding Section 5060 or any other provision of law to the contrary, the department shall not accept an application for participation in a special interest license plate program under Section 5060 and shall not issue, under Section 5060, special interest license plates for a new program.

SEC. 3. Article 8.6 (commencing with Section 5151) is added to Chapter 1 of Division 1 of the Vehicle Code, to read:

Article 8.6. Specialized License Plates

5151. (a) As used in this article, "state agency" means a state office, officer, department, division, bureau, board, or commission, or any other state body or agency.

(b) It is the intent of the Legislature that this article contain the authority for specialized license plates for state agencies.

5152. A person described in Section 5101 may apply for a specialized license plate under this article, in lieu of regular license plates.

5154. Specialized license plates issued under this article shall have a design or contain a message that publicizes or promotes a state agency, or the official policy, mission, or work of a state agency.

5155. The design criteria for a specialized license plate are as follows:

(a) The license plate for a passenger vehicle, commercial vehicle, or trailer shall provide a space not larger than two inches by three inches to the left of the numerical series and a space not larger than five-eighths of an inch in height below the numerical series for a distinctive design, decal, or descriptive message as authorized by this article. The license plates shall be issued in sequential numerical order or, pursuant to Section 5103, in a combination of numbers or letters.

(b) Specialized license plates authorized under this article may be issued for use on a motorcycle. That license plate shall contain a five-digit configuration issued in sequential numerical order or, pursuant to Section 5103, in a combination of numbers or letters. There shall be a space to the left of the numerical series for a distinctive design or decal and the characters shall contrast sharply with the uniform background color. A motorcycle plate containing a full plate graphic design is not authorized.

(c) Specialized license plates may be issued as environmental license plates, as defined in Section 5103.

5156. (a) (1) A state agency may apply to the department to sponsor a specialized license plate program, and the department shall issue specialized license plates for that program, if the agency complies with all of the requirements of this article.

(2) The department shall not issue specialized license plates to a state agency for a vehicle that is exempt from the payment of registration fees pursuant to Section 9101 or 9103.

(b) The department shall not establish a specialized license plate program for an agency until the department has received not less than 7,500 applications for that agency's specialized license plates. The agency shall collect and hold applications for the plates. Once the agency has received at least 7,500 applications, it shall submit the applications, along with the necessary fees, to the department. The department shall not issue a specialized license plate until the agency has received and

submitted to the department not less than 7,500 applications for that particular specialized license plate within the time period prescribed in this section. Advance payment to the department by the agency representing the department's estimated or actual administrative costs associated with the issuance of a particular specialized license plate shall not constitute compliance with this requirement. The agency shall have 12 months, following the date of approval of the agency's initial application to sponsor a specialized license plate program, to receive the required number of applications. If, after that 12 months, 7,500 applications have not been received, the agency shall immediately do either of the following:

(1) Refund to all applicants all fees or deposits that have been collected.

(2) Contact the department to indicate the agency's intent to undertake collection of additional applications and fees or deposits for an additional period, not to exceed 12 months, in order to obtain the minimum 7,500 applications. If the agency elects to exercise the option under this subparagraph, it shall contact each applicant who has submitted an application with the appropriate fees or deposits to determine if the applicant wishes a refund of fees or deposits or requests the continuance of the holding of the application and fees or deposits until that time that the agency has received 7,500 applications. The agency shall refund the fees or deposits to an applicant so requesting. The agency shall not collect and hold applications for a period exceeding 24 months following the date of approval of the agency's initial application to sponsor a specialized license plate program.

(c) (1) If the number of outstanding and valid specialized license plates in a particular program provided for in this article is less than 7,500, the department shall notify the sponsoring agency of that fact and shall inform the agency that if that number is less than 7,500 one year from the date of that notification, the department will no longer issue or replace those specialized license plates.

(2) Those particular specialized license plates that were issued prior to the discontinuation provided by paragraph (1) may continue to be used and attached to the vehicle for which they were issued and may be renewed, retained, or transferred pursuant to this code.

5157. (a) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, or transfer of the specialized license plates:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration with the plates, forty dollars ($40).

(3) For transfer of the plates to another vehicle, fifteen dollars ($15).

(4) For each substitute replacement plate, thirty-five dollars ($35).

(5) In addition, for the issuance of environmental license plates, as defined in Section 5103, with a specialized license plate design, the additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the California Environmental License Plate Fund.

(b) Except as provided in paragraph (5) of subdivision (a), and after deducting its administrative costs under this section, the department shall deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of the specialized license plates in the Specialized License Plate Fund, which is hereby established in the State Treasury. Upon appropriation by the Legislature, the moneys in that fund shall be allocated to each sponsoring agency, in proportion to the amount in the fund that is attributable to the agency's specialized license plate program. Except as authorized under Section 5159, the sponsoring agency shall expend all funds received under this section exclusively for projects and programs that promote the state agency's official policy, mission, or work.

5158. When payment of renewal fees is not required as specified in Section 4000, or when a person determines to retain the specialized license plate upon a sale, trade, or other release of the vehicle upon which the plate has been displayed, the person shall notify the department and the person may retain and use the plate as authorized by departmental regulations.

5159. A state agency that is eligible to participate in a specialized license plate program pursuant to this article and receives funds from the additional fees collected from the sale of specialized plates shall not expend annually more than 25 percent of those funds on administrative costs, marketing, or other promotional activities associated with encouraging application for, or renewal of, the specialized plates.

5160. (a) A state agency authorized under this article to offer specialized license plates shall prepare and submit an annual accounting report to the department by June 30. The report shall include an accounting of all revenues and expenditures associated with the specialized license plate program.

(b) If a state agency submits a report pursuant to subdivision (a) indicating that the agency violated the expenditure restriction set forth in Section 5159, the department shall immediately cease depositing fees for that agency's specialized license plate program in the Specialized License Plate Fund established under Section 5157 and, instead, shall deposit those fees that would have otherwise been deposited in that fund in a separate fund created by the Controller, which fund is subject to appropriation by the Legislature. The department shall immediately notify the agency of this course of action. The depositing of funds in the

account established pursuant to this paragraph shall continue until the agency demonstrates to the satisfaction of the department that the agency is in compliance or will comply with the requirements of Section 5159. If one year from the date that the agency receives the notice described in this paragraph, the agency is still unable to satisfactorily demonstrate to the department that it is in compliance or will comply with the requirements of Section 5159, the department shall no longer issue or replace those specialized license plates associated with that agency. Those particular specialized license plates that were issued prior to the discontinuation provided by this subdivision may continue to be used and attached to the vehicle for which they were issued and may be renewed, retained, or transferred pursuant to this code.

(c) Upon receiving the reports required under subdivision (a), notwithstanding Section 7550.5 of the Government Code, the department shall prepare and transmit an annual consolidated report to the Legislature containing the revenue and expenditure data.

SEC. 4. (a) If Senate Bill 651 is not enacted during the 2005–06 Regular Session, or is enacted during that session but does not establish a special interest license plate program, Sections 2 and 3 of this act shall become operative on the effective date of this act.

(b) If Senate Bill 651 is enacted during the 2005–06 Regular Session and establishes a special interest license plate program, Sections 2 and 3 of this act shall not become operative, except as required under subdivision (c).

(c) If Senate Bill 651 is enacted during the 2005–06 Regular Session and establishes a special interest license plate program, but that program is later held to be unconstitutional, or is otherwise rendered inoperative, by the final judgment of a court of competent jurisdiction, Sections 2 and 3 of this act shall become operative on the effective date of that judgment.

CHAPTER 455

An act to add Section 2782.8 to the Civil Code, relating to indemnity.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 2782.8 is added to the Civil Code, to read:

2782.8. (a) For all contracts, and amendments thereto, entered into on or after January 1, 2007, with a public agency for design professional services, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any such contract, and amendments thereto, that purport to indemnify, including the cost to defend, the public agency by a design professional against liability for claims against the public agency, are unenforceable, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. 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.

(b) For purposes of this section, the following definitions apply:

(1) "Public agency" includes any county, city, city and county, district, school district, public authority, municipal corporation, or other political subdivision, joint powers authority, or public corporation in the state. Public agency does not include the State of California.

(2) "Design professional" includes all of the following:

(A) An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.

(B) An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.

(C) An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.

(D) An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

(c) This section shall only apply to a professional service contract, or any amendment thereto, entered into on or after January 1, 2007.

CHAPTER 456

An act to add and repeal Article 10.1 (commencing with Section 926.1) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurer investments.

[Approved by Governor September 25, 2006. Filed with
Secretary of State September 25, 2006.]

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

SECTION 1. Article 10.1 (commencing with Section 926.1) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 10.1. California Insurance Community Investment

926.1. As used in this article, the following terms shall have the following meanings:

(a) "Area median income" (AMI) means either of the following:

(1) The median family income for the Metropolitan Statistical Area (MSA), if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions.

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(b) "Community Development Investment" means an investment where all or a portion of the investment has as its primary purpose community development for, or that directly benefits, California low-income or moderate-income individuals, families, or communities. "Community Development Investment" includes, but is not limited to, investments in California in the following:

(1) Affordable housing, including multifamily rental and ownership housing, for low-income or moderate-income individuals or families.

(2) Community facilities or community services providers (including providers of education, health, or social services) directly benefiting low-income or moderate-income individuals, families or communities.

(3) Economic development that demonstrates benefits, including, but not limited to, job creation, retention or improvement, or provision of needed capital, to low-income, or moderate-income, individuals, families, or communities, including urban or rural communities, or businesses or nonprofit community service organizations that serve these communities.

(4) Activities that revitalize or stabilize low-income or moderate-income communities.

(5) Investments in or through California Organized Investment Network (COIN)-certified Community Development Financial Institutions (CDFIs) and investments made pursuant to the requirements of federal, state, or local community development investment programs or community development investment tax incentive programs, if these

investments directly benefit low-income, or moderate-income, individuals, families, and communities and are consistent with this article.

(6) Community Development Infrastructure Investments.

(7) Investments in a commercial property or properties located in low-income or moderate-income geographical areas and are consistent with this article.

(c) "Community Development Infrastructure" means California public debt (including all debt issued by the State of California or a California State or local government agency) where all or a portion of the debt has as its primary purpose community development for, or that directly benefits, low-income or moderate-income communities and is consistent with subdivision (b).

(d) "Geography" means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(e) "Insurer" means an admitted insurer as defined in Section 24, including the State Compensation Insurance Fund, or a domestic fraternal benefit society as defined in Section 10990.

(f) "Investment" means a lawful equity or debt investment, or loan, or deposit obligation, or other investment or investment transaction allowed by the Insurance Code.

(g) "Low-income" means an individual income that is less than 50 percent of the AMI, or a median family income that is less than 50 percent of the AMI in the case of a geographical area.

(h) "MSA" means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(i) "Moderate income" means an individual income that is at least 50 percent but less than 80 percent of the AMI, or a median family income that is at least 50 percent but less than 80 percent of the AMI in the case of a geographical area.

(j) "Nonmetropolitan area" means any area that is not located in an MSA.

926.2. (a) Each insurer admitted in California shall provide information biennially to the commissioner on all its Community Development Investments and Community Development Infrastructure Investments in California. This information shall be provided as part of the required filing pursuant to Section 900 or Section 11131, or through a data call, or by other means as determined by the commissioner. COIN shall provide insurers with information on why investments, if any, were found not to be qualified by the commissioner.

(b) The commissioner shall biennially provide information on the department's Internet Web site on the aggregate insurer Community Development Investments and Community Development Infrastructure Investments. Insurers that make investments that are innovative,

responsive to community needs, not routinely provided by insurers, or have a high degree of positive impact on the economic welfare of low-income or moderate-income individuals, families, or communities in urban or rural California shall be identified.

(c) The department shall also biennially provide information on the department's Internet Web site regarding the aggregate amount of California public debt (including all debt issued by the State of California or a California State or local government agency) purchased by insurers as reported to the department in their National Association of Insurance Commissioners (NAIC) annual statement filing pursuant to Section 900 or Section 11131.

(d) The department shall also biennially provide on its Internet Web site the aggregate amount of identified California investments, as reported to the NAIC in the annual statement filed pursuant to Section 900 or Section 11131.

(e) The first report under this article shall be filed with the commissioner by May 31, 2007.

(f) Insurers that did not comply with the voluntary community investment data call issued by the commissioner in May 2005 shall provide the information requested therein to the commissioner on or before February 28, 2007.

(g) This article shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

(h) Nothing in this article shall limit the authority of the commissioner to ask for data concerning community development investments on a voluntary basis on or after January 1, 2010, if this article is not extended.

CHAPTER 457

An act to amend Sections 8030.2, 8030.4, 8030.6, and 8030.8 of the Business and Professions Code, relating to shorthand reporters.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. 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 become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. 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 become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. 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 become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 8030.8 of the Business and Professions Code is amended to read:

8030.8. (a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons.

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorneys' fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

(7) The certified shorthand reporter's invoice for transcripts shall include separate itemizations of charges claimed, as follows:

(A) Total charges and rates for customary services in preparation of an original transcript and one copy or a copy of the transcript of depositions.

(B) Total charges and rates for expedited deposition transcripts.

(C) Total charges and rates in connection with transcription of court proceedings.

(b) For an applicant claiming to be eligible pursuant to subdivision (a), (b), or (c) of Section 8030.4, a letter from the director of the project or center, certifying that the project or center meets the standards set forth in one of those subdivisions and that the litigant or litigants are indigent persons, is sufficient documentation to establish eligibility.

(c) For an applicant claiming to be eligible pursuant to subdivision (d) of Section 8030.4, a letter certifying that the applicant meets the requirements of that subdivision, that the case is not a fee-generating case, as defined in subdivision (g) of Section 8030.4, and that the litigant or litigants are indigent persons, together with a letter from the director of a project or center defined in subdivision (a), (b), or (c) of Section 8030.4 certifying that the litigant or litigants had been referred by that project or center to the applicant, is sufficient documentation to establish eligibility.

(d) The applicant may receive reimbursement directly from the board when the applicant has previously paid the certified shorthand reporter for transcripts as provided in Section 8030.6. To receive payment directly, the applicant shall submit, in addition to all other required documentation, an itemized statement signed by the certified shorthand reporter performing the services that describes payment for transcripts in accordance with the requirements of Section 8030.6.

(e) The board may prescribe appropriate forms to be used by applicants and certified shorthand reporters to facilitate these requirements.

(f) This chapter does not restrict the contractual obligation or payment for services, including, but not limited to, billing the applicant directly, during the pendency of the claim.

(g) This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 458

An act to amend Sections 5050 and 5134 of, to add Sections 5035.3, 5050.1, 5050.2, 5096.13, 5096.14, and 5096.15 to, and to add and repeal Section 5096.12 of, the Business and Professions Code, relating to accountancy, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2006. Filed with
Secretary of State September 25, 2006.]

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

SECTION 1. Section 5035.3 is added to the Business and Professions Code, to read:

5035.3. For purposes of subdivision (b) of Section 5050 and Sections 5054 and 5096.12, "firm" includes any entity that is authorized or permitted to practice public accountancy as a firm under the laws of another state.

SEC. 2. Section 5050 of the Business and Professions Code is amended to read:

5050. (a) Except as provided in subdivisions (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.

(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that:

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

SEC. 3. Section 5050.1 is added to the Business and Professions Code, to read:

5050.1. (a) Any person that engages in any act that is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the board. This subdivision is declarative of existing law.

(b) Any person engaged in the practice of public accountancy under subdivision (a) is deemed to have appointed the regulatory authority of the state or foreign jurisdiction that issued the person's permit, certificate, license or other authorization to practice as the person's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the board against or involving that person.

SEC. 4. Section 5050.2 is added to the Business and Professions Code, to read:

5050.2. (a) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the holder of an authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act that would be a violation of this code or grounds for discipline against a licensee or holder of a practice privilege, or ground for denial of a license or practice privilege under this code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (b) of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act that would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that section.

SEC. 5. Section 5096.12 is added to the Business and Professions Code, to read:

5096.12. (a) A certified public accounting firm that is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege.

(2) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm for any act that would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

SEC. 6. Section 5096.13 is added to the Business and Professions Code, to read:

5096.13. The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its federal taxpayer identification number.

SEC. 7. Section 5096.14 is added to the Business and Professions Code, to read:

5096.14. The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of Regulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.

SEC. 8. Section 5096.15 is added to the Business and Professions Code, to read:

5096.15. It is the intent of the Legislature that the board adopt regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege. These regulations shall ensure that the practice privilege program is adequately funded. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and, for purposes of that chapter, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

SEC. 9. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the examination, plus the estimated cost to the board of administering the examination and shall not exceed six hundred dollars ($600). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the examination or any of its component parts, plus the estimated cost to the board of administering the examination and not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the registration and shall not exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (e), inclusive, and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the

practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars ($125).

(2) On and after enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

(k) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(*l*) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(m) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

SEC. 10. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600). The board may charge a reexamination fee not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to

sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars ($125).

(2) On and after enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

(k) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(*l*) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

SEC. 11. Section 10 of this bill incorporates amendments to Section 5134 of the Business and Professions Code proposed by both this bill and SB 503. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 5134 of the Business and Professions Code, and (3) this bill is enacted after SB 503, in which case Section 5134 of the Business and Professions Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of SB 503, at which time Section 10 of this bill shall become operative.

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.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that accountants licensed by another jurisdiction be permitted to lawfully provide services to their clients in California as soon as possible, it is necessary that this bill take effect immediately.

CHAPTER 459

An act to add Sections 53601.8 and 53635.8 to the Government Code, relating to local agency investments.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 53601.8 is added to the Government Code, to read:

53601.8. Notwithstanding Section 53601 or any other provision of this code, a local agency, at its discretion, may invest a portion of its surplus funds in certificates of deposit at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit, provided that the purchases of certificates of deposit pursuant to this section, Section 53635.8, and subdivision (h) of Section 53601 do not, in total, exceed 30 percent of the agency's funds that may be invested for this purpose. The following conditions shall apply:

(a) The local agency shall choose a nationally or state chartered commercial bank, savings bank, savings and loan association, or credit union in this state to invest the funds, which shall be known as the "selected" depository institution.

(b) The selected depository institution may submit the funds to a private sector entity that assists in the placement of certificates of deposit with one or more commercial banks, savings banks, savings and loan associations, or credit unions that are located in the United States, for the local agency's account.

(c) The full amount of the principal and the interest that may be accrued during the maximum term of each certificate of deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(d) The selected depository institution shall serve as a custodian for each certificate of deposit that is issued with the placement service for the local agency's account.

(e) At the same time the local agency's funds are deposited and the certificates of deposit are issued, the selected depository institution shall receive an amount of deposits from other commercial banks, savings banks, savings and loan associations, or credit unions that, in total, are equal to, or greater than, the full amount of the principal that the local agency initially deposited through the selected depository institution for investment.

(f) A local agency may not invest surplus funds with a selected depository institution for placement as certificates of deposit pursuant to this section on or after January 1, 2012. A local agency's surplus funds, invested pursuant to this section before January 1, 2012, may remain invested in certificates of deposit issued through a private sector entity for the full term of each certificate of deposit.

(g) Notwithstanding subdivisions (a) to (f), inclusive, no credit union may act as a selected depository institution under this section or Section 53635.8 unless both of the following conditions are satisfied:

(1) The credit union offers federal depository insurance through the National Credit Union Administration.

(2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally-insured credit unions in one or more certificate of deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.

(h) It is the intent of the Legislature that nothing in this section shall restrict competition among private sector entities that provide placement services pursuant to this section.

SEC. 2 Section 53635.8 is added to the Government Code, to read:

53635.8. Notwithstanding Section 53601 or any other provision of this code, a local agency, at its discretion, may invest a portion of its surplus funds in certificates of deposit at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit, provided that the purchases of certificates of deposit pursuant to this section, Section 53601.8, and subdivision (h) of Section 53601 do not, in total, exceed 30 percent of the agency's funds that may be invested for this purpose. The following conditions shall apply:

(a) The local agency shall choose a nationally or state chartered commercial bank, savings bank, savings and loan association, or credit union in this state to invest the funds, which shall be known as the "selected" depository institution.

(b) The selected depository institution may submit the funds to a private sector entity that assists in the placement of certificates of deposit

with one or more commercial banks, savings banks (savings and loan associations), or credit unions that are located in the United States, for the local agency's account.

(c) The full amount of the principal and the interest that may be accrued during the maximum term of each certificate of deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(d) The selected depository institution shall serve as a custodian for each certificate of deposit that is issued with the placement service for the local agency's account.

(e) At the same time the local agency's funds are deposited and the certificates of deposit are issued, the selected depository institution shall receive an amount of deposits from other commercial banks, savings banks, savings and loan associations, or credit unions that, in total, are equal to, or greater than, the full amount of the principal that the local agency initially deposited through the selected depository institution for investment.

(f) A local agency may not invest surplus funds with a selected depository institution for placement as certificates of deposit pursuant to this section on or after January 1, 2012. A local agency's surplus funds, invested pursuant to this section before January 1, 2012, may remain invested in certificates of deposit issued through a private sector entity for the full term of each certificate of deposit.

(g) Notwithstanding subdivisions (a) to (f), inclusive, no credit union may act as a selected depository institution under this section or Section 53601.8 unless both of the following conditions are satisfied:

(1) The credit union offers federal depository insurance through the National Credit Union Administration.

(2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally-insured credit unions in one or more certificate of deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.

(h) It is the intent of the Legislature that nothing in this section shall restrict competition among private sector entities that provide placement services pursuant to this section.

CHAPTER 460

An act to amend Section 56434 of the Government Code, relating to local agency formation.

[Approved by Governor September 25, 2006. Filed with
Secretary of State September 25, 2006.]

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

SECTION 1. Section 56434 of the Government Code is amended to read:

56434. (a) The commission may review and comment upon both of the following:

(1) The extension of services into previously unserved territory within unincorporated areas.

(2) The creation of new service providers to extend urban type development into previously unserved territory within unincorporated areas.

(b) The purpose of the review authorized by this section shall be to ensure that the proposed extension of services or creation of new service providers is consistent with the policies of Sections 56001, 56300, 56301, and the adopted policies of the commission implementing these sections, including promoting orderly development, discouraging urban sprawl, preserving open space and prime agricultural lands, providing housing for persons and families of all incomes, and the efficient extension of governmental services.

(c) 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.

CHAPTER 461

An act to add Chapter 24.5 (commencing with Section 22755) to Division 8 of the Business and Professions Code, relating to plastic merchandise containers.

[Approved by Governor September 25, 2006. Filed with
Secretary of State September 25, 2006.]

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

SECTION 1. Chapter 24.5 (commencing with Section 22755) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 24.5. PLASTIC BULK MERCHANDISE CONTAINERS

22755. (a) For purposes of this section, a plastic bulk merchandise container means a plastic crate or shell used by a product producer, distributor, or retailer, or an agent of the product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers of milk, eggs, or bottled beverage products.

(b) Any person or entity purchasing plastic bulk merchandise containers, who is in the business of recycling, shredding, or destruction of plastic bulk merchandise containers, shall obtain a proof of ownership record from a person selling five or more plastic bulk merchandise containers that shows that the person selling the containers has lawful possession or ownership of the containers, and shall also verify the seller's identity by a driver's license or other government-issued photo identification. The proof of ownership record shall include all of the following information:

(1) The name, address, telephone number, and signature of the seller or the seller's authorized representative.

(2) The name and address of the buyer or consignee if not sold.

(3) A description of the product including number of units.

(4) The date of transaction.

(c) The information required to be collected by this section shall be kept for one year from the date of purchase or delivery, whichever is later.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 and repeal Section 12805.3 of the Government Code, relating to public resources.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

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

(a) The Wildlife Conservation Board is responsible for the review and approval of the acquisition of resource lands and easements for the Department of Fish and Game.

(b) The State Public Works Board is responsible for the review and approval of the acquisition of resource lands and easements for other state agencies and departments, including the Department of Parks and Recreation and the state conservancies.

(c) In 2004, the California Performance Review identified numerous concerns with the existing State Public Works Board's review and approval process for land acquisition with cultural, natural, and recreational values.

SEC. 2. Section 12805.3 is added to the Government Code, to read:

12805.3. (a) The Secretary of the Resources Agency and the Director of Finance shall jointly convene a workgroup to evaluate and develop options for improving the efficiency of state resource land acquisition transactions for those departments and conservancies subject to the jurisdiction of the State Public Works Board. At a minimum, the workgroup shall address the issues raised by the California Performance Review in 2004 regarding the State Public Works Board's review and approval process for resource land acquisition, such as the length of time for the review and approval of acquisitions, the expertise of the board, and the level of confidentiality regarding site selection.

(b) The workgroup shall not exceed 11 members and shall include, but not be limited to, representatives from all of the following:

(1) The Wildlife Conservation Board.

(2) The Department of Parks and Recreation.

(3) The State Coastal Conservancy and one or more other state conservancies with land acquisition responsibilities.

(4) The Legislative Analyst's Office.

(5) Natural resource organizations with an interest in and experience with the state land acquisition processes.

(c) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2008, the Resources Agency and the Director of Finance shall report to the Governor and the Legislature on the outcomes of the workgroup.

(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

(e) For purposes of this section, "resource land acquisition" means acquiring an interest in property that has cultural, natural, or recreational resource value.

CHAPTER 463

An act to amend Sections 7055, 103050, and 103075 of the Health and Safety Code, relating to human remains.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

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

SECTION 1. Section 7055 of the Health and Safety Code is amended to read:

7055. (a) Every person, who for himself or herself or for another person, inters or incinerates a body or permits the same to be done, or removes any remains, other than cremated remains, from the primary registration district in which the death or incineration occurred or the body was found, except a removal by a funeral director in a funeral director's conveyance or an officer of a duly accredited medical college engaged in official duties with respect to the body of a decedent who has willfully donated his or her body to the medical college from that registration district or county to another registration district or county, or within the same registration district or county, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or removes interred human remains from the cemetery in which the interment occurred, or removes cremated remains from the premises on which the cremation occurred without the authority of a removal permit is guilty of a misdemeanor and punishable as follows:

(1) For the first offense, by a fine of not less than ten dollars ($10) nor more than five hundred dollars ($500).

(2) For each subsequent offense, by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500) or imprisonment in the county jail for not more than 60 days, or by both.

(b) Notwithstanding subdivision (a), a funeral director of a licensed out-of-state funeral establishment may transport human remains out of this state without a removal permit when he or she is acting within the requirements specified in subdivision (b) of Section 103050.

SEC. 2. Section 103050 of the Health and Safety Code is amended to read:

103050. (a) No person shall dispose of human remains unless both of the following has occurred:

(1) There has been obtained and filed with a local registrar a death certificate, as provided in Chapter 6 (commencing with Section 102775).

(2) There has been obtained from a local registrar a permit for disposition.

(b) (1) Notwithstanding subdivision (a), neither a death certificate nor a permit for disposition shall be required to transport human remains from California to an adjacent state for disposition in that state when all of the following circumstances exist:

(A) The remains are found within 50 miles of the California border and the nearest licensed funeral establishment is within 20 miles of the border in the adjacent state, and the remains are released to that funeral establishment.

(B) The coroner with jurisdiction over the area in which the remains were found authorizes their release pursuant to paragraph (2).

(2) The coroner may release the remains to a licensed out-of-state funeral establishment without a death certificate or permit for disposition when he or she determines that all of the following conditions exist:

(A) No forensic interest in the remains exists.

(B) A reasonable certainty exists that the cause of death will be provided either by the primary physician, or by a review of medical records by the coroner or medical examiner.

(3) The coroner with jurisdiction over the area in which the remains were found who releases the remains to an out-of-state funeral establishment shall, within 72 hours after the remains were found, file a death certificate with the local registrar.

(c) Nothing in this section shall exempt a coroner, health officer, health care provider, or other individual from requirements to report a case or suspected case of any reportable communicable diseases or conditions pursuant to any provision of the Health and Safety Code or the California Code of Regulations.

SEC. 3. Section 103075 of the Health and Safety Code is amended to read:

103075. Except when a permit is not required to be issued pursuant to subdivision (b) of Section 103050, the permit shall accompany the body to its destination, where, if within this state, it shall be delivered to the person in charge of the place of interment.

CHAPTER 464

An act to amend Sections 25620.1, 25740, 25741, 25742, 25743, 25746, and 25751 of, to add Sections 25470.5 and 25744.5 to, and to repeal Sections 25745 and 25749 of, the Public Resources Code, and to amend Sections 387, 399.11, 399.12, 399.13, 399.14, and 399.15 of, to add Article 9 (commencing with Section 635) to Chapter 3 of Part 1 of Division 1 of, to add and repeal Section 2854 of, and to repeal and add Section 399.16 of, the Public Utilities Code, relating to energy.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 25620.1 of the Public Resources Code is amended to read:

25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program that is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets. The commission shall administer the program consistent with the policies of this chapter.

(b) The general goal of the program is to develop, and help bring to market, energy technologies that provide increased environmental benefits, greater system reliability, and lower system costs, and that provide tangible benefits to electrical utility customers through investments in the following:

(1) Advanced electricity and natural gas transportation technologies that reduce air pollution and emissions of greenhouse gases beyond applicable standards, and that benefit electricity and natural gas ratepayers.

(2) Increased energy efficiency in buildings, appliances, lighting, and other applications beyond applicable standards, and that benefit electrical utility customers.

(3) Advanced electricity generation technologies that exceed applicable standards to increase reductions in emissions of greenhouse gases from electricity generation, and that benefit electric utility customers.

(4) Advanced electricity technologies that reduce or eliminate consumption of water or other finite resources, increase use of renewable

energy resources, or improve transmission or distribution of electricity generated from renewable energy resources.

(c) To achieve the goals established in subdivision (b), the commission shall adopt a portfolio approach for the program that does all of the following:

(1) Effectively balances the risks, benefits, and time horizons for various activities and investments that will provide tangible energy or environmental benefits for California electricity customers.

(2) Emphasizes innovative energy supply and end-use technologies, focusing on their reliability, affordability, and environmental attributes.

(3) Includes projects that have the potential to enhance transmission and distribution capabilities.

(4) Includes projects that have the potential to enhance the reliability, peaking power, and storage capabilities of renewable energy.

(5) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 399.8 of the Public Utilities Code.

(6) Addresses key technical and scientific barriers.

(7) Demonstrates a balance between short-term, mid-term, and long-term potential.

(8) Ensures that prior, current, and future research not be unnecessarily duplicated.

(9) Provides for the future market utilization of projects funded through the program.

(10) Ensures an open project selection process and encourages the awarding of research funding for a diverse type of research as well as a diverse award recipient base and equally considers research proposals from the public and private sectors.

(11) Coordinates with other related research programs.

(d) The term "award," as used in this chapter, may include, but is not limited to, contracts, grants, interagency agreements, loans, and other financial agreements designed to fund public interest research, demonstration, and development projects or programs.

SEC. 2. Section 25740 of the Public Resources Code is amended to read:

25740. It is the intent of the Legislature in establishing this program, to increase the amount of electricity generated from eligible renewable energy resources per year, so that it equals at least 20 percent of total retail sales of electricity in California per year by December 31, 2010.

SEC. 3. 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.

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

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

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

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

(D) The technology produces no hazardous wastes.

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

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

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

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

(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. 4. Section 25740.5 is added to the Public Resources Code, to read:

25740.5. (a) The commission shall optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued.

(b) The commission's long-term goal shall be a fully competitive and self-sustaining supply of electricity generated from renewable sources.

(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable electricity generation facilities, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(d) An additional objective of the program shall be to identify and support emerging renewable technologies in distributed generation applications that have the greatest near-term commercial promise and that merit targeted assistance.

(e) The Legislature recommends allocations among all of the following:

(1) (A) Except as provided in subparagraph (B), production incentives for new in-state renewable electricity generation facilities, including repowered or refurbished facilities.

(B) Allocations shall not be made for electricity that is generated by an in-state renewable electricity generation facility that remains under an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives may be allowed in any month for incremental new electricity generated by an in-state renewable electricity generation facility that is repowered or refurbished, where the electricity is delivered under an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, if all of the following occur:

(i) The facility's electricity purchase contract provides that all electricity delivered and sold under the contract is paid at a price that does not exceed the Public Utilities Commission approved short-run avoided cost of energy.

(ii) Either of the following is true:

(I) The electricity purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) The facility's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the electricity purchase contract, the electricity purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

(2) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(3) Customer education.

(4) Incentives for reducing fuel costs, that are confirmed to the satisfaction of the commission, at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including improved air quality.

(5) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the commission. The commission may require financial disclosure from applicants for purposes of this paragraph.

(6) Specified fuel cell technologies, if the commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the report made pursuant to Section 25748.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the

long-term objective of a self-sustaining, competitive supply of electricity generated from renewable sources.

(7) Existing wind-generating resources, if the commission finds that the existing wind-generating resources are a cost-effective source of reliable energy and environmental benefits compared with other in-state renewable electricity generation facilities, and that the existing wind-generating resources require financial assistance to remain economically viable. The commission may require financial disclosure from applicants for the purposes of this paragraph.

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

SEC. 5. Section 25742 of the Public Resources Code is amended to read:

25742. (a) Ten 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 incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (4), (5), and (7) 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, including the following conditions:

(1) The commission shall establish a production incentive, which shall not exceed payment caps established by the commission, representing the difference between target prices and the price paid for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and price paid for electricity or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation.

(2) The commission may establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price.

(3) The commission may consider inflation and production costs.

(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 is used on site.

(d) (1) The commission shall award funding to eligible facilities based on a facility's individual need. In assessing a facility's individual need, the commission shall, to the extent feasible, consider all of the following:

(A) The amount of the funds being considered for an award to the facility.

(B) The cumulative amount of funds the facility has received previously from the commission and other state sources.

(C) The value of any current federal or state tax credits.

(D) The facility's contract price for energy and capacity.

(E) The likelihood that the award will make the facility competitive and self-sustaining within the 2007–2011 investment cycle.

(F) Any other criteria as determined by the commission.

(2) The assessment shall also consider the public benefits provided by the operation of the facility.

(3) The commission shall use its assessment of the facility's individual need to determine the value of an award to the public relative to other renewable energy investment alternatives.

(4) The commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.

SEC. 6. Section 25743 of the Public Resources Code is amended to read:

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

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

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

(A) The commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy

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

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

(C) Supplemental energy payments awarded to facilities selected by a retail seller or procurement entity pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be paid for no longer than 10 years, but shall, subject to the payment caps in subparagraph (A), be equal to the cumulative above-market costs relative to the applicable market price referent at the time of initial contracting, over the duration of the contract with the retail seller or procurement entity.

(D) The commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

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

(F) A project selected by an electrical corporation may receive supplemental energy payments only if it results from a competitive solicitation that is found by the Public Utilities Commission to comply with the California Renewables Portfolio Standard Program under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, and the project has entered into an electricity purchase agreement resulting from that solicitation, that is approved by the Public Utilities Commission. A project selected for an electricity purchase agreement by another retail seller or procurement entity may receive supplemental energy payments only if the Public Utilities Commission determines that the selection of the project is consistent with the results of a least-cost and best-fit process, and the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers. The commission may not award supplemental energy payments to service load that is not subject to the renewable energy public goods charge.

(G) (i) Supplemental energy payments shall not be awarded for any purchases of renewable energy credits.

(ii) Supplemental energy payments shall not be awarded for electricity purchase agreements that have a duration of less than 10 years. The ineligibility of agreements of less than 10 years duration for supplemental energy payments does not constitute an insufficiency in supplemental energy payments pursuant to paragraph (4) or (5) of subdivision (b) of Section 399.15.

(2) (A) A facility that is located outside of California shall not be eligible for funding under this section unless it satisfies the requirements of this subdivision and the criteria of subparagraph (B) of paragraph (2) of subdivision (b) of Section 25741.

(B) No more than 10 percent of the funds available under this section shall be awarded to facilities located outside of California.

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

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

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

(C) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code, or any other provision authorizing an appropriation of water.

(D) Is a solid waste conversion facility, unless the facility meets the criteria established in paragraph (3) of subdivision (b) of Section 25741 and the facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000), has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

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

(5) The commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project

proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

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

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

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

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

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

(1) Agricultural crops and agricultural wastes and residues.

(2) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

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

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

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

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

Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

SEC. 7. Section 25744.5 is added to the Public Resources Code, to read:

25744.5. The commission shall allocate and use funding available for emerging renewable technologies pursuant to Section 25744 and Section 25751 to fund photovoltaic and solar thermal electric technologies in accordance with eligibility criteria and conditions established pursuant to Chapter 8.8 (commencing with Section 25780).

SEC. 8. Section 25745 of the Public Resources Code is repealed.

SEC. 9. Section 25746 of the Public Resources Code is amended to read:

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

(b) If the commission provides funding for a regional accounting system to verify compliance with the renewable portfolio standard by retail sellers, pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, the commission shall recover all costs from user fees.

SEC. 10. Section 25749 of the Public Resources Code is repealed.

SEC. 11. Section 25751 of the Public Resources Code is amended to read:

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

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

(1) The Existing Renewable Resources Account.

(2) New Renewable Resources Account.

(3) Emerging Renewable Resources Account.

(4) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended, only upon appropriation by the Legislature in the annual Budget Act, for the following purposes:

(1) The administration of this article by the state.

(2) The state's expenditures associated with the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(d) That portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to Section

25740.5, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 399.6 of the Public Utilities Code. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts.

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

SEC. 12. Section 387 of the Public Utilities Code is amended to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, 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. 13. Section 399.11 of the Public Utilities Code is amended to read:

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

(a) In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California's reliance on eligible renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of eligible renewable energy resources and the delivery of the electricity generated by those resources to customers in California may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered

by the State Energy Resources Conservation and Development Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(e) New and modified electric transmission facilities may be necessary to facilitate the state achieving its renewables portfolio standard targets.

SEC. 14. 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) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(b) "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 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 require a new or increased appropriation or diversion of water from a watercourse.

(B) Notwithstanding subparagraph (A), an existing conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource. A new conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource so long as it does not require a new or increased appropriation or diversion of water from a watercourse.

(3) 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.

(c) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(d) "Local publicly owned electric utility" has the same meaning as provided in subdivision (d) of Section 9604.

(e) "Procure" means that a retail seller 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.

(f) "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.

(g) (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 minimus quantity, as determined by the Energy Commission, shall result in the creation of a renewable energy credit.

(h) "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. 15. Section 399.13 of the Public Utilities Code is amended to read:

399.13. The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (b) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.

(d) Certify, for purposes of compliance with the renewable portfolio standard requirements by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, if the Energy Commission determines that the following conditions have been satisfied:

(1) The local publicly owned electric utility that is procuring the electricity is in compliance with the requirements of Section 387.

(2) The local publicly owned electric utility has established an annual renewables portfolio standard target comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.

(e) Allocate and award supplemental energy payments pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the

Public Resources Code, to eligible renewable energy resources to cover above-market costs of renewable energy. A project selected by an electrical corporation may receive supplemental energy payments only if it results from a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard Program under this article and the project has entered into an electricity purchase agreement resulting from that solicitation that is approved by the commission. A project selected for an electricity purchase agreement by another retail seller may receive supplemental energy payments only if the retail seller demonstrates to the commission that the selection of the project is consistent with the results of a least-cost and best-fit process, and that the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers.

SEC. 16. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) (1) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(2) The commission shall adopt, by rulemaking, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) (i) Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

(ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

(I) Utilize flexible delivery points.

(II) Ensure the availability of any needed transmission capacity.

(III) If the retail seller is an electric corporation, to construct needed transmission facilities.

(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators. A contract for the purchase of electricity generated by an eligible renewable energy resource shall, at a minimum, include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include the requirement that, no later than six months after the commission's approval of an electricity purchase agreement entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of eligible renewable energy resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for eligible renewable energy resources of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide

tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, subject to the following conditions:

(1) No supplemental energy payments shall be awarded for a contract of less than 10 years' duration. The ineligibility of contracts of less than 10 years' duration for supplemental energy payments pursuant to this paragraph does not constitute an insufficiency in supplemental energy payments pursuant to paragraph (4) or (5) of subdivision (b) of Section 399.15.

(2) The commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

(c) The commission shall review and accept, modify, or reject each electrical corporation's renewable energy procurement plan prior to the commencement of renewable procurement pursuant to this article by an electrical corporation.

(d) The commission shall review the results of an eligible renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate the contracts or conduct a new solicitation.

(e) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. The commission shall enforce comparable penalties on any other retail seller that fails to meet annual procurement targets established pursuant to Section 399.15.

(f) (1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for deliveries of eligible renewable energy resources to satisfy annual renewables portfolio standard obligations. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

(2) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that

are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.

(3) A project selected for a long-term electricity purchase contract of more than 10 years' duration by a procurement entity through a competitive solicitation, and approved by the commission, may receive supplemental energy payments from the Energy Commission if the transaction satisfies the requirements of subdivision (b) of Section 25743 of the Public Resources Code.

(g) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Sections 25742 and 25743 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives or supplemental energy payments is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 17. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewable energy resources.

(b) The commission shall implement annual procurement targets for each retail seller as follows:

(1) Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.

(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and to the extent applicable, adjusted going forward pursuant to Section 399.12.

(3) Only for purposes of establishing these targets, the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover any above-market costs of eligible renewable energy resources.

(5) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover any above-market costs of electricity procured from eligible renewable energy resources through an electricity purchase agreement of at least 10 years' duration, the commission shall allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c).

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available electricity.

(d) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division

15 of the Public Resources Code, consistent with this article, for any above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources by an electrical corporation, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades, shall not be eligible for supplemental energy payments, but are recoverable in rates, as authorized by the commission. The Energy Commission shall not award supplemental energy payments to service load that is not subject to the renewable energy public goods charge.

(e) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(f) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

SEC. 18. Section 399.16 of the Public Utilities Code is repealed.

SEC. 19. Section 399.16 is added to the Public Utilities Code, to read:

399.16. (a) The commission, by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article, subject to the following conditions:

(1) Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).

(2) A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(3) The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility.

(4) All revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers.

(5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the

ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.12 and count towards the renewables portfolio standard obligations of the purchasing retail seller.

(7) The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article.

(8) No retail seller shall be obligated to procure renewable energy credits to satisfy the requirements of this article in the event that supplemental energy payments, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of long-term contracts, of more than 10 years' duration, with eligible renewable energy resources.

(9) Any additional condition that the commission determines is reasonable.

(b) The commission shall allow an electrical corporation to recover the reasonable costs of purchasing renewable energy credits in rates.

SEC. 20. Article 9 (commencing with Section 635) is added to Chapter 3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 9. Long-Term Plans and Procurement Plans

635. In a long-term plan adopted by an electrical corporation or in a procurement plan implemented by a local publicly owned electric utility, the electrical corporation or local publicly owned electric utility shall adopt a strategy applicable both to newly constructed or repowered generation owned and procured by the electrical corporation or local publicly owned electric utility to achieve efficiency in the use of fossil fuels and to address carbon emissions.

SEC. 21. Section 2854 is added to Chapter 9 of Part 2 of Division 1 of the Public Utilities Code, to read:

2854. (a) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2008, the commission shall report to the Legislature on the feasibility, desirability, and design of

performance-based incentives for solar energy systems of less than 30 kilowatt.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 22. By June 30, 2007, the Public Utilities Commission, in consultation with the State Energy Resources Conservation and Development Commission, shall review the impact of allowing supplemental energy payments to be applied toward contracts for the procurement of eligible renewable energy resources that are of a duration of less than 10 years, and to report to the Legislature with the results of the review, including both of the following:

(a) The impact that higher priced short-term contracts may have on the allocation of supplemental energy payments.

(b) Recommended methods to fairly allocate supplemental energy payments for the above-market costs of short-term contracts that ensure that no more supplemental energy payments are paid for those contracts than would have been allocated for an equivalent long-term contract.

SEC. 23. 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 465

An act to amend Sections 18600, 18602, 18613, 18618, 18646, 18706, 18711, 18822, 18824, 18880, and 18882 of, to add Sections 18602.5 and 18828 to, and to repeal Section 18603 of, the Business and Professions Code, relating to the Boxing Act.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 18600 of the Business and Professions Code is amended to read:

18600. This chapter shall be known and may be cited as the Boxing Act or the State Athletic Commission Act.

Whenever a reference is made to the Boxing Act or the State Athletic Commission Act by the provisions of any statute, it is to be construed as referring to the provisions of this chapter.

SEC. 2. 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 become inoperative on July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, which becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the commission subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 3. Section 18602.5 is added to the Business and Professions Code, to read:

18602.5. (a) The commission shall adopt and submit a strategic plan to the Governor and the Legislature on or before September 30, 2008. The commission shall also submit a report to the Governor and the Legislature on the status of the adoption of the strategic plan during the commission's next regularly scheduled sunset review after January 1, 2007. The strategic plan shall include, but shall not be limited to, efforts to resolve prior State Athletic Commission deficiencies in the following areas:

(1) Regulation of the profession, what fees should be paid for this regulation, and the structure and equity of the fees charged.

(2) The effect and appropriateness of contracts made pursuant to Section 18828.

(3) Costs to train ringside physicians, referees, timekeepers, and judges.

(4) Steps that need to be taken to ensure sufficient sources of revenue and funding.

(5) Necessity for review and modification of organizational procedures, the licensing process, and the complaint process.

(6) Outdated information technology.

(7) Unorganized and improper accounting.

(8) Miscalculations at events, a lack of technology to record proper calculations, and funding issues.

(9) The health and safety of the participants and the public in attendance at events regulated under this chapter, including costs of examinations under Section 18711.

(b) The commission shall solicit input from the public, the State Auditor, the Little Hoover Commission, the Center for Public Interest Law, and others as necessary in preparing and adopting the strategic plan.

(c) The commission shall report on progress in implementing the strategic plan to the Director of Consumer Affairs, the Governor, and the Legislature on or before September 30, 2009.

SEC. 4. Section 18603 of the Business and Professions Code is repealed.

SEC. 5. 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 become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 18618 of the Business and Professions Code is amended to read:

18618. The commission shall furnish to the Governor and the Legislature a report, on or before July 30, 2010, on the following:

(a) The condition of the State Athletic Commission Neurological Examination Account. This report shall include the amount of the assessment collected from each promoter pursuant to Section 18711, the purposes for which moneys in the account are expended, and findings and recommendations on the amounts, appropriateness, and effectiveness

of these assessments. The report shall also include a recommendation on the viability and need for creating a medical database that would be used for identifying trends in medical records and data associated with injuries and deaths related to competing.

(b) The condition of the Boxers' Pension Fund. This report shall include a recommendation on whether the fund should be continued and, if so, whether it should be expanded to include all athletes licensed under this chapter and appropriate fees paid into the fund.

SEC. 7. Section 18646 of the Business and Professions Code is amended to read:

18646. (a) This chapter applies to all amateur boxing, wrestling, and full contact martial arts contests.

(b) The commission may, however, authorize a nonprofit boxing, wrestling, or martial arts club or organization, upon approval of its bylaws, to administer its rules for amateur boxing, wrestling, and full contact martial arts contests, and may, therefore, waive direct commission application of laws and rules, including licensure, subject to the commission's affirmative finding that the standards and enforcement of similar rules by that club or organization meet or exceed the safety and fairness standards of the commission. The commission shall review the performance of any such club or organization annually.

(c) Every contest subject to this section shall be preceded by a physical examination, specified by the commission, of every contestant. A physician shall be in attendance at the contest. There shall be a medical insurance program satisfactory to the commission provided by the amateur club or organization in effect covering all contestants. The commission shall review compliance with these requirements.

(d) Any club or organization which conducts, holds, or gives amateur contests pursuant to this section, which collects money for the event, shall furnish a written financial report of receipts and disbursements within 90 days of the event.

(e) The commission has the right to have present without charge or restriction such representatives as are necessary to obtain compliance with this section.

(f) The commission may require any additional notices and reports it deems necessary to enforce the provisions of this section.

SEC. 8. Section 18706 of the Business and Professions Code is amended to read:

18706. (a) Not later than at the weigh-in time, which shall be not more than 30 hours prior to the beginning of the first event, the physician provided for in Section 18705 shall conduct a physical examination of the contestant and certify in writing as to the contestant's physical condition to engage in the contest or match.

(1) The commission shall make the contestants' medical records available to the physician and the physician shall review the contestant's medical records as part of the certification of the contestant's physical condition.

(2) The physician shall determine whether the contestant may have any knowledge, manifestations, symptoms, or prior history of a physical condition that may affect the contestant's ability to perform or present a potential threat to the contestant's health as a result of competing in the contest or match. The contestant shall complete a questionnaire developed by the commission. The contestant shall be asked to disclose on the questionnaire any conditions of which the contestant is aware, including, but not limited to, any of the following:

(A) Significant weight gain or loss and any change in weight in the seven days prior to the contest.

(B) Neuromuscular condition, including peripheral nerves, muscle problems, and brain problems.

(C) Pregnancy.

(D) Bone fractures and all forms of arthritis.

(E) Any condition related to vision or changes in hearing function.

(F) Heart condition or other cardiovascular condition.

(G) Pulmonary or respiratory condition.

(H) Renal or urological condition.

(I) Hematological condition, including manifestations of any unusual bleeding or bruising.

If any condition is disclosed under this paragraph, the physician shall not allow the contestant to compete unless the physician or, at the contestant's discretion, the contestant's personal physician, who is licensed to practice medicine in the United States, has conducted a physical examination and determined that the specific condition does not affect the contestant's ability to perform or present a potential threat to the contestant's health as a result of competing in the contest or match.

(3) The questionnaire shall be developed by the commission through promulgated regulations in consultation with qualified medical professionals.

(4) Nothing in this chapter may be construed to require a contestant to submit to a pregnancy test.

(b) On the day of the event, and no later than one hour before the contestants enter the ring, the physician provided for in Section 18705 shall conduct a brief reexamination and certify in writing as to the contestant's physical condition to engage in the contest or match. This reexamination shall include an evaluation of any significant changes since the physical examination provided under subdivision (a).

(c) A report of the medical examinations shall be filed with the commission not later than 24 hours after the termination of the contest or match. The physician's report of the examination shall include specific mention as to the condition of the contestant's heart, nerves and brain.

SEC. 9. Section 18711 of the Business and Professions Code is amended to read:

18711. (a) (1) (A) The commission shall require, as a condition of licensure and as a part of the application process, the examination by a licensed physician and surgeon who specializes in neurology and neurosurgery of each applicant for a license as a professional athlete or contestant licensed under this chapter or, if for the renewal of a license, this examination every year, in addition to any other medical examinations.

(i) Upon initial licensure, the examination shall include tests and examinations designed to detect physical conditions that could place the athlete or contestant at risk for serious injury or permanent or temporary impairment of any bodily function. These tests or examinations shall include, but not be limited to, a neurological examination or a neuro-psychological examination, a brain imaging scan, and an electrocardiogram (EKG). The physician may recommend any additional tests or evaluations he or she deems necessary.

(ii) For renewal of a license, the physician shall determine the tests or evaluations necessary, if any.

(iii) The commission may require an athlete or contestant licensed under this chapter to undergo additional neurological tests where, based on the totality of the athlete's or contestant's records, it appears the athlete or contestant may be at risk of cognitive impairment.

(iv) On the basis of a physical examination under this subdivision, and any additional tests that are conducted, the physician may recommend to the commission whether the applicant may be permitted to be licensed in California or not. The executive officer shall review these recommendations and report any denials of licensure. If, as a result of these recommendations, the executive officer refuses to grant the applicant a license or to renew a license, the applicant shall not compete in California until the denial has been overruled by the commission as provided in this chapter.

(v) The commission may waive the requirement for a brain imaging scan or an EKG if a brain imaging scan or EKG was completed as part of the licensing requirements in another state, the commission determines that this brain imaging scan or EKG creates a reliable baseline for the athlete or contestant, and the commission has been provided with a copy of the brain imaging scan or EKG reports.

(vi) This subparagraph shall become inoperative on the date the regulations adopted by the commission pursuant to subparagraph (B) become operative.

(B) On and after January 1, 2008, all professional athletes licensed under this chapter shall be required by the commission to complete a medical examination process, which shall include the completion of specific medical examinations, to be determined by the commission through regulations, as a condition of initial licensure and license renewal. This medical examination process may include examinations required under current law and any additional medical examinations determined to be medically necessary. In adopting the medical examination process, the commission shall consider the health and safety of contestants, the medical necessity of any examinations required, and the financial aspects of requiring those medical examinations.

(2) In the absence of any pertinent untoward medical event, the commission may, in its discretion, on forms prescribed by the commission, accept tests or evaluations that are equivalent to those described in paragraph (1) and that have been completed within one year of licensure to meet the requirements of this subdivision.

(3) (A) Any medical records obtained, reviewed, or created under this chapter shall be utilized only for purposes of administering this chapter. The commission and any physician may not disclose the athlete's medical records without a signed authorization from the athlete, except that the commission may disclose those records to other state licensing boards and commissions to which the athlete has applied for licensure or has an enforcement action pending, or upon court order in a criminal or civil action.

(B) After the adoption of regulations to establish a process for participating in medical research studies, the commission may use medical information for purposes of participating in medical research studies of the effects on the human body of contests and exhibitions regulated under this chapter. However, medical information shall not include any personal identifying information on any contestant, including, but not limited to, the contestant's name, address, telephone number, social security number, license number, federal identification number, or any other information identifying the contestant. The medical information shall only be provided if the licensed athlete has consented in writing to participating in the research study. The regulations adopted by the commission shall include a process to ensure that no conflicts of interest arise regarding which medical examinations are required to be completed by contestants.

(b) If an applicant for licensure as a professional athlete under this chapter undergoes a neurological examination for purposes of licensure

within the 120-day period immediately preceding the normal expiration of that license, the applicant shall not be required to undergo an additional neurological examination within the following 12 consecutive month license period unless the commission, for cause, orders that the examination be taken. The commission shall notify all commission approved physicians and referees that the commission has the authority to order any professional athlete to undergo a neurological examination.

(c) The cost of the examinations required by this section shall be paid from assessments on any one or more of the following: promoters of professional matches, managers, and professional athletes or other contestants licensed under this chapter. The rate and manner of assessment shall be set by the commission, and may cover all costs associated with the requirements of this section. This assessment shall be imposed on all contests approved by the commission under this chapter. As of July 1, 1994, all moneys received by the commission pursuant to this section shall be deposited in and credited to the State Athletic Commission Neurological Examination Account which is hereby created in the General Fund.

(d) Whenever a reference is made to the Boxers' Neurological Examination Account, it is to be construed as referring to the State Athletic Commission Neurological Examination Account.

SEC. 10. Section 18822 of the Business and Professions Code is amended to read:

18822. (a) For licenses issued before January 1, 2007, a license may be renewed at any time prior to midnight on December 31 of the year in which it was issued. If not renewed, the license shall expire at that time.

(b) A license issued on or after January 1, 2007, shall expire 12 months after issuance, on the last day of the 12th month. To renew an unexpired license, the licenseholder shall, on or before midnight of the day on which the license would otherwise expire, apply for renewal on a form prescribed by the commission and pay the prescribed renewal fee. If the licenseholder is a boxer or martial arts contestant, the renewal application shall also be accompanied by the required medical examinations and test results. Renewal of an unexpired license shall continue the license in effect for one year from the expiration date of the license, when it shall again expire if it is not renewed.

SEC. 11. Section 18824 of the Business and Professions Code is amended to read:

18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within five working days after the determination of every contest or wrestling

exhibition for which admission is charged and received, furnish to the commission the following:

(1) A written report executed under penalty of perjury by one of the officers, showing the amount of the gross receipts, not to exceed two million dollars ($2,000,000), and the gross price for the contest or wrestling exhibition charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission.

(2) A fee of 5 percent, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, except that for any one contest, the fee shall not exceed the amount of one hundred thousand dollars ($100,000). The commission shall report to the Joint Committee on Boards, Commissions, and Consumer Protection on the fiscal impact of the one hundred thousand dollar ($100,000) limit on fees collected by the commission for admissions revenues.

(A) The amount of the gross receipts upon which the fee provided for in paragraph (2) is calculated shall not include any assessments levied by the commission under Section 18711.

(B) (i) If the fee for any one boxing contest exceeds seventy thousand dollars ($70,000), the amount in excess of seventy thousand dollars ($70,000) shall be paid one-half to the commission and one-half to the Boxers' Pension Fund.

(ii) If the report required by subdivision (b) of Section 18618 recommends that the Boxers' Pension Fund shall be expanded to include all athletes licensed under this chapter, the commission, by regulation, shall require, for all contests where the fee exceeds seventy thousand dollars ($70,000), the amount in excess of seventy thousand dollars ($70,000) shall be paid one-half to the commission and one-half to the Boxers' Pension Fund only if all athletes licensed under this chapter are made eligible for the Boxers' Pension Fund.

(C) The fee shall apply to the amount actually paid for admission and not to the regular established price.

(D) No fee is due in the case of a person admitted free of charge. However, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest, or wrestling exhibition exceeds 33 percent of the total number of spectators, then a fee of one dollar ($1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket

or pass that exceeds the numerical total of 33 percent of the total number of spectators.

(E) The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars ($500).

(3) A fee of up to 5 percent, to be established by the commission through regulations to become operative on or before July 1, 2008, and updated periodically as needed, of the gross price, exclusive of any federal taxes paid thereon, for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars ($1,000) or more than twenty-five thousand dollars ($25,000).

(b) As used in this section, "person" includes a promoter, club, individual, corporation, partnership, association, or other organization, and "wrestling exhibition" means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.

SEC. 12. Section 18828 is added to the Business and Professions Code, to read:

18828. (a) The commission may enter into a contract to sanction, supervise, or provide other services for contests under this chapter for which the fees under this chapter do not apply only if the contract provides for a payment to the commission for reasonable and necessary services provided under the contract.

(b) It is the intent of the Legislature that payment under subdivision (a) shall include the following:

(1) Consideration of costs incurred by the commission.

(2) A contribution into the Boxers' Pension Fund of not less than 20 percent of the commission's costs under paragraph (1).

(3) A contribution into the State Athletic Commission Neurological Examination Account of not less than 20 percent of the commission's costs under paragraph (1).

(c) A contestant's participation in a contest subject to this section shall be deemed to be a commission-approved contest for purposes of participation in the Boxers' Pension Plan.

SEC. 13. Section 18880 of the Business and Professions Code is amended to read:

18880. (a) The Legislature finds and declares all of the following:

(1) That professional athletes licensed under this chapter, as a group, for many reasons, do not retain their earnings, and are often injured or destitute, or both, and unable to take proper care of themselves, whether financially or otherwise, and that the enactment of this article is to serve

a public purpose by making provisions for a needy group to insure a modicum of financial security for professional athletes.

(2) Athletes licensed under this chapter may suffer extraordinary disabilities in the normal course of their trade. These may include acute and chronic traumatic brain injuries, resulting from multiple concussions as well as from repeated exposure to a large number of subconcussive punches, eye injuries, including retinal tears, holes, and detachments, and other neurological impairments.

(3) The pension plan of the commission is part of the state's health and safety regulatory scheme, designed to protect boxers licensed under this chapter from the health-related hazards of their trade. The pension plan addresses those health and safety needs, recognizing the disability and health maintenance expenses those needs may require.

(4) The regulatory system of California is interrelated with the conduct of the trade in every jurisdiction. Athletes licensed under this chapter participate in contests in other states and many athletes who are based in those other jurisdictions may participate in California on a single-event basis.

(5) The outcomes and natures of fights in other jurisdictions are relevant to California regulatory jurisdiction and are routinely monitored for health and safety reasons, so that, for example, a knockout of an athlete licensed under this chapter in another jurisdiction is paid appropriate heed with respect to establishing a waiting period before that athlete may commence fighting in California.

(6) The monitoring of other jurisdictions is an integral part of the health and safety of California athletes licensed under this chapter due to the interstate nature of the trade, and therefore the regulatory scheme for contests and athletes under this chapter should reflect this accordingly.

(b) The provisions of this article pertain only to professional boxers licensed under this chapter.

SEC. 14. Section 18882 of the Business and Professions Code is amended to read:

18882. (a) At the time of payment of the fee required by Section 18824, a promoter shall pay to the commission all amounts scheduled for contribution to the pension plan. If the commission, in its discretion, requires pursuant to Section 18881, that contributions to the pension plan be made by the boxer and his or her manager, those contributions shall be made at the time and in the manner prescribed by the commission.

(b) All contributions to finance the pension plan shall be deposited in the State Treasury and credited to the Boxers' Pension Fund, which is hereby created. Notwithstanding the provisions of Section 13340 of the Government Code, all moneys in the Boxers' Pension Fund are

hereby continuously appropriated to be used exclusively for the purposes and administration of the pension plan.

(c) The Boxers' Pension Fund is a retirement fund, and no moneys within it shall be deposited or transferred to the General Fund.

(d) The commission has exclusive control of all funds in the Boxers' Pension Fund. No transfer or disbursement in any amount from this fund shall be made except upon the authorization of the commission and for the purpose and administration of the pension plan.

(e) Except as otherwise provided in this subdivision, the commission or its designee shall invest the money contained in the Boxers' Pension Fund according to the same standard of care as provided in Section 16040 of the Probate Code. The commission has exclusive control over the investment of all moneys in the Boxers' Pension Fund. Except as otherwise prohibited or restricted by law, the commission may invest the moneys in the fund through the purchase, holding, or sale of any investment, financial instrument, or financial transaction that the commission in its informed opinion determines is prudent.

(f) The administrative costs associated with investing, managing, and distributing the Boxers' Pension Fund shall be limited to no more than 20 percent of the average annual contribution made to the fund in the previous two years, not including any investment income derived from the corpus of the fund. Diligence shall be exercised by administrators in order to lower the fund's expense ratio as far below 20 percent as feasible and appropriate. The commission shall report to the Joint Committee on Boards, Commissions, and Consumer Protection on the impact of this provision during the next regularly scheduled sunset review after January 1, 2007.

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

CHAPTER 466

An act to amend Sections 2194, 8105, 8202, and 8204 of, and to add Sections 2166.7 and 8023 to, the Elections Code, and to amend Section 6254.24 of the Government Code, relating to public officials.

[Approved by Governor September 26, 2006. Filed with
Secretary of State September 26, 2006.]

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

SECTION 1. Section 2166.7 is added to the Elections Code, to read:

2166.7. (a) If authorized by his or her county board of supervisors, a county elections official shall, upon application of a public safety officer, make confidential that officer's residence address, telephone number, and e-mail address appearing on the affidavit of registration, in accordance with the terms and conditions of this section.

(b) The application by the public safety officer shall contain a statement, signed under penalty of perjury, that the person is a public safety officer as defined in subdivision (f) and that a life threatening circumstance exists to the officer or a member of the officer's family. The application shall be a public record.

(c) The confidentiality granted pursuant to subdivision (a) shall terminate no more than two years after commencement, as determined by the county elections official. The officer may submit a new application for confidentiality pursuant to subdivision (a), and the new request may be granted for an additional period of not more than two years.

(d) Any person granted confidentiality under subdivision (a) shall:

(1) Be considered an absent voter for all subsequent elections or until the county elections official is notified otherwise by the Secretary of State or in writing by the voter. A voter requesting termination of absent voter status thereby consents to placement of his or her residence address, telephone number, and e-mail address in the roster of voters.

(2) In addition to the required residence address, provide a valid mailing address to be used in place of the residence address for election, scholarly, or political research, and government purposes. The elections official, in producing any list, roster, or index may, at his or her choice, use the valid mailing address or the word "confidential" or some similar designation in place of the residence address.

(e) No action in negligence may be maintained against any government entity or officer or employee thereof as a result of disclosure of the information that is the subject of this section unless by a showing of gross negligence or willfulness.

(f) "A public safety officer" has the same meaning as defined in subdivision (a), (d), (e), (f), or (j) of Section 6254.24 of the Government Code.

SEC. 2. Section 2194 of the Elections Code is amended to read:

2194. (a) The voter registration card information identified in subdivision (a) of Section 6254.4 of the Government Code:

(1) Shall be confidential and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.

(2) Shall not be used for any personal, private, or commercial purpose, including, but not limited to:

(A) The harassment of any voter or voter's household.

(B) The advertising, solicitation, sale, or marketing of products or services to any voter or voter's household.

(C) Reproduction in print, broadcast visual or audio, or display on the Internet or any computer terminal unless pursuant to paragraph (3).

(3) Shall be provided with respect to any voter, subject to the provisions of Sections 2166.5, 2166.7, and 2188, to any candidate for federal, state, or local office, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.

(b) (1) Notwithstanding any other provision of law, the California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to voter registration records to comply with the requirements of the Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.), are confidential and shall not be disclosed to any person.

(2) Notwithstanding any other provision of law, the signature of the voter shown on the voter registration card is confidential and shall not be disclosed to any person, except as provided in subdivision (c).

(c) (1) The home address or signature of any voter shall be released whenever the person's vote is challenged pursuant to Sections 15105 to 15108, inclusive, or Article 3 (commencing with Section 14240) of Chapter 3 of Division 14. The address or signature shall be released only to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge.

(2) An elections official shall permit a person to view the signature of a voter for the purpose of determining whether the signature matches a signature on an affidavit of registration or a petition, but shall not permit a signature to be copied.

(d) A governmental entity, or officer or employee thereof, shall not be held civilly liable as a result of disclosure of the information referred to in this section, unless by a showing of gross negligence or willfulness.

(e) For the purposes of this section, "voter's household" is defined as the voter's place of residence or mailing address or any persons who reside at the place of residence or use the mailing address as supplied

on the affidavit of registration pursuant to paragraphs (3) and (4) of subdivision (a) of Section 2150.

SEC. 3. Section 8023 is added to the Elections Code, to read:

8023. (a) Except in the case of a judicial office filled in accordance with subdivision (d) of Section 16 of Article VI of the Constitution, every candidate for a judicial office, not more than 14 nor less than five days prior to the first day on which his or her nomination papers may be circulated and signed or may be presented for filing, shall file in the office of the elections official in which his or her nomination papers are required to be filed or left for examination, a written and signed declaration in duplicate of his or her intention to become a candidate for that office on a form to be supplied by the elections official. A candidate for a numerically designated judicial office shall state in his or her declaration for which office he or she intends to become a candidate. A copy of each declaration of intention filed in accordance with this article shall be immediately forwarded by the elections official to the Secretary of State.

(b) No person may be a candidate nor have his or her name printed on any ballot as a candidate for judicial office unless he or she has filed the declaration of intention provided for in this section. If the incumbent of a judicial office fails to file a declaration of intention by the end of the period specified in subdivision (a), persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers.

(c) Declarations shall be in substantially the following form:

"I hereby declare my intention to become a candidate for the office of____(name of office and district, if any) at the ____, 2 ____election."

(d) This section shall apply to all judicial offices whether numerically designated or not.

SEC. 4. Section 8105 of the Elections Code is amended to read:

8105. (a) The filing fees for all candidates shall be paid at the time the candidates obtain their nomination forms from the county elections official. The county elections official shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county elections official or to the registrar of voters that the fee has been paid at the time of the declaration of candidacy in another county. The county elections official shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. All filing fees received by the Secretary of State and county elections officials are nonrefundable.

(b) The filing fees for candidates required to file declarations of intention pursuant to Section 8023 shall be paid at the time the declarations are filed with the county elections official.

SEC. 5. Section 8202 of the Elections Code is amended to read:

8202. The numerically designated offices shall be grouped and arranged on all ballots in numerical order. No person may be a candidate nor have his or her name printed upon any ballot as a candidate for any numerically designated office other than the one indicated by him or her in his or her declaration of intention to become a candidate.

SEC. 6. Section 8204 of the Elections Code is amended to read:

8204. (a) If an incumbent of a judicial office dies on or before the last day prescribed for the filing of nomination papers, or files a declaration of intention but for any reason fails to file his or her nomination papers by the last day prescribed for the filing of the papers, an additional five days shall be allowed for the filing of nomination papers for the office.

(b) Any person other than the person who was the incumbent, if otherwise qualified, may file nomination papers for the office during the extended period, notwithstanding that he or she has not filed a written and signed declaration of intention to become a candidate for the office as provided in Sections 8023 and 8201.

SEC. 7. Section 6254.24 of the Government Code is amended to read:

6254.24. As used in this chapter, "public safety official" means any of the following:

(a) An active or retired peace officer as defined in Sections 830 and 830.1 of the Penal Code.

(b) An active or retired public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.

(c) An "elected or appointed official" as defined in subdivision (f) of Section 6254.21.

(d) Attorneys employed by the Department of Justice, the State Public Defender, a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.

(e) City attorneys and attorneys who represent cities in criminal matters.

(f) Specified employees of the Department of Corrections, the California Youth Authority, and the Prison Industry Authority who supervise inmates or are required to have a prisoner in their care or custody.

(g) Sworn and nonsworn employees who supervise inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities,

or local juvenile halls, camps, ranches, and homes, and probation officers as defined in Section 830.5 of the Penal Code.

(h) Federal prosecutors and criminal investigators and National Park Service Rangers working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

(j) State and federal judges and court commissioners.

SEC. 7.5. Section 6254.24 of the Government Code is amended to read:

6254.24. As used in this chapter, "public safety official" means any of the following:

(a) An active or retired peace officer as defined in Sections 830 and 830.1 of the Penal Code.

(b) An active or retired public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.

(c) An "elected or appointed official" as defined in subdivision (f) of Section 6254.21.

(d) An attorney employed by the Department of Justice, the State Public Defender, a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.

(e) A city attorney and an attorney who represent cities in criminal matters.

(f) A specified employee of the Department of Corrections and Rehabilitation who supervises inmates or is required to have a prisoner in his or her care or custody.

(g) Sworn and nonsworn employees who supervise inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, or a local detention facility, or a local juvenile hall, camp, ranch, or home, and probation officers as defined in Section 830.5 of the Penal Code.

(h) A federal prosecutor, a federal criminal investigator and a National Park Service Ranger working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

(j) State and federal judges and court commissioners.

(k) An employee of the Attorney General, a district attorney, or a public defender who submits verification from the Attorney General, district attorney, or public defender that the employee represents the Attorney General, district attorney, or public defender in matters that routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.

(*l*) A nonsworn employee of the Department of Justice or a police department or sheriff's office that, in the course of his or her employment, is responsible for collecting, documenting, and preserving physical evidence at crime scenes, testifying in court as an expert witness, and other technical duties, and a nonsworn employee that, in the course of his or her employment, performs a variety of standardized and advanced laboratory procedures in the examination of physical crime evidence, determines their results, and provides expert testimony in court.

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.

SEC. 9. Section 7.5 of this bill incorporates amendments to Section 6254.24 of the Government Code proposed by both this bill and AB 2005. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 6254.24 of the Government Code, and (3) this bill is enacted after AB 2005, in which case Section 7 of this bill shall not become operative.

CHAPTER 467

An act to amend Section 6389 of the Family Code, relating to protective orders.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 6389 of the Family Code is amended to read:

6389. (a) A person subject to a protective order, as defined in Section 6218, shall not own, possess, purchase, or receive a firearm while that protective order is in effect. 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.

(b) On all forms providing notice that a protective order has been requested or granted, the Judicial Council shall include a notice that, upon service of the order, the respondent shall be ordered to relinquish possession or control of any firearms and not to purchase or receive or attempt to purchase or receive any firearms for a period not to exceed the duration of the restraining order.

(c) (1) Upon issuance of a protective order, as defined in Section 6218, the court shall order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control.

(2) The relinquishment ordered pursuant to paragraph (1) shall occur by immediately surrendering the firearm in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the protective order. Alternatively, if no request is made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served with the order, by either surrendering the firearm in a safe manner to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code. The law enforcement officer or licensed gun dealer taking possession of the firearm pursuant to this subdivision shall issue a receipt to the person relinquishing the firearm at the time of relinquishment. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court that issued the protective order, within 48 hours after being served with the order, the receipt showing the firearm was surrendered to a local law enforcement agency or sold to a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of the protective order.

(3) The application forms for protective orders adopted by the Judicial Council and approved by the Department of Justice shall be amended to require the petitioner to describe the number, types, and locations of any firearms presently known by the petitioner to be possessed or controlled by the respondent.

(4) It is recommended that every law enforcement agency in the state develop, adopt, and implement written policies and standards for law enforcement officers who request immediate relinquishment of firearms.

(d) If the respondent declines to relinquish possession of any firearm based on the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm required under this section.

(e) A local law enforcement agency may charge the respondent a fee for the storage of any firearm pursuant to this section. This fee shall not

exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal Code or to the respondent.

(f) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (c) shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent's right under existing law to petition the court at a later date for modification of the order.

(g) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (c) shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the respondent, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the respondent is prohibited from possessing a firearm because the respondent is in any prohibited class for the possession of firearms, as defined in Sections 12021 and 12021.1 of the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining order is used against the respondent under this section. If the local law enforcement agency determines that the respondent is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(h) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any

case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

(i) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale.

(j) The disposition of any unclaimed property under this section shall be made pursuant to Section 1413 of the Penal Code.

(k) The return of a firearm to any person pursuant to subdivision (g) shall not be subject to the requirements of subdivision (d) of Section 12072 of the Penal Code.

(*l*) If the respondent notifies the court that he or she owns a firearm that is not in his or her immediate possession, the court may limit the order to exclude that firearm if the judge is satisfied the respondent is unable to gain access to that firearm while the protective order is in effect.

(m) Any respondent to a protective order who violates any order issued pursuant to this section shall be punished under the provisions of subdivision (g) of Section 12021 of the Penal Code.

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

CHAPTER 468

An act to amend Section 664 of, and to add Section 831.7 to, the Penal Code, relating to crimes.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 664 of the Penal Code is amended to read:

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(a) If the crime attempted is punishable by imprisonment in the state prison, the person guilty of the attempt shall be punished by imprisonment in the state prison for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(b) If the crime attempted is punishable by imprisonment in a county jail, the person guilty of the attempt shall be punished by imprisonment in a county jail for a term not exceeding one-half the term of imprisonment prescribed upon a conviction of the offense attempted.

(c) If the offense so attempted is punishable by a fine, the offender convicted of that attempt shall be punished by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense attempted.

(d) If a crime is divided into degrees, an attempt to commit the crime may be of any of those degrees, and the punishment for the attempt shall be determined as provided by this section.

(e) Notwithstanding subdivision (a), if attempted murder is committed upon a peace officer or firefighter, as those terms are defined in

paragraphs (7) and (9) of subdivision (a) of Section 190.2, a custodial officer, as that term is defined in subdivision (a) of Section 831 or subdivision (a) of Section 831.5, a custody assistant, as that term is defined in subdivision (a) of Section 831.7, or a nonsworn uniformed employee of a sheriff's department whose job entails the care or control of inmates in a detention facility, as defined in subdivision (c) of Section 289.6, and the person who commits the offense knows or reasonably should know that the victim is a peace officer, firefighter, custodial officer, custody assistant, or nonsworn uniformed employee of a sheriff's department engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

(f) Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also charged and admitted or found to be true by the trier of fact that the attempted murder was willful, deliberate, and premeditated, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement.

SEC. 2. Section 831.7 is added to the Penal Code, to read:

831.7. (a) As used in this section, a custody assistant is a person who is a full-time employee, not a peace officer, employed by the county sheriff's department who assists peace officer personnel in maintaining order and security in a custody detention, court detention, or station jail facility of the sheriff's department. A custody assistant is responsible for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custody assistants of the sheriff's department shall be employees of, and under the authority of, the sheriff.

(b) A custody assistant has no right to carry or possess firearms in the performance of his or her prescribed duties.

(c) Each person described in this section as a custody assistant shall satisfactorily complete a training course specified by the sheriff's

department. In addition, each person designated as a custody assistant shall satisfactorily meet the minimum selection and training standards prescribed by the Department of Corrections and Rehabilitation pursuant to Section 6035.

(d) A custody assistant may use reasonable force in establishing and maintaining custody of persons housed at a local detention facility, court detention facility, or station jail facility.

(e) Custody assistants employed by the county sheriff's department are authorized to perform the following additional duties in a custody facility, court detention facility, or station jail facility:

(1) Assist in supervising the conduct of inmates in sleeping quarters, during meals and bathing, at recreation, and on work assignments.

(2) Assist in overseeing the work of, and instructing, a group of inmates assigned to various operational, maintenance, or other rehabilitative activities.

(3) Assist in the operation of main or dormitory control booths.

(4) Assist in processing inmates for court appearances.

(5) Control, or assist in the monitoring and control of, access to attorney rooms and visiting areas.

(6) Fingerprint, photograph, or operate livescan machines with respect to inmates, or assist in the fingerprinting or photographing of inmates.

(7) Obtain criminal history information relating to an inmate including any warrant or other hold, and update classification or housing information relating to an inmate, as necessary.

(8) Interview inmates and review records related to the classification process to determine the appropriate security level for an inmate or the eligibility of an inmate for transfer to another facility.

(9) Ensure compliance of a custody facility, court detention facility, or station jail facility with the provisions of Title 15 of the California Code of Regulations, or with any other applicable legislative or judicial mandate.

(10) Assist in receiving and processing inmates in a sheriff's station, court detention area, or type I jail facility.

(11) Secure inmates and their personal property and moneys as necessary in compliance with the rules and regulations of the sheriff's department.

(12) Order, inspect, or serve meals to inmates.

(13) Maintain sanitary conditions within a custody facility, court detention facility, or station jail facility.

(14) Respond to public inquiries regarding any inmate.

(f) Notwithstanding any other law, nothing in this section shall be construed to confer any authority upon a custody assistant except while

on duty, or to grant any additional retirement benefits to persons employed within this classification.

(g) This section shall apply only in a county of the first class, as established by Sections 28020 and 28022 of the Government Code, but shall not be operative in a county until adopted by resolution of the board of supervisors.

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 469

An act to add Section 1356 to the Fish and Game Code, relating to wildlife conservation.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 1356 is added to the Fish and Game Code, to read:

1356. The board, when it prioritizes the use of available funds for proposed acquisitions, with regard to the priority of a proposal to acquire forestland, may consider and take into account the potential of that proposed acquisition to beneficially reduce or sequester greenhouse gas emissions. The board may use policies, protocols, or other relevant information developed by the California Climate Action Registry as a basis for determining a project's potential to reduce or sequester greenhouse gas emissions.

CHAPTER 470

An act to add Section 115755 to, and to repeal and add Article 1 (commencing with Section 115725) of Chapter 4 of Part 10 of Division 104 of, the Health and Safety Code, relating to playground safety.

[Approved by Governor September 26, 2006. Filed with
Secretary of State September 26, 2006.]

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

SECTION 1. Section 115755 is added to the Health and Safety Code, to read:

115755. This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. Article 1 (commencing with Section 115725) is added to Chapter 4 of Part 10 of Division 104 of the Health and Safety Code, to read:

Article 1. Playgrounds

115725. (a) All new playgrounds open to the public built by a public agency or any other entity shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission.

(b) Replacement of equipment or modification of components inside existing playgrounds shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission.

(c) All public agencies operating playgrounds and all other entities operating playgrounds open to the public shall have a playground safety inspector, certified by the National Playground Safety Institute, conduct an initial inspection for the purpose of aiding compliance with the requirements set forth in subdivision (a) or (b), as applicable. Any inspection report may serve as a reference when the upgrades are made, but is not intended for any other use.

(d) Playgrounds installed between January 1, 1994, and December 31, 1999, shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission not later than 15 years after the date those playgrounds were installed.

(e) For purposes of this section, all of the following shall apply:

(1) An "entity operating a playground open to the public" includes, but is not limited to, a church, subdivision, hotel, motel, resort, camp, office, hospital, shopping center, day care setting, and restaurant. An

"entity operating a playground open to the public" shall not include a foster family home, certified family home, small family home, group home, or family day care home, which is licensed and regulated to meet child safety requirements enforced by the State Department of Social Services.

(2) "Playground" means an improved outdoor area designed, equipped, and set aside for children's play that is not intended for use as an athletic playing field or athletic court, and shall include any playground equipment, fall zones, surface materials, access ramps, and all areas within and including the designated enclosure and barriers.

(f) Operators of playgrounds in child care centers regulated by the California Department of Social Services (CDSS) pursuant to Title 22 of Division 12 of Chapter 1 of the California Code of Regulations and facilities operated for the developmentally disabled, shall comply with the requirements established in this section.

(g) (1) No state funding shall be available for the planning, development, or redevelopment of any playground, unless the playground, after completion of the state-funded project, will conform to the requirements of subdivision (a) or (b), as applicable. However, where state funds have been appropriated to, or allocated for, a playground project prior to the effective date of this section but the section becomes effective prior to the completion of the project, that funding shall be maintained, as long as the playground is altered to conform to the requirements of subdivision (a) or (b), as applicable, to the extent the alterations can be made without adding significantly to the project cost.

(2) After the date by which an entity is required to conform its playground to satisfy requirements of this section, no state funding shall be available for the operation, maintenance, or supervision of the playground unless the playground conforms to the applicable requirements of the section.

115730. (a) The State Department of Social Services shall convene a working group to develop recommendations for minimum safety requirements for playgrounds at child care centers.

(b) The working group shall include, but not be limited to, child care center operators, including representatives of the Professional Association for Childhood Education, the California Child Care Health Program, the Children's Advocacy Institute, the State Department of Health Services, and certified playground inspectors.

(c) The working group shall use the national guidelines published by the United States Consumer Product Safety Commission and those regulations adopted pursuant to this article as a reference in developing its recommendations. However, the State Department of Social Services

shall determine minimum safety requirements that are protective of child health on playgrounds at child care centers.

(d) The working group shall submit its playground safety recommendations to the State Department of Social Services by September 1, 2001.

(e) The working group shall submit its recommendations to the Legislature by November 1, 2001.

(f) This section shall be construed as a continuation of former Section 115736.

115735. This article shall become operative on January 1, 2008.

CHAPTER 471

An act relating to energy.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. (a) (1) On or before November 1, 2007, the State Energy Resources Conservation and Development Commission, in coordination with the Division of Oil, Gas, and Geothermal Resources of the Department of Conservation and the California Geological Survey, shall submit a report to the Legislature containing recommendations for how the state can develop parameters to accelerate the adoption of cost-effective geologic sequestration strategies for the long-term management of industrial carbon dioxide. In formulating recommendations, the commission shall meet with representatives from industry, environmental groups, academic experts, and other government officials, with expertise in indemnification, subsurface geology, fossil fuel electric generation facilities, advanced carbon separation and transport technologies, and greenhouse gas management.

(2) The study for the report shall be conducted using existing resources and shall include, but is not limited to, all of the following:

(A) Key components of site certification protocol, including seal characterization, reservoir capacity and fluid and gas dynamics, testing standards, and monitoring strategies.

(B) Integrity and longevity standards for storage sites.

(C) Mitigation, remediation, and indemnification strategies to manage long-term risks.

(3) The commission shall include the report prepared pursuant to this section in its 2007 integrated energy policy report required by Section 25302 of the Public Resources Code.

(b) The commission shall support research and development efforts to do all of the following:

(1) Identify and characterize state geological sites that potentially are appropriate for long-term storage of carbon dioxide.

(2) Evaluate the comparative economics of various technologies for capture and sequestration of carbon dioxide.

(3) Identify technical gaps in the science of sequestration of carbon dioxide, to be prioritized for further analysis.

(4) Evaluate the potential risks associated with geologic sequestration of carbon dioxide, including leakage resulting from carbonates and other dissolved minerals.

(5) Evaluate the potential risks if geologically sequestered carbon dioxide leaks into aquifers.

(6) Evaluate, and to the extent feasible quantify, the potential liability from the leakage of geologically sequestered carbon dioxide and potentially responsible parties.

(c) For purposes of this section, "commission" means the State Energy Resources Conservation and Development Commission (Chapter 3 (commencing with Section 25200) of Division 15 of the Public Resources Code).

CHAPTER 472

An act to amend Section 6254.24 of the Government Code, relating to records.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 6254.24 of the Government Code is amended to read:

6254.24. As used in this chapter, "public safety official" means the following:

(a) An active or retired peace officer as defined in Sections 830 and 830.1 of the Penal Code.

(b) An active or retired public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.

(c) An "elected or appointed official" as defined in subdivision (f) of Section 6254.21.

(d) An attorney employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.

(e) A city attorney and an attorney who represent cities in criminal matters.

(f) A specified employee of the Department of Corrections and Rehabilitation who supervises inmates or is required to have a prisoner in his or her care or custody.

(g) A sworn or nonsworn employee who supervises inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, or a local detention facility, and a local juvenile hall, camp, ranch, or home, and a probation officer as defined in Section 830.5 of the Penal Code.

(h) A federal prosecutor, a federal criminal investigator, and a National Park Service Ranger working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

(j) State and federal judges and court commissioners.

(k) An employee of the Attorney General, a district attorney, or a public defender who submits verification from the Attorney General, district attorney, or public defender that the employee represents the Attorney General, district attorney, or public defender in matters that routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.

(*l*) A nonsworn employee of the Department of Justice or a police department or sheriff's office that, in the course of his or her employment, is responsible for collecting, documenting, and preserving physical evidence at crime scenes, testifying in court as an expert witness, and other technical duties, and a nonsworn employee that, in the course of his or her employment, performs a variety of standardized and advanced laboratory procedures in the examination of physical crime evidence, determines their results, and provides expert testimony in court.

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 473

An act to add Section 13139 to the Health and Safety Code, relating to product safety.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 13139 is added to the Health and Safety Code, to read:

13139. (a) On or before January 1, 2008, the State Fire Marshal shall approve and list portable gasoline containers that are designed and constructed according to one of the following child-resistant standards:

(1) Construction and design standards which are substantially the same as the American Society for Testing and Materials (ASTM) F2517-05 standard, issued by ASTM International, or any successor standard issued by ASTM International.

(2) Construction and design standards approved by a national testing laboratory recognized by the State Fire Marshal.

(b) No person shall sell, offer for sale, or possess for sale, on or after April 1, 2008, portable gasoline containers that have not been listed and approved by the State Fire Marshal.

(c) For purposes of this section, "portable gasoline container" means any container or vessel with a nominal capacity of 10 gallons or less intended for reuse and is designed, or used, sold, advertised or offered for sale primarily for receiving, transporting, storing, or dispensing gasoline. "Portable fuel containers" does not include containers or vessels permanently embossed or permanently labeled as described in Section 172.407(a) of Title 49 of the Code of Federal Regulations, as it existed on September 15, 2005, indicating containers or vessels that are solely intended for use with nonfuel or nonkerosene products.

(d) Retailers are permitted to sell through existing supplies of portable gasoline containers that have not been listed and approved for sale by the State Fire Marshal.

(e) This section shall cease to be applicable if federal fire safety standards for portable gasoline containers that preempt this section are

enacted and take effect subsequent to the effective date of this statute and the State Fire Marshal so notifies the Secretary of State.

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

CHAPTER 474

An act to amend Section 527.9 of the Code of Civil Procedure, relating to restraining orders.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 527.9 of the Code of Civil Procedure is amended to read:

527.9. (a) A person subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2 of the Penal Code, or Section 15657.03 of the Welfare and Institutions Code, shall relinquish the firearm pursuant to this section.

(b) Upon the issuance of a protective order pursuant to subdivision (a), the court shall order the person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 48 hours after receiving the order. In the event that it is necessary to continue the date of any hearing due to a request for a relinquishment order pursuant to this section, the court shall ensure that all applicable protective orders described in Section 6218 of the Family Code remain in effect or

bifurcate the issues and grant the permanent restraining order pending the date of the hearing.

(c) A local law enforcement agency may charge the person subject to the order or injunction a fee for the storage of any firearm relinquished pursuant to this section. The fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal Code or to the person relinquishing the firearm.

(d) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent's right under existing law to petition the court at a later date for modification of the order.

(e) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the respondent, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the respondent is prohibited from possessing a firearm because the respondent is in any prohibited class for the possession of firearms, as defined in Sections 12021 and 12021.1 of the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining order is used against the respondent under this section. If the local law enforcement agency determines that the respondent is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(f) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is

necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

(g) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale.

CHAPTER 475

An act to amend and repeal Sections 6211 and 6217 of the Government Code, relating to public records.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 6211 of the Government Code is amended to read:

6211. This chapter 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 6217 of the Government Code is amended to read:

6217. This chapter 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. 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 mandated costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 476

An act to amend Sections 527.6 and 527.8 of the Code of Civil Procedure, to amend Section 6222 of the Family Code, to amend Section 6103.2 of the Government Code, and to amend and repeal Section 1203.097 of the Penal Code, relating to domestic violence.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction, issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section if there are allegations or threats of domestic violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and may

not provide legal advice. The support person may assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of domestic violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon the filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(*l*) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a plaintiff from using other existing civil remedies.

(m) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(o) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(p) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No

fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(q) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:

(A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence.

(C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

SEC. 2. Section 527.8 of the Code of Civil Procedure is amended to read:

527.8. (a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

(b) For the purposes of this section:

(1) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(c) This section does not permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) For purposes of this section, the terms "employer" and "employee" mean persons defined in Section 350 of the Labor Code. "Employer" also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. "Employee" also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, "employee" also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the employee, or other persons employed at his or her workplace or workplaces.

A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(g) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(h) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i) (1) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(2) At the request of the plaintiff, an order issued under this section shall be served on the defendant, regardless of whether the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The plaintiff shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the plaintiff or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and obtain the defendant's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the defendant into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code. The plaintiff shall mail an endorsed copy of the order to the defendant's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence

or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

(j) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(k) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(*l*) Nothing in this section may be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(m) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(o) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(p) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a

petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(q) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process of a temporary restraining order or injunction to be issued pursuant to this section if either of the following conditions apply:

(A) The temporary restraining order or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or injunction issued pursuant to this section is based upon a credible threat of violence.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

SEC. 3. Section 6222 of the Family Code is amended to read:

6222. There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division when the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

SEC. 4. Section 6103.2 of the Government Code is amended to read:

6103.2. (a) Section 6103 does not apply to any fee or charge or expense for official services rendered by a sheriff or marshal in connection with the levy of writs of attachment, execution, possession, or sale. The fee, charge, or expense may be advanced to the sheriff or marshal, as otherwise required by law.

(b) (1) Notwithstanding Section 6103, the sheriff or marshal, in connection with the service of process or notices, may require that all fees which a public agency, or any person or entity, is required to pay under provisions of law other than this section, be prepaid by a public agency named in Section 6103, or by any person or entity, prior to the performance of any official act. This authority to require prepayment shall include fees governed by Section 6103.5.

(2) This subdivision does not apply to the service of process or notices in any action by the district attorney's office for the establishment or enforcement of a child support obligation.

(3) This subdivision does not apply to a particular jurisdiction unless the sheriff or marshal, as the case may be, imposes the requirement of prepayment upon public agencies and upon all persons or entities within the private sector.

(4) The requirement for prepayment of a fee deposit does not apply to orders or injunctions described in paragraph (1) of subdivision (q) of

Section 527.6 and Section 527.8 of the Code of Civil Procedure, Division 10 (commencing with Section 6200) of the Family Code (Prevention of Domestic Violence), and Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code (Elder Abuse and Dependent Adult Civil Protection Act).

However, a sheriff, marshal, or constable may submit a billing to the superior court for payment of fees in the manner prescribed by the Judicial Council irrespective of the in forma pauperis status of any party under Rule 985 of the Rules of Court. The fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731.

SEC. 5. Section 1203.097 of the Penal Code, as amended by Section 1 of Chapter 431 of the Statutes of 2003, is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) A minimum payment by the defendant of four hundred dollars ($400) to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

Two-thirds of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to one-third of funds collected during the preceding month. In no event may the funds transferred to the Controller be less than one hundred thirty-three dollars ($133) for each defendant. However, if the court orders the defendant to pay less than two hundred dollars ($200) because of his or her inability to pay, the state shall receive two-thirds

of the payment. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

(B) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The

probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. When the injury to a married person is caused, in whole or in part, by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to,

any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's

inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines

the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its costs in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke any approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent

counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

(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. 6. Section 1203.097 of the Penal Code, as added by Section 2 of Chapter 431 of the Statutes of 2003, is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) A minimum payment by the defendant of two hundred dollars ($200) to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

One-third of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to two-thirds of funds collected during the preceding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the

Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

(B) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The

probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. When the injury to a married person is caused, in whole or in part, by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group

discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group

sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its costs in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke any approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

(d) This section shall become operative on January 1, 2010.

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 477

An act to amend Section 105256 of the Health and Safety Code, relating to lead abatement.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 105256 of the Health and Safety Code is amended to read:

105256. (a) Notwithstanding any other provision of law, whenever the department or a local enforcement agency determines that a condition at a location or premises, or the activity of any person at the location or premises, is creating or has created a lead hazard at the location or premises, the department or the local enforcement agency may order the owner of the location or premises to abate the lead hazard, and may order the person whose activity is creating or has created the lead hazard, to cease and desist.

(b) It is unlawful for any person to refuse to obey any order issued pursuant to this section.

(c) A violation of subdivision (b) shall be an infraction punishable by a fine not to exceed one thousand dollars ($1,000).

(d) A second or subsequent violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment for not more than six months in the county jail or by both that fine and imprisonment.

(e) Any penalties under this section shall be in addition to any other penalty or remedy provided by law.

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

CHAPTER 478

An act to amend Sections 115922, 115924, and 115928 of the Health and Safety Code, relating to public safety.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. This act shall be known as, and may be cited as, the Swimming Pool and Spa Safety Act of 2006.

SEC. 2. Section 115922 of the Health and Safety Code is amended to read:

115922. (a) Commencing January 1, 2007, except as provided in Section 115925, whenever a building permit is issued for construction of a new swimming pool or spa, or any building permit is issued for remodeling of an existing pool or spa, at a private, single-family home, it shall be equipped with at least one of the following seven drowning prevention safety features:

(1) The pool shall be isolated from access to a home by an enclosure that meets the requirements of Section 115923.

(2) The pool shall incorporate removable mesh pool fencing that meets American Society for Testing and Materials (ASTM) Specifications F 2286 standards in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.

(3) The pool shall be equipped with an approved safety pool cover that meets all requirements of the ASTM Specifications F 1346 .

(4) The residence shall be equipped with exit alarms on those doors providing direct access to the pool.

(5) All doors providing direct access from the home to the swimming pool shall be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.

(6) Swimming pool alarms that, when placed in pools, will sound upon detection of accidental or unauthorized entrance into the water. These pool alarms shall meet and be independently certified to the ASTM Standard F 2208 “Standards Specification for Pool Alarms” which includes surface motion, pressure, sonar, laser, and infrared type alarms. For purposes of this article, “swimming pool alarms” shall not include swimming protection alarm devices designed for individual use, such as an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water.

(7) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the devices set forth above, and have been independently verified by an approved testing laboratory as meeting standards for those devices established by the ASTM or the American Society of Mechanical Engineers (ASME).

(b) Prior to the issuance of any final approval for the completion of permitted construction or remodeling work, the local building code official shall inspect the drowning safety prevention devices required by this act and if no violations are found, shall give final approval.

SEC. 3. Section 115924 of the Health and Safety Code is amended to read:

115924. (a) Any person entering into an agreement to build a swimming pool or spa, or to engage in permitted work on a pool or spa covered by this article, shall give the consumer notice of the requirements of this article.

(b) Pursuant to existing law, the Department of Health Services shall have available on the department's Web site, commencing January 1, 2007, approved pool safety information available for consumers to download. Pool contractors are encouraged to share this information with consumers regarding the potential dangers a pool or spa poses to toddlers. Additionally, pool contractors may provide the consumer with swimming pool safety materials produced from organizations such as the United States Consumer Product Safety Commission, Drowning Prevention Foundation, California Coalition for Children's Safety & Health, Safe Kids Worldwide, Association of Pool and Spa Professionals, or the American Academy of Pediatrics.

SEC. 4. Section 115928 of the Health and Safety Code is amended to read:

115928. Whenever a building permit is issued for the construction of a new swimming pool or spa, the pool or spa shall meet all of the following requirements:

(a) (1) The suction outlet of the pool or spa for which the permit is issued shall be equipped to provide circulation throughout the pool or spa as prescribed in paragraph (2).

(2) The swimming pool or spa shall have at least two circulation drains per pump that shall be hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least three feet in any dimension between the drains.

(b) Suction outlets that are less than 12 inches across shall be covered with antientrapment grates, as specified in the ASME/ANSI Standard A 112.19.8, that cannot be removed except with the use of tools. Slots or openings in the grates or similar protective devices shall be of a shape,

area, and arrangement that would prevent physical entrapment and would not pose any suction hazard to bathers.

(c) Any backup safety system that an owner of a new swimming pool or spa may choose to install in addition to the requirements set forth in subdivisions (a) and (b) shall meet the standards as published in the document, "Guidelines for Entrapment Hazards: Making Pools and Spas Safer," Publication Number 363, March 2005, United States Consumer Product Safety Commission.

(d) Whenever a building permit is issued for the remodel or modification of a single family home with an existing swimming pool, toddler pool, or spa, the permit shall require that the suction outlet of the existing swimming pool, toddler pool, or spa be upgraded so as to be equipped with an antientrapment cover meeting current standards of the American Society for Testing and Materials (ASTM) or the American Society of Mechanical Engineers (ASME).

SEC. 5. The Legislature hereby directs the Building and Standards Commission to incorporate the provisions of this act into the California State Building Standards Code, no later than January 1, 2010.

SEC. 6. 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 479

An act to add Section 6275 to the Family Code, relating to emergency protective orders.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 6275 is added to the Family Code, to read:

6275. (a) A law enforcement officer who responds to a situation in which the officer believes that there may be grounds for the issuance of an emergency protective order pursuant to Section 6250 of this code or Section 646.91 of the Penal Code, shall inform the person for whom an emergency protective order may be sought, or, if that person is a minor, his or her parent or guardian, provided that the parent or guardian is not

the person against whom the emergency protective order may be obtained, that he or she may request the officer to request an emergency protective order pursuant to this part.

(b) Notwithstanding Section 6250, and pursuant to this part, an officer shall request an emergency protective order if the officer believes that the person requesting an emergency protective order is in immediate and present danger.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 480

An act to add Section 1648 to the Health and Safety Code, relating to human milk.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

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

(a) There is consensus among health care experts and institutions that breastfeeding is the superior method of feeding and nurturing infants.

(b) The American Dietetic Association states that "human milk provides optimal nutrition to the infant, with its dynamic composition and the appropriate balance of nutrients provided in easily digestible and bioavailable form."

(c) According to the American Academy of Pediatrics 2005 policy statement, "human milk is species-specific, and all substitute feeding preparations differ markedly from it, making human milk uniquely superior for infant feeding." The policy statement also asserts that "research in developed and developing countries of the world, including middle-class populations in developed countries, provides strong evidence that human milk feeding decreases the incidence and severity of a wide range of infectious diseases, including bacterial meningitis, bacteremia diarrhea, respiratory tract infection, necrotizing enterocolitis, otitis media, urinary tract infection, and late-onset sepsis in preterm infants. In addition, postneonatal infant mortality rates in the United States are reduced by 21 percent in breastfed infants. Some studies suggest

decreased rates of sudden infant death syndrome in the first year of life and reduction of insulin-dependent (type 1) and noninsulin-dependent (type 2) diabetes mellitus, lymphoma, leukemia, Hodgkin's disease, overweight and obesity, hypercholesterolemia, and asthma in older children and adults who were breastfed, compared with individuals who were not breastfed.

(d) The American Academy of Pediatrics recommends that infants be exclusively breastfed for approximately six months before being introduced to complementary foods.

(e) Too few women in California exclusively breastfeed their infants in the early postpartum period, let alone in the first six months of life, as recommended by the American Academy of Pediatrics.

(f) There are also racial and ethnic disparities with regard to breastfeeding rates. While 61.8 percent (down from 64 percent in 2001) of white women in California are exclusively breastfeeding in the hospital, only 40 percent of Asians, 27 percent of Pacific Islanders, 30 percent of African-American women, and 29 percent (down from 30 percent in 2001) of Latinas are doing so.

(g) In "Breastfeeding: Investing in California's Future," the Breastfeeding Promotion Committee Report to the California Department of Health Services Primary Care and Family Health (1996) there was a finding that "... women look to health care providers for breastfeeding information and support; however, health care systems, policies, and personnel often unknowingly interfere with the initiation and continuation of breastfeeding." This report also states that health care professionals are in a key position to effect breastfeeding success, and promotional efforts will be successful only if women who are encouraged to breastfeed encounter providers who are able to respond to their needs.

(h) Current California law inadvertently discourages the feeding of breast milk to infants in the hospital by requiring a hospital that permits a mother to store her milk in a hospital refrigerator to obtain and maintain a full tissue bank license.

(i) Hospitals that cannot complete the process for obtaining a full tissue bank license cannot legally allow a mother to store her milk in a refrigerator on the hospital premises.

(j) A mother whose infant is admitted to a hospital may not be able to be physically present to breastfeed the infant at each feeding time, and may wish to store her milk in a refrigerator or freezer on the hospital premises. Many hospitals wish to permit mothers to do this, but are unable to do so due to the lengthy and complicated process required to obtain a full tissue bank license from the State of California.

(k) It is the intent of the Legislature to adopt policies that promote and encourage the breastfeeding of all infants, including those who are hospitalized.

SEC. 2. Section 1648 is added to the Health and Safety Code, to read:

1648. (a) A hospital that collects, processes, stores, or distributes human milk collected from a mother exclusively for her own child shall comply with the most current standards established for the collection, processing, storage, or distribution of human milk by the Human Milk Banking Association of North America until or unless the department approves alternative standards.

(b) A hospital shall be exempt from the requirements of Chapter 4.1 (commencing with Section 1635) for the purpose of collecting, processing, storing, or distributing human milk collected from a mother exclusively for her own child.

(c) Notwithstanding any other provision of law, no screening tests shall be required to be performed on human milk collected from a mother exclusively for her own child.

(d) The department shall assess hospital processes for collecting, processing, storing, or distributing human milk pursuant to its current practice, as required by Chapter 2 (commencing with Section 1250).

(e) This section does not apply to any hospital that collects, processes, stores, or distributes milk from human milk banks or other outside sources.

CHAPTER 481

An act to amend Sections 13776, 13777, and 13779 of, and to add Section 13777.2 to, the Penal Code, relating to law enforcement.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 13776 of the Penal Code is amended to read:

13776. The following definitions apply for the purposes of this title:

(a) "Anti-reproductive-rights crime" means a crime committed partly or wholly because the victim is a reproductive health services client, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or any class of persons or entities from becoming or remaining a reproductive health services

client, provider, or assistant. "Anti-reproductive-rights crime" includes, but is not limited to, a violation of subdivision (a) or (c) of Section 423.2.

(b) "Subject matter experts" includes, but is not limited to, the Commission on the Status of Women, law enforcement agencies experienced with anti-reproductive-rights crimes, including the Attorney General and the Department of Justice, and organizations such as the American Civil Liberties Union, the American College of Obstetricians and Gynecologists, the California Council of Churches, the California Medical Association, the Feminist Majority Foundation, NARAL Pro-Choice California, the National Abortion Federation, the California National Organization for Women, the Planned Parenthood Federation of America, Planned Parenthood Affiliates of California, and the Women's Health Specialists clinic that represent reproductive health services clients, providers, and assistants.

(c) "Crime of violence," "nonviolent," "reproductive health services;" "reproductive health services client, provider, or assistant;" and "reproductive health services facility" each has the same meaning as set forth in Section 423.1.

SEC. 2. Section 13777 of the Penal Code is amended to read:

13777. (a) Except as provided in subdivision (d), the Attorney General shall do each of the following:

(1) Collect and analyze information relating to anti-reproductive-rights crimes, including, but not limited to, the threatened commission of these crimes and persons suspected of committing these crimes or making these threats. The analysis shall distinguish between crimes of violence, including, but not limited to, violations of subdivisions (a) and (e) of Section 423.2, and nonviolent crimes, including, but not limited to, violations of subdivision (c) of Section 423.2. The Attorney General shall make this information available to federal, state, and local law enforcement agencies and prosecutors in California.

(2) Direct local law enforcement agencies to report to the Department of Justice, in a manner that the Attorney General prescribes, any information that may be required relative to anti-reproductive-rights crimes. The report of each crime that violates Section 423.2 shall note the subdivision that prohibits the crime. The report of each crime that violates any other law shall note the code, section, and subdivision that prohibits the crime. The report of any crime that violates both Section 423.2 and any other law shall note both the subdivision of Section 423.2 and the other code, section, and subdivision that prohibits the crime.

(3) On or before July 1, 2003, and every July 1 thereafter, submit a report to the Legislature analyzing the information it obtains pursuant to this section.

(4) (A) Develop a plan to prevent, apprehend, prosecute, and report anti-reproductive-rights crimes, and to carry out the legislative intent expressed in subdivisions (c), (d), (e), and (f) of Section 1 of the act that enacts this title in the 2001–02 Regular Session of the Legislature.

(B) Make a report on the plan to the Legislature by December 1, 2002. The report shall include recommendations for any legislation necessary to carry out the plan.

(b) In carrying out his or her responsibilities under this section, the Attorney General shall consult the Governor, the Commission on Peace Officer Standards and Training, and other subject matter experts.

(c) To avoid production and distribution costs, the Attorney General may submit the reports that this section requires electronically or as part of any other reports that he or she submits to the Legislature, and shall post the reports that this section requires on the Department of Justice Web site.

(d) The Attorney General shall implement this section to the extent the Legislature appropriates funds in the Budget Act or another statute for this purpose.

SEC. 3. Section 13777.2 is added to the Penal Code, to read:

13777.2. (a) The Commission on the Status of Women shall convene an advisory committee consisting of one person appointed by the Attorney General and one person appointed by each of the organizations named in subdivision (b) of Section 13776 that chooses to appoint a member, and any other subject matter experts the commission may appoint. The advisory committee shall elect its chair and any other officers of its choice.

(b) The advisory committee shall make a report by December 31, 2007, to the Committees on Health, Judiciary, and Public Safety of the Senate and Assembly, to the Attorney General, the Commission on Peace Officer Standards and Training, and the Commission on the Status of Women. The report shall evaluate the implementation of Chapter 899, Statutes of 2001 and the effectiveness of the plan developed by the Attorney General pursuant to subparagraph (A) of paragraph (4) of Section 13777. The report shall also include recommendations concerning whether the Legislature should extend or repeal the sunset dates in Section 13779, recommendations regarding any other legislation, and recommendations for any other actions by the Attorney General, Commission on Peace Officer Standards and Training, or the Commission on the Status of Women.

(c) The Commission on the Status of Women shall transmit the report of the advisory committee to the appropriate committees of the Legislature, including, but not limited to, the Committees on Health, Judiciary, and Public Safety in the Senate and Assembly, and make the

report available to the public, including by posting it on the Commission on the Status of Women's Web site. To avoid production and distribution costs, the Commission on the Status of Women may submit the report electronically or as part of any other report that the Commission on the Status of Women submits to the Legislature.

(d) The Commission on Peace Officer Standards and Training shall make the telecourse that it produced in 2002 pursuant to subdivision (a) of Section 13778 available to the advisory committee. However, before providing the telecourse to the advisory committee or otherwise making it public, the commission shall remove the name and face of any person who appears in the telecourse as originally produced who informs the commission in writing that he or she has a reasonable apprehension that making the telecourse public without the removal will endanger his or her life or physical safety.

(e) Nothing in this section requires any state agency to pay for compensation, travel, or other expenses of any advisory committee member.

SEC. 4. Section 13779 of the Penal Code is amended to read:

13779. This title shall remain in effect until January 1, 2009, and as of that date is repealed unless a later enacted statute deletes or extends that date.

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 482

An act to amend Section 1367.66 of the Health and Safety Code, and to amend Section 10123.18 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 1367.66 of the Health and Safety Code is amended to read:

1367.66. Every individual or group health care service plan contract, except for a specialized health care service plan, that is issued, amended,

or renewed, on or after January 1, 2002, and that includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage for an annual cervical cancer screening test upon the referral of the patient's physician and surgeon, a nurse practitioner, or certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee.

The coverage for an annual cervical cancer screening test provided pursuant to this section shall include the conventional Pap test, a human papillomavirus screening test that is approved by the federal Food and Drug Administration, and the option of any cervical cancer screening test approved by the federal Food and Drug Administration, upon the referral of the patient's health care provider.

Nothing in this section shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in an existing plan contract. The Legislature intends in this section to provide that cervical cancer screening services are deemed to be covered if the plan contract includes coverage for cervical cancer treatment or surgery.

SEC. 2. Section 10123.18 of the Insurance Code is amended to read:

10123.18. (a) Every individual or group policy of health insurance that provides coverage for hospital, medical, or surgical benefits, that is issued, amended, or renewed, on or after January 1, 2002, and that includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage, upon the referral of a patient's physician and surgeon, a nurse practitioner, or a certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee, for an annual cervical cancer screening test.

The coverage for an annual cervical cancer screening test provided pursuant to this section shall include the conventional Pap test, a human papillomavirus screening test that is approved by the federal Food and Drug Administration, and the option of any cervical cancer screening test approved by the federal Food and Drug Administration, upon the referral of the patient's health care provider.

Nothing in this section shall be construed to require an individual or group policy to cover treatment or surgery for cervical cancer or to prevent application of deductible or copayment provisions contained in the policy or certificate, nor shall this section be construed to require that coverage under an individual or group policy be extended to any other procedures.

(b) This section shall not apply to vision only, dental only, accident only, specified disease, hospital indemnity, Medicare supplement, CHAMPUS supplement, long-term care, or disability income insurance. For accident only, hospital indemnity, or specified disease insurance,

coverage for benefits under this section shall apply only to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy or certificate. Nothing in this section shall be construed as imposing a new benefit mandate on accident only, hospital indemnity, or specified disease insurance.

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 483

An act to amend Sections 125118, 125119, 125119.3, 125119.5, and 125300 of, and to add Chapter 2 (commencing with Section 125330) to Part 5.5 of Division 106 of, the Health and Safety Code, relating to reproductive health.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

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

(a) The purpose of this act is to create protections for research subjects and it should not be construed to affect any other form of medical care.

(b) Scientific research can be most effectively achieved by establishing protocols to protect, respect, and promote human health, safety, dignity, autonomy, and rights in conducting research.

(c) This act seeks to support the requirements already in current law upholding the principle of voluntary and informed consent and to tailor them to this new area of pioneering research that utilizes human oocytes.

(d) The potential for exploitation of the reproductive capabilities of women for commercial gain raises health and ethical concerns that justify the prohibition of payment for human oocytes.

SEC. 2. Section 125118 of the Health and Safety Code is amended to read:

125118. (a) The State Department of Health Services shall develop guidelines for research involving the derivation or use of human embryonic stem cells in California.

(b) In developing the guidelines specified in subdivision (a), the department may consider other applicable guidelines developed or in use in the United States and in other countries, including, but not limited to, the Guidelines for Research Using Human Pluripotent Stem Cells developed by the National Institutes of Health and published in August 2000, and corrected in November 2000, and the Guidelines for Human Embryonic Stem Cell Research issued by the National Research Council and Institute of Medicine of the National Academies in 2005.

SEC. 3. Section 125119 of the Health and Safety Code is amended to read:

125119. (a) (1) All research projects involving the derivation or use of human embryonic stem cells shall be reviewed and approved by a stem cell research oversight committee prior to being undertaken. Any stem cell research oversight committee shall, in its review of human embryonic stem cell research projects, consider and apply the guidelines developed by the department pursuant to Section 125118. A stem cell research oversight committee may require modifications to the plan or design of a proposed human embryonic stem cell research project as a condition of approving the research project.

(2) A stem cell research oversight committee for purposes of this article shall be established substantially in accordance with Guidelines for Human Embryonic Stem Cell Research issued by the National Research Council and the Institute of Medicine of the National Academies in 2005. This committee shall be established in accordance with standards issued by the California Institute for Regenerative Medicine (CIRM) as authorized by Article XXXV of the California Constitution. The intent of the Legislature is to avoid inconsistencies for stem cell research oversight committees established pursuant to this article with other existing standards for research conducted in California.

(b) Not less than once per year, a stem cell research oversight committee shall conduct continuing review of human embryonic stem cell research projects reviewed and approved under this section in order to ensure that the research continues to meet the standards for stem cell research oversight committee approval. Pursuant to its review in accordance with this subdivision, a stem cell research oversight committee may revoke its prior approval of research under this section and require modifications to the plan or design of a continuing research project before permitting the research to continue.

(c) A stem cell research oversight committee may provide scientific and ethical review of research consistent with this article.

SEC. 4. Section 125119.3 of the Health and Safety Code is amended to read:

125119.3. (a) Each stem cell research oversight committee that has reviewed human embryonic stem cell research pursuant to Section 125119 shall report to the department, annually, on the number of human embryonic stem cell research projects that the stem cell research oversight committee has reviewed, and the status and disposition of each of those projects, including the information collected pursuant to Section 125342.

(b) Each stem cell research oversight committee shall also report to the department regarding unanticipated problems, unforeseen issues, or serious continuing investigator noncompliance with the requirements or determinations of the stem cell research oversight committee with respect to the review of human embryonic stem cell research projects, and the actions taken by the stem cell research oversight committee to respond to these situations.

SEC. 5. Section 125119.5 of the Health and Safety Code is amended to read:

125119.5. (a) The department shall at least annually review reports from stem cell research oversight committees, and may revise the guidelines developed pursuant to Section 125118, as it deems necessary.

(b) The department shall provide a biennial review to the Legislature on human embryonic stem cell research activity. These biennial reviews shall be compiled from the reports from stem cell research oversight committees.

SEC. 6. Section 125300 of the Health and Safety Code is amended to read:

125300. The policy of the State of California shall be that research involving the derivation and use of human embryonic stem cells, human embryonic germ cells, and human adult stem cells, including somatic cell nuclear transplantation, shall be reviewed by a stem cell research oversight committee.

SEC. 7. Chapter 2 (commencing with Section 125330) is added to Part 5.5 of Division 106 of the Health and Safety Code, to read:

Chapter 2. Procuring of Oocytes for Research

125330. The following definitions shall apply to this chapter:

(a) "Assisted oocyte production" or "AOP" means surgical extraction of oocytes following pharmaceutically induced manipulation of oocyte production through the use of ovarian stimulation.

(b) "Oocyte" means a female egg or egg cell of a human female.

(c) "Subject" means any person undergoing AOP or any alternative method of ovarian retrieval for research or for the development of

medical therapies, including those who would not meet the definition of "subject" under 45 C.F.R. 46.102.

(d) "Alternate method of oocyte retrieval" means a method of oocyte retrieval that does not involve the pharmaceutically induced manipulation of oocyte production.

(e) "Institutional review board" means a body established in accordance with federal regulations, including Part 46 (commencing with Section 46.101) of Subchapter A of Subtitle A of Title 45 of the Code of Federal Regulations.

125335. (a) Prior to obtaining informed consent from a subject for AOP or any alternative method of ovarian retrieval on a subject for the purpose of procuring oocytes for research or the development of medical therapies, a physician and surgeon shall provide to the subject a standardized medically accurate written summary of health and consumer issues associated with AOP and any alternative methods of oocyte retrieval. The failure to provide to a subject this standardized medically accurate written summary constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(b) The summary shall include, but not be limited to, medically accurate disclosures concerning the potential risks of AOP or any alternative method of oocyte retrieval, including the risks associated with the surgical procedure and with using the drugs, medications, and hormones prescribed for ovarian stimulation during the AOP process or any alternative method of oocyte retrieval.

(c) For purposes of subdivision (a), "written summary of health and consumer issues" means the guide published and updated by the American Society for Reproductive Medicine entitled, "Assisted Reproductive Technology: A Guide for Patients" or an alternative written medically accurate document prepared by a recognized authority on oocyte retrieval for medical research that also meets the criteria included in this section. This alternative document may be one that has been approved and recommended by the State Department of Health Services pursuant to Section 125118 and shall include all of the following:

(1) The document shall adhere to simplified reading standards, including, but not limited to, those generally accepted and required for government publications. The document shall be written in layperson's language and shall be made available in languages spoken by subjects in the study if their proficiency is largely in a language other than English. All information in the document shall be conveyed to the subject orally in easy to understand and nontechnical terms.

(2) The document shall include additional resources for, or list additional sources of, medical information on health and safety issues surrounding oocyte retrieval.

125340. (a) Prior to providing AOP or any alternative method of ovarian retrieval to a subject for the purposes of medical research or development of medical therapies, a physician and surgeon shall obtain written and oral informed consent for the procedure from the subject. Informed consent for the purposes of this chapter shall comply with the informed consent requirements of the Protection of Human Subjects in Medical Experimentation Act (Chapter 1.3 (commencing with Section 24170) of Division 20).

(b) The failure to obtain written informed consent from the subject constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. Nothing in this section shall be construed to relieve the physician and surgeon from other existing duties under the law, including, but not limited to, the duty to obtain a subject's informed consent after fully explaining the proposed procedure. The requirement that a physician and surgeon provide the standardized written summary pursuant to Section 125335 is in addition to, and does not supplant, other existing legal requirements regarding informed consent, including, but not limited to, compliance with the Protection of Human Subjects in Medical Experimentation Act (Chapter 1.3 (commencing with Section 24170) of Division 20.

(c) This chapter shall not affect the suitability or availability of oocytes procured for research before January 1, 2007, if the oocytes were donated pursuant to protocols or standards that are generally recognized and accepted by national or international scientific bodies.

(d) Any written document required pursuant to this section shall adhere to simplified reading standards, including, but not limited to, those generally accepted and required for government publications, and in layperson's language. The document shall be made available in languages spoken by subjects in the study if their proficiency is largely in a language other than English. All information in the written informed consent document shall also be conveyed to the subject orally in easy to understand and nontechnical terms.

125341. An institutional review board (IRB) that reviews and approves medical and scientific research shall require all of the following of any research program or project that comes under its review that involves AOP or any alternative method of oocyte retrieval:

(a) That it include a written summary as required under Section 125335 that would include information on health risks and potential

adverse consequences of the procedure and describe the manner in which the subject will receive and review this written summary.

(b) That it obtain informed consent in compliance with the Protection of Human Subjects in Medical Experimentation Act (Chapter 1.3 (commencing with Section 24170) of Division 20), including informed consent for information obtained pursuant to Section 125342.

(c) That it provide the subject with an objective and accurate statement about the existing state of the research for which the subject is providing oocytes.

(d) That it perform psychological and physical screening, in accordance with the appropriate standard of care, for all subjects prior to the oocyte retrieval procedure.

(e) That it ensure that after conducting AOP or any alternative method of oocyte retrieval on a subject, the subject be given a postprocedure medical examination at a time within the standard of care to determine if the subject has experienced an adverse health effect that is a result of the procedure. The subject shall be informed that she has the right to a second opinion if she has any medical concerns.

(f) That it ensure that the subject has access to and coverage for medically appropriate medical care that is required as a direct result of the procedure for research purposes. The research program or project shall ensure that payment or coverage of resulting medical expenses be provided at no cost to the subject and that a summary of the arrangements the procuring entity has made for coverage or payment for medical care related to AOP or any alternative method of oocyte retrieval is provided to the subject prior to the procedure.

(g) That it provide a summary informing the subject that oocytes may not be sold or transferred for valuable consideration except as set forth in Section 125350.

(h) That it provide disclosure if the physician and surgeon and his or her immediate family members have any professional interest in the outcome of the research or of the oocyte retrieval procedure and, if so, that it provide disclosure that he or she carries the interest of both the subject and the success of the research.

125342. (a) A research program or project that involves AOP or any alternative method of oocyte retrieval shall ensure that a written record is established and maintained to include, but not be limited to, all of the following components:

(1) The demographics of subjects, including, but not limited to, their age, race, primary language, ethnicity, income bracket, education level, and the first three digits of the ZIP Code of current residence.

(2) Information regarding every oocyte that has been donated or used. This record should be sufficient to determine the provenance and disposition of those materials.

(3) A record of all adverse health outcomes, including, but not limited to, incidences and degrees of severity, resulting from the AOP or any alternative method of oocyte retrieval.

(b) (1) The information included in the written record pursuant to subdivision (a) shall not disclose personally identifiable information about subjects, and shall be confidential and is deemed protected by subject privacy provisions of law. This information shall be reported to the State Department of Health Services, which shall aggregate the data and make it publicly available, as set forth in paragraph (2), in a manner that does not reveal personally identifiable information about the subjects.

(2) The department shall provide public access to information which it is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The department shall disseminate the information to the general public via governmental and other Web sites in a manner that is understandable to the average person. The information shall be made available to the public when the biennial review pursuant to Section 125119.5 is provided to the Legislature.

125343. Any employee who works in the unit conducting stem cell research using human oocytes, persons who report to, or are supervised by, the principal investigator or key personnel of the project, or both, along with the principal investigator and the key personnel of the project, and the immediate family members of any of the above persons are prohibited from being a subject in the research.

125344. The physician and surgeon performing the AOP or any alternative method of oocyte retrieval shall not have a financial interest in the outcome of the research.

125345. Pursuant to guidelines adopted by the Research Council and Institute of Medicine of the National Academies, researchers shall offer subjects an opportunity to document their preferences regarding future uses of their donated materials. The consent process shall fully explore whether subjects have objections to any specific forms of research to ensure that their wishes are honored.

125346. Any procedures for procuring oocytes in this state for research or the development of medical therapies shall meet all of the standards for subjects included in this chapter. All oocytes procured outside of this state for research taking place in this state shall meet these same standards. All egg extractions for research shall be approved by an institutional review board pursuant to Section 125341.

125350. No human oocyte or embryo shall be acquired, sold, offered for sale, received, or otherwise transferred for valuable consideration for the purposes of medical research or development of medical therapies. For purposes of this section, "valuable consideration" does not include reasonable payment for the removal, processing, disposal, preservation, quality control, and storage of oocytes or embryos.

125355. No payment in excess of the amount of reimbursement of direct expenses incurred as a result of the procedure shall be made to any subject to encourage her to produce human oocytes for the purposes of medical research.

SEC. 8. This act shall not be construed to amend Proposition 71, approved by the voters at the November 2, 2004, general election.

CHAPTER 484

An act to amend Sections 124977 and 125055 of, to add Sections 1604.6 and 125002 to, and to add Article 4 (commencing with Section 123370) to Chapter 1 of Part 2 of Division 106 of, the Health and Safety Code, relating to prenatal testing and umbilical cord blood banking, and making an appropriation therefor.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. This act shall be known and may be cited as the Maternal and Child Health Advancement Act.

SEC. 1.5. Section 1604.6 is added to the Health and Safety Code, to read:

1604.6. (a) Notwithstanding any other provision of law, in order to provide umbilical cord blood banking storage services, a blood bank shall be licensed pursuant to this chapter. Any additional standards for blood banks to store umbilical cord blood may be implemented by the department through the adoption of regulations.

(b) (1) The department may adopt emergency regulations to implement and make specific subdivision (a) 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 the Administrative Procedure Act, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(2) (A) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law. Notwithstanding Sections 11346.1 and 11349.6, the department shall submit these regulations directly to the Secretary of State for filing.

(B) Emergency regulations adopted pursuant to this section shall become effective immediately upon filing by the Secretary of State, shall be subject to public hearing within 120 days of filing with the Secretary of State, and shall comply with Sections 11346.8 and 11346.9 of the Government Code, or shall be repealed by the department.

(3) The Office of Administrative Law shall provide for the printing and publication of emergency regulations adopted pursuant to this section in the California Code of Regulations.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and subject to subparagraph (B) of paragraph (2), the emergency regulations adopted pursuant to this subdivision shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

SEC. 2. Article 4 (commencing with Section 123370) is added to Chapter 1 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 4. Cord Blood Banking Education

123370. The department shall conduct the Umbilical Cord Blood Community Awareness Campaign to do all of the following:

(a) Provide awareness, assistance, and information regarding umbilical cord blood banking options using brochures, television, print media, radio, Internet Web sites, outdoor advertising, and other media, where appropriate to disseminate information to licensed prenatal care providers, Family PACT providers, and pregnant women.

(b) Establish an Internet Web site to provide information about umbilical cord blood banking options that is accessible to prenatal care providers, pregnant women, and the general public.

(c) Undertake public education activities related to umbilical cord blood donation to targeted populations, as appropriate.

123371. (a) The State Department of Health Services shall develop standardized, objective information about umbilical cord blood donation that is sufficient to allow a pregnant woman to make an informed decision on whether to participate in a private or public umbilical cord blood

banking program. This information shall include, but not be limited to, all of the following:

(1) The current and potential future medical uses of stored umbilical cord blood.

(2) The benefits and risks involved in umbilical cord blood banking.

(3) The medical process involved in umbilical cord blood banking.

(4) Medical or family history criteria that can impact a family's consideration of umbilical cord banking.

(5) An explanation of the differences between public and private umbilical cord blood banking.

(6) The availability and costs of public or private umbilical cord blood banks.

(7) Medical or family history criteria that can impact a family's consideration of umbilical cord blood banking.

(8) An explanation that the practices and policies of blood banks may vary with respect to accreditation, cord blood processing and storage methods, costs, and donor privacy.

(b) The information provided by the department pursuant to subdivision (a) shall be made available in Cantonese, English, Spanish, and Vietnamese.

(c) The information provided by the department pursuant to subdivision (a) shall be made available on the Internet Web sites of the licensing boards that have oversight over primary prenatal care providers.

(d) (1) The primary prenatal care provider of a woman who is known to be pregnant may, during the first prenatal visit, provide her with information developed by the department regarding her options with respect to umbilical cord blood banking at the same time the provider provides information regarding the use and availability of prenatal screening for birth defects of the fetus, as required by Section 6527 of Title 17 of the California Code of Regulations.

(2) For purposes of this article, a "prenatal care provider" means a health care provider licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or pursuant to an initiative act referred to in that division, who provides prenatal medical care within his or her scope of practice.

(e) The department shall only implement this article upon a determination by the Director of Finance, that sufficient private donations have been collected and deposited into the Umbilical Cord Blood Education Account, which is hereby created in the State Treasury. The moneys in the account shall be available, upon appropriation by the Legislature, for the purposes of this article. No public funds shall be used to implement this article. If sufficient funds are collected and

deposited into the account, the Director of Finance shall file a written notice thereof with the Secretary of State.

SEC. 3. Section 124977 of the Health and Safety Code is amended to read:

124977. (a) It is the intent of the Legislature that, unless otherwise specified, the program carried out pursuant to this chapter be fully supported from fees collected for services provided by the program.

(b) (1) The department shall charge a fee to all payers for any tests or activities performed pursuant to this chapter. The amount of the fee shall be established by regulation and periodically adjusted by the director in order to meet the costs of this chapter. Notwithstanding any other provision of law, any fees charged for prenatal screening and followup services provided to persons enrolled in the Medi-Cal program, health care service plan enrollees, or persons covered by health insurance policies, shall be paid in full directly to the Genetic Disease Testing Fund, subject to all terms and conditions of each enrollee's or insured's health care service plan or insurance coverage, whichever is applicable, including, but not limited to, copayments and deductibles applicable to these services, and only if these copayments, deductibles, or limitations are disclosed to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(2) The department shall expeditiously undertake all steps necessary to implement the fee collection process, including personnel, contracts, and data processing, so as to initiate the fee collection process at the earliest opportunity.

(3) The director shall convene, in the most cost-efficient manner and using existing resources, a working group comprised of health insurance, health care service plan, hospital, consumer, and department representatives to evaluate newborn and prenatal screening fee billing procedures, and recommend to the department ways to improve these procedures in order to improve efficiencies and enhance revenue collections for the department and hospitals. In performing its duties, the working group may consider models in other states. The working group shall make its recommendations by March 1, 2005.

(4) Effective for services provided on and after July 1, 2002, the department shall charge a fee to the hospital of birth, or, for births not occurring in a hospital, to families of the newborn, for newborn screening and followup services. The hospital of birth and families of newborns born outside the hospital shall make payment in full to the Genetic Disease Testing Fund. The department shall not charge or bill Medi-Cal beneficiaries for services provided under this chapter.

(5) The department shall charge a fee for prenatal screening to support the pregnancy blood sample storage, testing, and research activities of the Birth Defects Monitoring Program.

(6) The initial prenatal screening fee increase for activities of the Birth Defects Monitoring Program shall be ten dollars ($10).

(7) The only funds from the Genetic Disease Testing Fund that may be used for the purpose of supporting the pregnancy blood sample storage, testing, and research activities of the Birth Defects Monitoring Program are those prenatal screening fees assessed and collected specifically to support those Birth Defects Monitoring Program activities.

(c) (1) The Legislature finds that timely implementation of changes in genetic screening programs and continuous maintenance of quality statewide services requires expeditious regulatory and administrative procedures to obtain the most cost-effective electronic data processing, hardware, software services, testing equipment, and testing and followup services.

(2) The expenditure of funds from the Genetic Disease Testing Fund for these purposes shall not be subject to Section 12102 of, and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of, the Public Contract Code, or to Division 25.2 (commencing with Section 38070). The department shall provide the Department of Finance with documentation that equipment and services have been obtained at the lowest cost consistent with technical requirements for a comprehensive high-quality program.

(3) The expenditure of funds from the Genetic Disease Testing Fund for implementation of the Tandem Mass Spectrometry screening for fatty acid oxidation, amino acid, and organic acid disorders, and screening for congenital adrenal hyperplasia may be implemented through the amendment of the Genetic Disease Branch Screening Information System contracts and shall not be subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, and any policies, procedures, regulations or manuals authorized by those laws.

(4) The expenditure of funds from the Genetic Disease Testing Fund for the expansion of the Genetic Disease Branch Screening Information System to include cystic fibrosis and biotinidase may be implemented through the amendment of the Genetic Disease Branch Screening Information System contracts, and shall not be subject to Chapter 2 (commencing with Section 10290) or Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, or Sections 4800 to 5180,

inclusive, of the State Administrative Manual as they relate to approval of information technology projects or approval of increases in the duration or costs of information technology projects. This paragraph shall apply to the design, development, and implementation of the expansion, and to the maintenance and operation of the Genetic Disease Branch Screening Information System, including change requests, once the expansion is implemented.

(d) (1) The department may adopt emergency regulations to implement and make specific this chapter in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law. Notwithstanding Section 11346.1 and Section 11349.6 of the Government Code, the department shall submit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State. Regulations shall be subject to public hearing within 120 days of filing with the Secretary of State and shall comply with Sections 11346.8 and 11346.9 of the Government Code or shall be repealed.

(2) The Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the regulations adopted pursuant to this chapter shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

(3) The Legislature finds and declares that the health and safety of California newborns is in part dependent on an effective and adequately staffed genetic disease program, the cost of which shall be supported by the fees generated by the program.

SEC. 4. Section 125002 is added to the Health and Safety Code, to read:

125002. (a) In order to align closely related programs and in order to facilitate research into the causes of, and treatment for, birth defects, the Birth Defects Monitoring Program provided for pursuant to Chapter 1 (commencing with Section 103825) of Part 2 of Division 102 shall become part of the Maternal, Child, and Adolescent Health program

provided for in Article 1 (commencing with Section 123225) of Chapter 1 of Part 2 of Division 106.

(b) It is the intent of the Legislature that pregnancy blood samples, taken for prenatal screening, shall be stored and used only for the following purposes:

(1) Research to identify risk factors for children's and women's diseases.

(2) Research to develop and evaluate screening tests.

(3) Research to develop and evaluate prevention strategies.

(4) Research to develop and evaluate treatments.

(c) Before any pregnancy blood samples are released for research purposes, all of the following conditions must be met:

(1) Individual consent at the time the sample is drawn to allow confidential use of the sample for research purposes by the department or the department's approved researchers.

(2) Protocol review for scientific merit by the department or another entity authorized by the department.

(3) Protocol review by the State Committee for the Protection of Human Subjects.

(d) When pregnancy blood samples are stored, analyzed or otherwise shared for research purposes with nondepartment staff, no information may be released identifying the person from whom the samples were obtained.

(e) Since the pregnancy blood samples described in this section will be stored by the California Birth Defects Monitoring Program or another entity authorized by the State Department of Health Services, Section 103850, pertaining to confidentiality of information, is applicable.

SEC. 5. Section 125055 of the Health and Safety Code is amended to read:

125055. The department shall:

(a) Establish criteria for eligibility for the prenatal testing program. Eligibility shall include definition of conditions and circumstances that result in a high risk of a detectable genetic disorder or birth defect.

(b) Develop an education program designed to educate physicians and surgeons and the public concerning the uses of prenatal testing and the availability of the program.

(c) Ensure that genetic counseling be given in conjunction with prenatal testing at the approved prenatal diagnosis centers.

(d) Designate sufficient prenatal diagnosis centers to meet the need for these services. Prenatal diagnosis centers shall have equipment and staff trained and capable of providing genetic counseling and performing prenatal diagnostic procedures and tests, including the interpretation of the results of the procedures and tests.

(e) Administer a program of subsidy grants for approved nonprofit prenatal diagnosis centers. The subsidy grants shall be awarded based on the reported number of low-income women referred to the center, the number of prenatal diagnoses performed in the previous year at that center, and the estimated size of unmet need for prenatal diagnostic procedures and tests in its service area. This subsidy shall be in addition to fees collected under other state programs.

(f) Establish any rules, regulations, and standards for prenatal diagnostic testing and the allocation of subsidies as the director deems necessary to promote and protect the public health and safety and to implement the Hereditary Disorders Act (Section 27).

(g) (1) The department shall expand prenatal screening to include all tests that meet or exceed the current standard of care as recommended by nationally recognized medical or genetic organizations, including, but not limited to, inhibin.

(2) The prenatal screening fee increase for expanding prenatal screening to include those tests described in paragraph (1) is forty dollars ($40).

(3) The department shall report to the Legislature regarding the progress of the program with regard to implementing prenatal screening for those tests described in paragraph (1) on or before July 1, 2007. The report shall include the costs of screening, followup, and treatment as compared to costs and morbidity averted by this testing under the program.

(4) (A) The expenditure of funds from the Genetic Disease Testing Fund for the expansion of the Genetic Disease Branch Screening Information System to include the expansion of prenatal screenings, pursuant to paragraph (1), may be implemented through the amendment of the Genetic Disease Branch Screening Information System contracts, and shall not be subject to Chapter 2 (commencing with Section 10290) or Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, or Sections 4800 to 5180, inclusive, of the State Administrative Manual as they relate to approval of information technology projects or approval of increases in the duration or costs of information technology projects. This paragraph shall apply to the design, development, and implementation of the expansion, and to the maintenance and operation of the Genetic Disease Branch Screening Information System, including change requests, once the expansion is implemented.

(B) (i) The department may adopt emergency regulations to implement and make specific the amendments to this section made during the 2006 portion of the 2005–06 Regular Session in accordance with

Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law. Notwithstanding Section 11346.1 and Section 11349.6 of the Government Code, the department shall submit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State. Regulations shall be subject to public hearing within 120 days of filing with the Secretary of State and shall comply with Sections 11346.8 and 11346.9 of the Government Code or shall be repealed.

(ii) The Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the regulations adopted pursuant to this chapter shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

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 485

An act to amend Sections 109275, 109277, and 109280 of the Health and Safety Code, relating to public health.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 109275 of the Health and Safety Code is amended to read:

109275. (a) Upon a diagnosis of breast cancer, the physician and surgeon, meaning the primary provider who initially referred the patient for the screening or biopsy or, if different, the provider who has made the diagnosis of breast cancer and initially consulted with the patient about treatment, shall give the patient the written summary described in subdivision (c) and required by this section and shall note on the patient's chart that he or she has given the patient the written summary. The physician and surgeon may choose to provide the summary prior to the performance of a screening or biopsy for breast cancer upon a patient's request or at the discretion of the physician and surgeon in appropriate cases, including, but not limited to, instances when a patient has demonstrated risk factors, has a family history of breast cancer, or is otherwise susceptible.

(b) The failure of a physician and surgeon to inform a patient, by means of a standardized written summary developed by the department on the recommendation of the Cancer Advisory Council in accordance with subdivision (c), in layperson's language and in a language understood by the patient, of alternative efficacious methods of treatment that may be medically viable, including surgical, radiological, or chemotherapeutic treatments or combinations thereof, when the patient is being treated for any form of breast cancer, constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(c) (1) A standardized written summary in layperson's language and in a language understood by the patient shall be developed by the department with the recommendations of the Cancer Advisory Council, and shall be printed and made available by the Medical Board of California to physicians and surgeons, for the purposes of informing the patient of the advantages, disadvantages, risks, and descriptions of the procedures with regard to medically viable and efficacious alternative methods of treatment for breast cancer as required by subdivision (a).

(2) Commencing no later than January 1, 1995, and every three years thereafter, the department shall review the written summary and shall revise the written summary if the department determines that new or revised information should be included in the written summary, and shall provide a copy of the revised summary to the Medical Board of California.

(3) At the next revision of the standardized written summary required by this section, the department shall incorporate all of the following additional information:

(A) Information regarding methods of treatment for breast cancer that are in the investigational or clinical trial stage and are recognized for treatment by the Physician's Data Query of the National Cancer Institute.

(B) Available reference numbers, including, but not limited to, the "800" telephone numbers for the National Cancer Institute and the American Cancer Society, in order for breast cancer patients to obtain the most recent information.

(C) A discussion of breast reconstruction surgery, including, but not limited to, problems, benefits, and alternatives.

(D) Statistics on the incidence of breast cancer.

(d) The Medical Board of California shall establish a distribution system for the breast cancer treatment alternatives written summary, and shall provide a link to its Internet Web site that may be accessed by consumers interested in viewing and obtaining a copy of the summary.

(e) The department and the Medical Board of California shall each post the summary on its Internet Web site.

SEC. 2. Section 109277 of the Health and Safety Code is amended to read:

109277. (a) Every person or entity who owns or operates a health facility or a clinic, or who is licensed as a physician and surgeon and rents or owns the premises where his or her practice is located, shall cause a sign or notice to be posted where a physician and surgeon performs breast cancer screening or biopsy as an outpatient service, or in a reasonably proximate area to where breast cancer screening or biopsy is performed. A sign or notice posted at the patient registration area of the health facility, clinic, or physician and surgeon's office shall constitute compliance with this section.

(b) The sign or notice shall read as follows:

"BE INFORMED"

"Upon a diagnosis of breast cancer, your physician and surgeon is required to provide you a written summary of alternative efficacious methods of treatment, pursuant to Section 109275 of the California Health and Safety Code. Your physician and surgeon may choose to provide the summary prior to the performance of a screening or biopsy for breast cancer at your request or at the physician and surgeon's discretion, when appropriate."

"The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures."

(c) The sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The words "BE INFORMED" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The message on the sign shall appear in English, Spanish, and Chinese.

SEC. 3. Section 109280 of the Health and Safety Code is amended to read:

109280. (a) A standardized written summary in layperson's language and in a language understood by patients shall be approved by the department. The department may approve the use of an existing publication from a recognized cancer authority as the written summary. Commencing on January 1, 2003, and every three years thereafter, the department shall review its approval of the use of an existing publication from a recognized cancer authority as the written summary to ensure that the approved written summary comprises timely, new, and revised information regarding prostate cancer treatment options as the department determines is necessary. The written summary shall be printed or made available by the Medical Board of California to physicians and surgeons, concerning the advantages, disadvantages, risks, and descriptions, of procedures with regard to medically viable and efficacious alternative methods of treatment of prostate cancer. Physicians and surgeons are urged to make the summary available to patients when appropriate.

(b) The department and the Medical Board of California shall each post this summary on its Internet Web site for public use.

(c) If the department updates this summary, it shall send the updated summary to the Medical Board of California and both the department and the Medical Board of California shall each post this updated summary on its Internet Web site.

CHAPTER 486

An act to add Chapter 3.25 (commencing with Section 6218) to Division 7 of Title 1 of the Government Code, relating to reproductive health care services.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Chapter 3.25 (commencing with Section 6218) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 3.25. ONLINE PRIVACY FOR REPRODUCTIVE HEALTH SERVICES PROVIDERS, EMPLOYEES, VOLUNTEERS, AND PATIENTS

6218. (a) (1) No person, business, or association shall knowingly publicly post or publicly display on the Internet the home address, home telephone number, or image of any provider, employee, volunteer, or patient of a reproductive health services facility or other individuals residing at the same home address with the intent to do either of the following:

(A) Incite a third person to cause imminent great bodily harm to the person identified in the posting or display, or to a coresident of that person, where the third person is likely to commit this harm.

(B) Threaten the person identified in the posting or display, or a coresident of that person, in a manner that places the person identified or the coresident in objectively reasonable fear for his or her personal safety.

(2) A provider, employee, volunteer, or patient of a reproductive health services facility whose home address, home telephone number, or image is made public as a result of a violation of paragraph (1) may do either or both of the following:

(A) Bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the successful plaintiff court costs and reasonable attorney's fees.

(B) Bring an action for money damages in any court of competent jurisdiction. In addition to any other legal rights or remedies, if a jury or court finds that a violation has occurred, it shall award damages to that individual in an amount up to a maximum of three times the actual damages, but in no case less than four thousand dollars ($4,000).

(b) (1) No person, business, or association shall publicly post or publicly display on the Internet the home address or home telephone number of any provider, employee, volunteer, or patient of a reproductive health services facility if that individual has made a written demand of that person, business, or association to not disclose his or her home address or home telephone number. A demand made under this paragraph shall include a sworn statement declaring that the person is subject to the protection of this section and describing a reasonable fear for the safety of that individual or of any person residing at the individual's

home address, based on a violation of subdivision (a). A written demand made under this paragraph shall be effective for four years, regardless of whether or not the individual's affiliation with a reproductive health services facility has expired prior to the end of the four-year period.

(2) A provider, employee, volunteer, or patient of a reproductive health services facility whose home address or home telephone number is made public as a result of a failure to honor a demand made pursuant to paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the successful plaintiff court costs and reasonable attorney's fees.

(3) This subdivision shall not apply to a person or entity defined in Section 1070 of the Evidence Code.

(c) (1) No person, business, or association shall solicit, sell, or trade on the Internet the home address, home telephone number, or image of a provider, employee, volunteer, or patient of a reproductive health services facility with the intent to do either of the following:

(A) Incite a third person to cause imminent great bodily harm to the person identified in the posting or display, or to a coresident of that person, where the third person is likely to commit this harm.

(B) Threaten the person identified in the posting or display, or a coresident of that person, in a manner that places the person identified or the coresident in objectively reasonable fear for his or her personal safety.

(2) A provider, employee, volunteer, or patient of a reproductive health services facility whose home address, home telephone number, or image is solicited, sold, or traded in violation of paragraph (1) may bring an action in any court of competent jurisdiction. In addition to any other legal rights and remedies, if a jury or court finds that a violation has occurred, it shall award damages to that individual in an amount up to a maximum of three times the actual damages, but in no case less than four thousand dollars ($4,000).

(d) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause bodily harm that is likely to occur or threatens to cause bodily harm to a provider, employee, volunteer, or patient of a reproductive health services facility or any person residing at the same home address.

(e) Nothing in this section is intended to preclude punishment under any other provision of law.

6218.05. For purposes of this chapter, the following terms have the following meanings:

(a) "Reproductive health care services" means health care services relating to the termination of a pregnancy in a reproductive health care services facility.

(b) "Reproductive health care services provider, employee, volunteer, or patient" means a person who obtains, provides, or assists, at the request of another person, in obtaining or providing reproductive health care services, or a person who owns or operates a reproductive health care services facility.

(c) "Reproductive health care services facility" includes a hospital, an office operated by a licensed physician and surgeon, a licensed clinic or a clinic exempt from licensure, or other licensed health care facility that provides reproductive health care services and includes only the building or structure in which the reproductive health care services are actually provided.

(d) "Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(e) "Image" includes, but is not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted.

CHAPTER 487

An act to amend Sections 733 and 4122 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 26, 2006. Filed with Secretary of State September 26, 2006.]

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

SECTION 1. Section 733 of the Business and Professions Code is amended to read:

733. (a) No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough to the site from which the prescription or order is transferred, to ensure the patient has timely access to the drug or device.

(C) Return the prescription to the patient and refer the patient. The licentiate shall make a reasonable effort to refer the patient to a pharmacy that stocks the prescription drug or device that is near enough to the referring site to ensure that the patient has timely access to the drug or device.

(3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, "reasonable accommodation" and "undue hardship" shall have the same meaning as applied to those terms pursuant to subdivision (*l*) of Section 12940 of the Government Code.

(c) For the purposes of this section, "prescription drug or device" has the same meaning as the definition in Section 4022.

(d) The provisions of this section shall apply to the drug therapy described in paragraph (8) of subdivision (a) of Section 4052.

(e) This section imposes no duty on a licentiate to dispense a drug or device pursuant to a prescription or order without payment for the drug or device, including payment directly by the patient or through a third-party payer accepted by the licentiate or payment of any required copayment by the patient.

(f) The notice to consumers required by Section 4122 shall include a statement that describes patients' rights relative to the requirements of this section.

SEC. 2. Section 4122 of the Business and Professions Code is amended to read:

4122. (a) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice provided by the board concerning the availability of prescription price information, the possibility of generic drug product selection, the type of services provided by pharmacies, and a statement describing patients' rights relative to the requirements imposed on pharmacists pursuant to Section 733. The format and wording of the notice shall be adopted by the board by regulation. A written receipt that contains the required information on the notice may be provided to consumers as an alternative to posting the notice in the pharmacy.

(b) A pharmacist, or a pharmacist's employee, shall give the current retail price for any drug sold at the pharmacy upon request from a consumer, however that request is communicated to the pharmacist or employee.

(c) If a requester requests price information on more than five prescription drugs and does not have valid prescriptions for all of the drugs for which price information is requested, a pharmacist may require the requester to meet any or all of the following requirements:

(1) The request shall be in writing.

(2) The pharmacist shall respond to the written request within a reasonable period of time. A reasonable period of time is deemed to be 10 days, or the time period stated in the written request, whichever is later.

(3) A pharmacy may charge a reasonable fee for each price quotation, as long as the requester is informed that there will be a fee charged.

(4) No pharmacy shall be required to respond to more than three requests as described in this subdivision from any one person or entity in a six-month period.

(d) This section shall not apply to a pharmacy that is located in a licensed hospital and that is accessible only to hospital medical staff and personnel.

(e) Notwithstanding any other provision of this section, no pharmacy shall be required to do any of the following:

(1) Provide the price of any controlled substance in response to a telephone request.

(2) Respond to a request from a competitor.

(3) Respond to a request from an out-of-state requester.

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 488

An act to add Division 25.5 (commencing with Section 38500) to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Division 25.5 (commencing with Section 38500) is added to the Health and Safety Code, to read:

DIVISION 25.5. CALIFORNIA GLOBAL WARMING SOLUTIONS ACT OF 2006

PART 1. GENERAL PROVISIONS

CHAPTER 1. TITLE OF DIVISION

38500. This division shall be known, and may be cited, as the California Global Warming Solutions Act of 2006.

CHAPTER 2. FINDINGS AND DECLARATIONS

38501. The Legislature finds and declares all of the following:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage

to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

Chapter 3. Definitions

38505. For the purposes of this division, the following terms have the following meanings:

(a) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. "Alternative compliance mechanism" includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.

(d) "Cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) "Direct emission reduction" means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(f) "Emissions reduction measure" means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(g) "Greenhouse gas" or "greenhouse gases" includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexaflouride.

(h) "Greenhouse gas emissions limit" means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(i) "Greenhouse gas emission source" or "source" means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) "Market-based compliance mechanism" means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(*l*) "State board" means the State Air Resources Board.

(m) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38850).

Chapter 4. Role of State Board

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.

PART 2. MANDATORY GREENHOUSE GAS EMISSIONS REPORTING

38530. (a) On or before January 1, 2008, the state board shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program.

(b) The regulations shall do all of the following:

(1) Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources beginning with the sources or categories of sources that contribute the most to statewide emissions.

(2) Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (j) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 9604 of the Public Utilities Code.

(3) Where appropriate and to the maximum extent feasible, incorporate the standards and protocols developed by the California Climate Action Registry, established pursuant to Chapter 6 (commencing with Section 42800) of Part 4 of Division 26. Entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and have developed a greenhouse gas emission reporting program, shall not be required to significantly alter their reporting or verification program except as necessary to ensure that reporting is complete and verifiable for the purposes of compliance with this division as determined by the state board.

(4) Ensure rigorous and consistent accounting of emissions, and provide reporting tools and formats to ensure collection of necessary data.

(5) Ensure that greenhouse gas emission sources maintain comprehensive records of all reported greenhouse gas emissions.

(c) The state board shall do both of the following:

(1) Periodically review and update its emission reporting requirements, as necessary.

(2) Review existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this part and other programs, and to streamline reporting requirements on greenhouse gas emission sources.

PART 3. STATEWIDE GREENHOUSE GAS EMISSIONS LIMIT

38550. By January 1, 2008, the state board shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions.

38551. (a) The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.

(b) It is the intent of the Legislature that the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.

(c) The state board shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020.

PART 4. GREENHOUSE GAS EMISSIONS REDUCTIONS

38560. The state board shall adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources or categories of sources, subject to the criteria and schedules set forth in this part.

38560.5. (a) On or before June 30, 2007, the state board shall publish and make available to the public a list of discrete early action greenhouse gas emission reduction measures that can be implemented prior to the measures and limits adopted pursuant to Section 38562.

(b) On or before January 1, 2010, the state board shall adopt regulations to implement the measures identified on the list published pursuant to subdivision (a).

(c) The regulations adopted by the state board pursuant to this section shall achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from those sources or categories of sources, in furtherance of achieving the statewide greenhouse gas emissions limit.

(d) The regulations adopted pursuant to this section shall be enforceable no later than January 1, 2010.

38561. (a) On or before January 1, 2009, the state board shall prepare and approve a scoping plan, as that term is understood by the state board,

for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 under this division. The state board shall consult with all state agencies with jurisdiction over sources of greenhouse gases, including the Public Utilities Commission and the State Energy Resources Conservation and Development Commission, on all elements of its plan that pertain to energy related matters including, but not limited to, electrical generation, load based-standards or requirements, the provision of reliable and affordable electrical service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner.

(b) The plan shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the state board finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.

(c) In making the determinations required by subdivision (b), the state board shall consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations, including the northeastern states of the United States, Canada, and the European Union.

(d) The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods.

(e) In developing its plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions, and the potential for adverse effects on small businesses, and shall recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.

(f) In developing its plan, the state board shall identify opportunities for emission reductions measures from all verifiable and enforceable voluntary actions, including, but not limited to, carbon sequestration projects and best management practices.

(g) The state board shall conduct a series of public workshops to give interested parties an opportunity to comment on the plan. The state board shall conduct a portion of these workshops in regions of the state that

have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(h) The state board shall update its plan for achieving the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions at least once every five years.

38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7) Minimize the administrative burden of implementing and complying with these regulations.

(8) Minimize leakage.

(9) Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c) In furtherance of achieving the statewide greenhouse gas emissions limit, by January 1, 2011, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, applicable from January 1, 2012, to December 31, 2020,

inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

(d) Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1) The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2) For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3) If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e) The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities when adopting the regulations required by this section.

(f) The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) After January 1, 2011, the state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

38563. Nothing in this division restricts the state board from adopting greenhouse gas emission limits or emission reduction measures prior to January 1, 2011, imposing those limits or measures prior to January 1, 2012, or providing early reduction credit where appropriate.

38564. The state board shall consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.

38565. The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

PART 5. MARKET-BASED COMPLIANCE MECHANISMS

38570. (a) The state board may include in the regulations adopted pursuant to Section 38562 the use of market-based compliance mechanisms to comply with the regulations.

(b) Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.

(2) Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.

(3) Maximize additional environmental and economic benefits for California, as appropriate.

(c) The state board shall adopt regulations governing how market-based compliance mechanisms may be used by regulated entities subject to greenhouse gas emission limits and mandatory emission reporting requirements to achieve compliance with their greenhouse gas emissions limits.

38571. The state board shall adopt methodologies for the quantification of voluntary greenhouse gas emission reductions. The state board shall adopt regulations to verify and enforce any voluntary greenhouse gas emission reductions that are authorized by the state board for use to comply with greenhouse gas emission limits established by the state board. The adoption of methodologies is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

38574. Nothing in this part or Part 4 (commencing with Section 38560) confers any authority on the state board to alter any programs administered by other state agencies for the reduction of greenhouse gas emissions.

PART 6. ENFORCEMENT

38580. (a) The state board shall monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board pursuant to this division.

(b) (1) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division may be enjoined pursuant to Section 41513, and the violation is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(2) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division shall be deemed to result in an emission of an air contaminant for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(3) The state board may develop a method to convert a violation of any rule, regulation, order, emission limitation, or other emissions reduction measure adopted by the state board pursuant to this division into the number of days in violation, where appropriate, for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(c) Section 42407 and subdivision (i) of Section 42410 shall not apply to this part.

PART 7. MISCELLANEOUS PROVISIONS

38590. If the regulations adopted pursuant to Section 43018.5 do not remain in effect, the state board shall implement alternative regulations to control mobile sources of greenhouse gas emissions to achieve equivalent or greater reductions.

38591. (a) The state board, by July 1, 2007, shall convene an environmental justice advisory committee, of at least three members, to advise it in developing the scoping plan pursuant to Section 38561 and any other pertinent matter in implementing this division. The advisory committee shall be comprised of representatives from communities in the state with the most significant exposure to air pollution, including, but not limited to, communities with minority populations or low-income populations, or both.

(b) The state board shall appoint the advisory committee members from nominations received from environmental justice organizations and community groups.

(c) The state board shall provide reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

(d) The state board shall appoint an Economic and Technology Advancement Advisory Committee to advise the state board on activities that will facilitate investment in and implementation of technological research and development opportunities, including, but not limited to, identifying new technologies, research, demonstration projects, funding opportunities, developing state, national, and international partnerships and technology transfer opportunities, and identifying and assessing research and advanced technology investment and incentive opportunities that will assist in the reduction of greenhouse gas emissions. The committee may also advise the state board on state, regional, national, and international economic and technological developments related to greenhouse gas emission reductions.

38592. (a) All state agencies shall consider and implement strategies to reduce their greenhouse gas emissions.

(b) Nothing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

38593. (a) Nothing in this division affects the authority of the Public Utilities Commission.

(b) Nothing in this division affects the obligation of an electrical corporation to provide customers with safe and reliable electric service.

38594. Nothing in this division shall limit or expand the existing authority of any district, as defined in Section 39025.

38595. Nothing in this division shall preclude, prohibit, or restrict the construction of any new facility or the expansion of an existing facility subject to regulation under this division, if all applicable requirements are met and the facility is in compliance with regulations adopted pursuant to this division.

38596. The provisions of this division are severable. If any provision of this division 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.

38597. The state board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to this division, consistent with Section 57001. The revenues collected pursuant to this section, shall be deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out this division.

38598. (a) Nothing in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

(b) Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.

38599. (a) In the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm, the Governor may adjust the applicable deadlines for individual regulations, or for the state in the aggregate, to the earliest feasible date after that deadline.

(b) The adjustment period may not exceed one year unless the Governor makes an additional adjustment pursuant to subdivision (a).

(c) Nothing in this section affects the powers and duties established in the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

(d) The Governor shall, within 10 days of invoking subdivision (a), provide written notification to the Legislature of the action undertaken.

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 489

An act to add Chapter 8 (commencing with Section 122335) to Part 6 of Division 105 of the Health and Safety Code, relating to dogs.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Chapter 8 (commencing with Section 122335) is added to Part 6 of Division 105 of the Health and Safety Code, to read:

Chapter 8. Dog Tethering

122335. (a) For purposes of this chapter, the following terms shall have the following definitions:

(1) "Animal control" means the municipal or county animal control agency or any other entity responsible for enforcing animal-related laws.

(2) "Agricultural operation" means an activity that is necessary for the commercial growing and harvesting of crops or the raising of livestock or poultry.

(3) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative thereof.

(4) "Reasonable period" means a period of time not to exceed three hours in a 24-hour period, or a time that is otherwise approved by animal control.

(b) No person shall tether, fasten, chain, tie, or restrain a dog, or cause a dog to be tethered, fastened, chained, tied, or restrained, to a dog house, tree, fence, or any other stationary object.

(c) Notwithstanding subdivision (b), a person may do any of the following in accordance with Section 597t of the Penal Code:

(1) Attach a dog to a running line, pulley, or trolley system. A dog shall not be tethered to the running line, pulley, or trolley system by means of a choke collar or pinch collar.

(2) Tether, fasten, chain, tie, or otherwise restrain a dog pursuant to the requirements of a camping or recreational area.

(3) Tether, fasten, chain, or tie a dog no longer than is necessary for the person to complete a temporary task that requires the dog to be restrained for a reasonable period.

(4) Tether, fasten, chain, or tie a dog while engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by the State of California if the activity for which the license is issued is associated with the use or presence of a dog. Nothing in this paragraph shall be construed to prohibit a person from restraining a dog while participating in activities or using accommodations that are reasonably associated with the licensed activity.

(5) Tether, fasten, chain, or tie a dog while actively engaged in any of the following:

(A) Conduct that is directly related to the business of shepherding or herding cattle or livestock.

(B) Conduct that is directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

(d) A person who violates this chapter is guilty of an infraction or a misdemeanor.

(1) An infraction under this chapter is punishable upon conviction by a fine of up to two hundred fifty dollars ($250) as to each dog with respect to which a violation occurs.

(2) A misdemeanor under this chapter is punishable upon conviction by a fine of up to one thousand dollars ($1,000) as to each dog with respect to which a violation occurs, or imprisonment in a county jail for not more than six months, or both.

(3) Notwithstanding subdivision (d), animal control may issue a correction warning to a person who violates this chapter, requiring the owner to correct the violation, in lieu of an infraction or misdemeanor, unless the violation endangers the health or safety of the animal, the animal has been wounded as a result of the violation, or a correction warning has previously been issued to the individual.

(e) Nothing in this chapter shall be construed to prohibit a person from walking a dog with a hand-held leash.

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 490

An act to amend Sections 2352, 2540, 2543, 2590, and 2591 of, and to add Sections 2352.5 and 2591.5 to, the Probate Code, relating to conservatorships.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 2352 of the Probate Code is amended to read:

2352. (a) The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

(b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

(c) If permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state.

(d) An order under subdivision (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order.

(e) (1) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). The Judicial Council shall, on or before January 1, 2008, develop one or more forms of notice and declaration to be used for this purpose.

(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward.

(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or conservatee shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court.

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to establish his or her own residence.

SEC. 2. Section 2352.5 is added to the Probate Code, to read:

2352.5. (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) That determination shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.

(2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, that determination shall either include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future.

(c) The determination made by the conservator pursuant to subdivision (b) shall be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator.

(d) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care.

(e) (1) This section shall not apply to a conservatee with developmental disabilities for whom the Director of the Department of Developmental Services or a regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator and who receives services from a regional center pursuant to the Lanterman Developmental Disabilities Act, Division 4.5 (commencing with Section 4500) of the Welfare and Institutions.

(2) Services, including residential placement, for a conservatee described in paragraph (1) who is a consumer, as defined in Section 4512 of the Welfare and Institutions Code, shall be identified, delivered, and evaluated consistent with the individual program plan process described in Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code.

SEC. 3. Section 2540 of the Probate Code is amended to read:

2540. (a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's present or former personal residence as set forth in subdivision (b), sales of real or personal property

of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

(b) In seeking authorization to sell a conservatee's present or former personal residence, the conservator shall notify the court that the present or former personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. The conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale and shall describe the circumstances that necessitate the proposed sale, including whether the conservatee has the ability to live in the personal residence and why other alternatives, including, but not limited to, in-home care services, are not available. The court, in its discretion, may require the court investigator to discuss the proposed sale with the conservatee. This subdivision shall not apply when the conservator is granted the power to sell real property of the estate pursuant to Article 11 (commencing with Section 2590).

SEC. 4. Section 2543 of the Probate Code is amended to read:

2543. (a) If estate property is required or permitted to be sold, the guardian or conservator may:

(1) Use discretion as to which property to sell first.

(2) Sell the entire interest of the estate in the property or any lesser interest therein.

(3) Sell the property either at public auction or private sale.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, publishing and posting notice of sale, reappraisal for sale, minimum offer price for the property, reselling the property, report of sale and petition for confirmation of sale, and notice and hearing of that petition, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative as described in Articles 6 (commencing with Section 10300), 7 (commencing with Section 10350), 8 (commencing with Section 10360), and 9 (commencing with Section 10380) of Chapter 18 of Part 5 of Division 7. The provisions concerning sales by a personal representative as described in the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7 shall not apply to this subdivision.

(c) Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal

residence that was conducted not more than one year prior to the confirmation hearing.

(d) The clerk of the court shall cause notice to be posted pursuant to subdivision (b) only in the following cases:

(1) If posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) If posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) If posting of notice is ordered by the court.

SEC. 5. Section 2590 of the Probate Code is amended to read:

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to the requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, and if consistent with Section 2591, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the ward or conservatee could do if possessed of legal capacity.

SEC. 6. Section 2591 of the Probate Code is amended to read:

2591. The powers referred to in Section 2590 are:

(a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.

(b) The power to operate at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(c) The power to grant and take options.

(d) (1) The power to sell at public or private sale real or personal property of the estate, other than the personal residence of a conservatee.

(2) The power to sell at public or private sale the personal residence of the conservatee as described in Section 2591.5. The power granted pursuant to this paragraph is subject to the requirements of Sections 2352.5 and 2541.

(e) The power to create by grant or otherwise easements and servitudes.

(f) The power to borrow money and give security for the repayment thereof.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.

(j) The power to lend money on adequate security.

(k) The power to exchange property of the estate.

(*l*) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(m) The power to commence and maintain an action for partition.

(n) The power to exercise stock rights and stock options.

(o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

(p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.

(q) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

SEC. 7. Section 2591.5 is added to the Probate Code, to read:

2591.5. (a) Notwithstanding any other provisions of this article, a conservator seeking an order under Section 2590 authorizing a sale of the conservatee's personal residence shall demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the estate, are in all respects in the best interests of the conservatee.

(b) A conservator authorized to sell the conservatee's personal residence pursuant to Section 2590 shall comply with the provisions of Section 10309 concerning appraisal or new appraisal of the property for sale and sale at a minimum offer price. Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal shall be required prior to the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property.

(c) Within 15 days of the close of escrow, the conservator shall serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice and shall file a copy of the final escrow statement along with a proof of service with the court.

(d) The court may, for good cause, waive any of the requirements of this section, except the requirements regarding appraisal times in subdivision (b).

SEC. 8. This act shall become operative only if Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363 of the 2005–06 Regular Session are enacted and become effective on or before January 1, 2007.

SEC. 9. This act, together with Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363, shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 491

An act to add Chapter 6 (commencing with Section 6500) to Division 3 of the Business and Professions Code, and to add Section 60.1 to, to amend, repeal, and add Article 4 (commencing with Section 2340) to Chapter 4 of Part 4 of Division 4 of, and to amend and repeal Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of, the Probate Code, relating to professional fiduciaries.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. This act, together with Senate Bill 1116, Senate Bill 1716, and Assembly Bill 1363, shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

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

(a) California's population is growing at an increasing rate, and the growth in the number of people 65 years of age or older is surpassing that in other states. The number of California's population 65 years of age or older will grow from 3.6 million people in the year 2000, to 6.2 million people in the year 2020, an increase of 72 percent.

(b) As the population of California continues to grow and age, an increasing number of people in the state are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional, and physical harm. In addition, there is an increasing use of trusts and durable powers of attorney by individuals seeking to provide for potential incapacity. These vulnerable members of society have an expectation that they and their property will be protected by a fair system with high standards of care.

(c) One result of these trends is the growing number of people acting as professional conservators, guardians, trustees, attorneys-in-fact, and estate administrators on behalf of other persons or their estates. The persons acting in one or more of these capacities are known or are commonly referred to as professional fiduciaries.

(d) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect or the physical, emotional or financial abuse of the vulnerable clients that professional fiduciaries are supposed to serve. Unless there is a strengthened accountability, abuses of people who are unable to take care of themselves or their property by professional fiduciaries will increase.

(e) Creation of a program to license and regulate professional fiduciaries is necessary to protect the public health, safety, and welfare.

SEC. 3. Chapter 6 (commencing with Section 6500) is added to Division 3 of the Business and Professions Code, to read:

Chapter 6. Professional Fiduciaries

Article 1. General Provisions

6500. This chapter shall be known as the Professional Fiduciaries Act.

6501. As used in this chapter, the following terms have the following meanings:

(a) "Act" means this chapter.

(b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to Section 6510.

(c) "Client" means an individual who is served by a professional fiduciary.

(d) "Department" means the Department of Consumer Affairs.

(e) "Licensee" means a person who is licensed under this chapter as a professional fiduciary.

(f) "Professional fiduciary" means a person who acts as a conservator or guardian for two or more persons at the same time who are not related to the professional fiduciary or to each other by blood, adoption,

marriage, or registered domestic partnership. "Professional fiduciary" also means a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three people or more than three families, or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" does not include any of the following:

(1) A trust company, as defined in Section 83 of the Probate Code.

(2) An FDIC-insured institution, or its holding companies, subsidiaries, or affiliates. For the purposes of this paragraph, "affiliate" means any entity that shares an ownership interest with, or that is under the common control of, the FDIC-insured institution.

(3) A person employed by an entity described in paragraph (1) or (2) who is acting in the course and scope of that employment.

(4) Any public officer or public agency, including the public guardian, public conservator, or other agency of the State of California or of a county of California, when that public officer or public agency is acting in the course and scope of official duties, or any regional center for persons with developmental disabilities as defined in Section 4620 of the Welfare and Institutions Code.

(5) Any person whose sole activity as a professional fiduciary is as a broker-dealer, broker-dealer agent, investment adviser representative registered and regulated under the Corporate Securities Law of 1968 (Division 1 (commencing with section 25000) of Title 4 of the Corporations Code), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or involves serving as a trustee to a company regulated by the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(g) "Committee" means the Professional Fiduciaries Advisory Committee, as established pursuant to Section 6511..

6502. (a) Every person who is required to register with the Statewide Registry maintained by the Department of Justice under Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

(b) Every person who is required to file information with the clerk of the court under Article 4 (commencing with Section 2340) of Chapter 3 of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

Article 2. Administration

6510. (a) There is within the jurisdiction of the department the Professional Fiduciaries Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief of the bureau, who is responsible to the director. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to conditions and limitations as the director may prescribe.

(b) The Governor shall appoint, subject to confirmation by the Senate, the chief of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(c) 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, 2011, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the bureau subject to the review required by Division 1.2 (commencing with Section 473).

Notwithstanding any other provision of law, upon the repeal of this section, the responsibilities and jurisdiction of the bureau shall be transferred to the Professional Fiduciaries Advisory Committee, as provided by Section 6511.

6511. (a) There is within the bureau a Professional Fiduciaries Advisory Committee. The committee shall consist of seven members; three of whom shall be licensees actively engaged as professional fiduciaries in this state, and four of whom shall be public members. One of the public members shall be a member of a nonprofit organization advocating on behalf of the elderly, and one of the public members shall be a probate court investigator.

(b) Each member of the committee shall be appointed for a term of four years, and shall hold office until the appointment of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(c) Vacancies shall be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the committee for more than two consecutive terms.

(d) The Governor shall appoint the member from a nonprofit organization advocating on behalf of the elderly, the probate court investigator, and the three licensees. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Every member of the committee shall receive per diem and expenses as provided in Sections 103 and 113.

(f) The committee shall do all of the following:

(1) Examine the functions and policies of the bureau and make recommendations with respect to policies, practices, and regulations as may be deemed important and necessary by the director or the chief to promote the interests of consumers or that otherwise promote the welfare of the public.

(2) Consider and make appropriate recommendations to the bureau in any matter relating to professional fiduciaries in this state.

(3) Provide assistance as may be requested by the bureau in the exercise of its powers or duties.

(4) Meet at least once each quarter. All meetings of the committee shall be public meetings.

(g) The bureau shall meet and consult with the committee regarding general policy issues related to professional fiduciaries.

(h) Notwithstanding any other provision of law, if the bureau becomes inoperative or is repealed in accordance with Section 6510, or by subsequent acts, the committee shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the bureau and its chief. The succession of the committee to the functions of the bureau as provided in this subdivision shall establish the committee as the Professional Fiduciaries Committee in the department within the meaning of Section 22, and all references to the bureau in this code shall be considered as references to the committee.

6513. The bureau may employ, subject to civil service and other provisions of law, other employees as may be necessary to carry out the provisions of this chapter under the direction of the
chief.

6514. The bureau shall keep a complete record of all its proceedings and all licenses issued, renewed, or revoked, and a detailed statement of receipts and disbursements.

6515. The duty of administering and enforcing this chapter is vested in the bureau and the chief. In the performance of this duty, the bureau and the chief have all of the powers of, and are subject to all of the responsibilities vested in and imposed upon, the head of a department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

6516. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

6517. The bureau may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations necessary to enable the bureau to carry into effect the provisions of law relating to this chapter.

6518. (a) The bureau shall be responsible for administering the licensing and regulatory program established in this chapter.

(b) The bureau shall approve classes qualifying for prelicense education, as well as classes qualifying for annual continuing education required by this chapter. The bureau shall maintain a current list of all approved classes.

(c) The bureau shall arrange for the preparation and administration of licensing examinations.

6520. The bureau shall adopt, by regulation, a Professional Fiduciaries Code of Ethics. The Professional Fiduciaries Code of Ethics shall be consistent with all statutory requirements, as well as requirements developed by the courts and the Judicial Council. The Professional Fiduciaries Code of Ethics shall be provided electronically on the bureau's Internet Web site and to persons who request an application for licensure. The bureau may, by regulation, amend the Professional Fiduciaries Code of Ethics from time to time, as it deems necessary, provided that no amendment shall be effective with regard to a licensee until the licensee's next annual license renewal cycle, as specified in subdivision (a) of Section 6542, is completed. Any amendment to the Professional Fiduciaries Code of Ethics shall be included in the license renewal materials sent to a licensee.

Article 3. Licensing

6530. (a) On and after July 1, 2008, no person shall act or hold himself or herself out to the public as a professional fiduciary unless that person is licensed as a professional fiduciary in accordance with the provisions of this chapter.

(b) This section does not apply to a person licensed as an attorney under the State Bar Act (Chapter 4 (commencing with Section 6000)).

(c) This section does not apply to a person licensed as, and acting within the scope of practice of, a certified public accountant pursuant to Chapter 1 (commencing with Section 5000) of Division 3.

(d) This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

6531. No professional fiduciary shall operate with an expired, suspended, or revoked license.

6532. A person who has been licensed by the bureau may identify himself or herself as a "licensed professional fiduciary."

6533. In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

(a) Be at least 21 years of age.

(b) Be a United States citizen, or be legally admitted to the United States.

(c) Have not committed any acts that are ground for denial of a license under Section 480 or 6536.

(d) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.

(e) Have completed the required prelicensing education described in Section 6538.

(f) Have passed the licensing examination administered by the bureau pursuant to Section 6539.

(g) Have at least one of the following:

(1) A baccalaureate degree of arts or sciences from a college or university accredited by a nationally recognized accrediting body of colleges and universities or a higher level of education.

(2) An associate of arts or science degree from a college or university accredited by a nationally recognized accrediting body of colleges and universities, and at least five years of experience with substantive fiduciary responsibilities working for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(3) Experience of not less than three years, prior to July 1, 2008, with substantive fiduciary responsibilities working for a public agency or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(h) Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations.

(i) Consent to the bureau conducting a credit check on the applicant.

(j) File a completed application for licensure with the bureau on a form provided by the bureau and signed by the applicant under penalty of perjury.

(k) Submit with the license application a nonrefundable application fee, as specified in this chapter.

6533.5. Criminal offender record information shall be obtained on each applicant as provided in this section.

(a) Each applicant shall submit fingerprint images to the Department of Justice for the purpose of obtaining criminal offender record

information regarding state and federal level convictions and arrests, including arrests where the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, 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 fitness determination to the bureau.

(c) The Department of Justice shall provide a response to the bureau pursuant to subdivision (p) of Section 11105 of the Penal Code.

(d) The bureau shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

6534. (a) The bureau shall maintain the following information in each licensee's file, shall make this information available to a court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the licensee as a conservator, guardian, trustee, or personal representative, and shall otherwise keep this information confidential, except as provided in subdivisions (b) and (c) of this section:

(1) The names of the licensee's current conservatees or wards and the trusts or estates currently administered by the licensee.

(2) The aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary.

(3) The licensee's current addresses and telephone numbers for his or her place of business and place of residence.

(4) Whether the licensee has ever been removed for cause as conservator, guardian, trustee, or personal representative or has ever resigned as conservator, guardian, trustee, or personal representative in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers associated with the removal or resignation.

(5) The case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative.

(6) Information regarding any discipline imposed upon the licensee by the bureau.

(7) Whether the licensee has ever filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy.

(b) The bureau shall make the information in paragraphs (2), (4), (6), and (7) of subdivision (a) available to the public.

(c) The bureau shall also publish information regarding licensees on the Internet as specified in Section 27. The information shall include, but shall not be limited to, information regarding license status and the information specified under subdivision (b).

6535. The bureau shall approve or deny licensure in a timely manner to applicants who apply for licensure. Upon approval of a license, the bureau shall notify the applicant of issuance of the license, and shall issue a license certificate identifying him or her as a "licensed professional fiduciary."

6536. The bureau shall review all applications for licensure and may investigate an applicant's qualifications for licensure. The bureau shall approve those applications that meet the requirements for licensure, but shall not issue a license to any applicant who meets any of the following criteria:

(a) Does not meet the qualifications for licensure under this chapter.

(b) Has been convicted of a crime substantially related to the qualifications, functions, or duties of a fiduciary.

(c) Has engaged in fraud or deceit in applying for a license under this chapter.

(d) Has engaged in dishonesty, fraud, or gross negligence in performing the functions or duties of a fiduciary, including engaging in such conduct prior to July 1, 2008.

(e) Has been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or has demonstrated a pattern of negligent conduct, including a removal prior to July 1, 2008, and all appeals have been taken, or the time to file an appeal has expired.

6537. The bureau may deny a license for the reasons specified in Section 480 or 6536. An applicant notified of the denial of his or her application for licensure shall have the right to appeal to the bureau as specified in Chapter 2 (commencing with Section 480) of Division 1.5.

6538. (a) To qualify for licensure, an applicant shall have completed 30 hours of prelicensing education courses provided by an educational program approved by the bureau.

(b) To renew a license, a licensee shall complete 15 hours of approved continuing education courses each year.

(c) The cost of any educational course required by this chapter shall not be borne by any client served by a licensee.

6539. As a requirement for licensure, an applicant shall take and pass the licensing examination administered by the bureau. The bureau shall determine the frequency with which the examination will be given. The bureau shall also determine the frequency with which an applicant for reexamination may sit for the examination. The bureau shall administer the examination through a computer-based examination process and may also administer the examination through other means.

6540. Individuals, entities, agencies, and associations that propose to offer educational programs qualifying for the prelicensing educational or continuing educational requirements of this chapter shall apply for and obtain the approval of the bureau.

6541. (a) A license shall expire one year after it was issued on the last day of the month in which it was issued.

(b) A license may be renewed by filing a renewal application with the bureau, submitting the annual statement required by Section 6561, submitting proof of the licensee's compliance with the continuing education requirements of this chapter, and payment of the renewal fee set by the bureau, provided that the licensee has not engaged in conduct that would justify the bureau's refusal to grant the renewal. Acts justifying the bureau's refusal to renew a license shall include any of the following:

(1) Conviction of a crime substantially related to the qualifications, functions, or duties of a fiduciary.

(2) Fraud or deceit in obtaining a license under this chapter.

(3) Dishonesty, fraud, or gross negligence in performing the functions or duties of a professional fiduciary.

(4) Removal by a court as a fiduciary for breach of fiduciary duty if all appeals have been taken or the time to file an appeal has expired.

Article 4. Practice Provisions

6560. A licensee shall keep complete and accurate records of client accounts, and shall make those records available for audit by the bureau.

6561. (a) A licensee shall initially, and annually thereafter, file with the bureau a statement under penalty of perjury containing the following:

(1) Her or his business address, telephone number, and facsimile number.

(2) Whether or not he or she has been removed as conservator, guardian, trustee, or personal representative for cause. The licensee may file an additional statement of the issues and facts pertaining to the case.

(3) The case names, court locations, and case numbers for all matters where the licensee has been appointed by the court.

(4) Whether he or she has been found by a court to have breached a fiduciary duty.

(5) Whether he or she has resigned or settled a matter in which a complaint has been filed, along with the case number and a statement of the issues and facts pertaining to the allegations.

(6) Any licenses or professional certificates held by the licensee.

(7) Any ownership or beneficial interests in any businesses or other enterprises held by the licensee or by a family member that receives or has received payments from a client of the licensee.

(8) Whether the licensee has ever filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy.

(9) The name of any persons or entities that have an interest in the licensee's professional fiduciary business.

(10) Whether the licensee has been convicted of a crime .

(b) The statement by the licensee required by this section may be filed electronically with the bureau, in a form approved by the bureau. However, any additional statement filed under paragraph (2) of subdivision (a) shall be filed in writing.

6562. The annual statement shall be filed with the bureau 60 days prior to the expiration of the license as provided in subdivision (a) of Section 6541.

Article 5. Enforcement and Disciplinary Proceedings

6580. (a) The bureau may upon its own, and shall, upon the receipt of a complaint from any person, investigate the actions of any professional fiduciary. The bureau shall review a professional fiduciary's alleged violation of statute, regulation, or the Professional Fiduciaries Code of Ethics and any other complaint referred to it by the public, a public agency, or the department, and may impose sanctions upon a finding of a violation or a breach of fiduciary duty.

(b) Sanctions shall include any of the following:

(1) Administrative citations and fines as provided in Section 125.9 for a violation of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

(2) License suspension, probation, or revocation.

(c) The bureau shall provide on the Internet information regarding any sanctions imposed by the bureau on licensees, including, but not limited to, information regarding citations, fines, suspensions, and revocations of licenses or other related enforcement action taken by the bureau relative to the licensee.

6582. All proceedings against a licensee for any violation of this chapter or any regulations adopted by the bureau shall be conducted in

accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall be prosecuted by the Attorney General's office, and the bureau shall have all the powers granted therein.

6582.5. Notwithstanding Section 6582, if any violation occurs, in its discretion, the bureau may refer the case to the Attorney General or to the local district attorney for criminal prosecution. The referral of a case for criminal prosecution shall not preclude the bureau from taking any other action provided for in this chapter.

6583. The bureau shall establish a system of administrative citations and fines under Section 125.9 for violations of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

6584. A license issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

(a) Conviction of any felony or any misdemeanor, if the misdemeanor is substantially related to the functions and duties of a professional fiduciary. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the bureau of a conviction as required by paragraph (10) of subdivision (a) of Section 6561.

(c) Fraud or misrepresentation in obtaining a license.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in, or related to, the practice of a professional fiduciary. For purposes of this section, unprofessional conduct includes, but is not limited to, acts contrary to professional standards concerning any provision of law substantially related to the duties of a professional fiduciary.

(e) Failure to comply with, or to pay a monetary sanction imposed by, a court for failure to provide timely reports. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(f) Failure to pay a civil penalty relating to the licensee's professional fiduciary duties.

(g) The revocation of, suspension of, or other disciplinary action against, any other professional license by the State of California or by another state. A certified copy of the revocation, suspension, or disciplinary action is conclusive evidence of that action.

(h) Violation of this chapter or of the applicable provisions of Division 4 (commencing with Section 1400), Division 4.5 (commencing with Section 4000), Division 4.7 (commencing with Section 4600), or Division 5 (commencing with Section 5000) of the Probate Code or of any of the

statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary.

Article 6. Revenue

6590. All fees collected by the bureau shall be paid into the Professional Fiduciary Fund in the State Treasury, which is hereby created. The money in the fund shall be available to the bureau for expenditure for the purposes of this chapter only upon appropriation by the Legislature.

6591. The Professional Fiduciary Fund shall be the successor fund to those funds deposited under the Statewide Registry with the Department of Justice pursuant to Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code.

6592. (a) The fee for a professional fiduciary examination and reexamination shall be set by the bureau through regulation at the amount necessary to recover the actual costs to develop and administer the examination.

(b) The license fee to obtain a professional fiduciary license shall be set by the bureau.

(c) The renewal fee for a professional fiduciary license shall be set by the bureau.

(d) The license and renewal fees under subdivisions (b) and (c) shall be set by the bureau through regulation at an amount necessary to recover the costs to the bureau in carrying out the provisions of this chapter.

SEC. 4. Section 60.1 is added to the Probate Code, to read:

60.1. (a) "Professional fiduciary" means a person who is a professional fiduciary as defined under subdivision (f) of Section 6501 of the Business and Professions Code.

(b) On and after July 1, 2008, no person shall act or hold himself or herself out to the public as a professional fiduciary unless he or she is licensed as a professional fiduciary under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

SEC. 5. Article 4 (commencing with Section 2340) is added to Chapter 4 of Part 4 of Division 4 of the Probate Code, to read:

Article 4. Professional Fiduciaries

2340. On and after July 1, 2008, a superior court may not appoint a person to carry out the duties of a professional fiduciary, unless he or she holds a valid, unexpired, unsuspended license as a professional fiduciary under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

2341. This article shall become operative on July 1, 2008.

SEC. 6. Section 2345 is added to the Probate Code, to read:

2345. This article shall remain in effect only until July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 2856 is added to the Probate Code, to read:

2856. This chapter shall remain in effect only until July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. This act shall only become operative if Senate Bill 1116, Senate Bill 1716, and Assembly Bill 1363 of the 2005–06 Regular Session are enacted and become effective on or before January 1, 2007.

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 492

An act to amend Sections 1850 and 1851 of, and to add Section 1051 to, the Probate Code, and to add Section 5372 to the Welfare and Institutions Code, relating to conservatorships.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. This act, together with AB 1363 (Jones), SB 1116 (Scott), and SB 1550 (Figueroa), shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

SEC. 2. Section 1051 is added to the Probate Code, to read:

1051. (a) In the absence of a stipulation to the contrary between parties who have filed pleadings in a proceeding under this code, there shall be no ex parte communications between any party, or attorney for

the party, and the court concerning a subject raised in those pleadings, except as permitted or required by law.

(b) Notwithstanding subdivision (a), in any case upon which the court has exercised its jurisdiction, the court may refer to the court investigator or take other appropriate action in response to an ex parte communication regarding either or both of the following: (1) a fiduciary, as defined in Section 39, about the fiduciary's performance of his or her duties and responsibilities, and (2) a person who is the subject of a conservatorship or guardianship proceeding under Division 4 (commencing with Section 1400). Any action by the court pursuant to this subdivision shall be consistent with due process and the requirements of this code. The court shall disclose the ex parte communication to all parties and counsel. The court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm.

(c) The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this section.

(d) Subdivisions (a) and (b) of this section shall become operative on January 1, 2008.

SEC. 3. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter. The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(b) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(c) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 3.5. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court as follows:

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, The court

may, in response to the investigator's report, take appropriate action including, but not limited to:

(A) Ordering a review of the conservatorship pursuant to subdivision (b).

(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interest interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report tin the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interest interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(e) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 4. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the

conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 4.5. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration.

In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interest interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 5. Section 5372 is added to the Welfare and Institutions Code, to read:

5372. (a) The provisions of Section 1051 of the Probate Code shall apply to conservatorships established pursuant to this chapter.

(b) The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this section.

(c) Subdivision (a) of this section shall become operative on January 1, 2008.

SEC. 5.5. Section 3.5 of this bill incorporates amendments to Section 1850 of the Probate Code proposed by both this bill and AB 1363. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1850 of the Probate Code, and (3) this bill is enacted after AB 1363, in which case Section 3 of this bill shall not become operative.

SEC. 5.7. Section 4.5 of this bill incorporates amendments to Section 1851 of the Probate Code proposed by both this bill and AB 1363. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1851 of the Probate Code, and (3) this bill is enacted after AB 1363, in which case Section 4 of this bill shall not become operative.

SEC. 6. This act shall become operative only if Assembly Bill 1363, Senate Bill 1116, and Senate Bill 1550 of the 2005–06 Regular Session are enacted and become effective on or before January 1, 2007.

CHAPTER 493

An act to amend Sections 1610, 1822, 1826, 1829, 1830, 1850, 1851, 2215, 2250, 2253, 2320, 2321, 2401, 2610, 2620, 2620.2, 2623, 2640, 2640.1, 2641, 2653, 2701, and 2920 of, to add Sections 1456, 1457, 1850.5, 2113, 2250.2, 2250.4, 2250.6, 2250.8, 2410, and 2923 to, and to add and repeal Section 1458 of, the Probate Code, relating to conservatorship and guardianship.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. This act, together with Senate Bill 1116 (Scott), Senate Bill 1550 (Figueroa), and Senate Bill 1716 (Bowen), shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

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

(a) The rate of increase in the number of Californians who are 65 years of age or older is surpassing that in other states. The number of people who are 65 years of age will grow from 3.7 million people in the

year 2000, to 6.3 million in the year 2020. The fastest growing segment of California's population, expected to increase by 148 percent between the years 1990 and 2020, is people who are 85 years of age or older. As many as 10 percent of the population over 65 years of age and almost 50 percent of the population over 85 years of age will suffer from Alzheimer's disease.

(b) As the population of California continues to grow and age, an increasing number of persons in the state are unable to provide properly for their personal needs, to manage their financial resources, or to resist fraud or undue influence.

(c) One result of these trends is the growing number of persons acting as conservators on behalf of other persons or their estates. It is estimated that about 500 professional conservators oversee $1.5 billion in assets. Over 5,000 conservatorship petitions are filed each year in California.

(d) Probate courts oversee the work of conservators, but, in part due to a lack of resources and conflicting priorities, courts often do not provide sufficient oversight in conservatorship cases to ensure that the best interests of conservatees are protected.

(e) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect, or the physical or financial abuse, of the clients professional fiduciaries are supposed to serve.

(f) Public guardians do not have adequate resources to represent the best interests of qualifying Californians and, therefore, many in need of the assistance of a conservator go without.

(g) As a result, the conservatorship system in California is fundamentally flawed and in need of reform.

SEC. 3. Section 1456 is added to the Probate Code, to read:

1456. (a) In addition to any other requirements that are part of the judicial branch education program, on or before January 1, 2008, the Judicial Council shall adopt a rule of court that shall do all of the following:

(1) Specifies the qualifications of a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471.

(2) Specifies the number of hours of education in classes related to conservatorships or guardianships that a judge who is regularly assigned to hear probate matters shall complete, upon assuming the probate assignment, and then over a three-year period on an ongoing basis.

(3) Specifies the number of hours of education in classes related to conservatorships or guardianships that a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471 shall complete each year.

(4) Specifies the particular subject matter that shall be included in the education required each year.

(5) Specifies reporting requirements to ensure compliance with this section.

(b) In formulating the rule required by this section, the Judicial Council shall consult with interested parties, including, but not limited to, the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers.

SEC. 4. Section 1457 is added to the Probate Code, to read:

1457. In order to assist relatives and friends who may seek appointment as a nonprofessional conservator or guardian the Judicial Council shall develop a short educational program of no more than three hours that is user-friendly and shall make that program available free of charge to each proposed conservator and guardian and each court-appointed conservator and guardian who is not required to be licensed as a professional conservator or guardian pursuant to Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code. The program may be available by video presentation or Internet access.

SEC. 5. Section 1458 is added to the Probate Code, to read:

1458. (a) On or before January 1, 2008, the Judicial Council shall report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases. The report shall include all of the following with respect to the courts chosen for evaluation:

(1) A summary of caseload statistics, including both temporary and permanent conservatorships, bonds, court investigations, accountings, and use of professional conservators.

(2) An analysis of compliance with statutory timeframes.

(3) A description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes.

(b) The Judicial Council shall select three courts for the evaluation mandated by this section.

(c) The report shall include recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures.

(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 6. Section 1610 of the Probate Code is amended to read:

1610. (a) The Legislature finds and declares that it is in the best interests of children to be raised in a permanent, safe, stable, and loving environment.

(b) Unwarranted petitions, applications, or motions other than discovery motions after the guardianship has been established create an environment that can be harmful to children and are inconsistent with the goals of permanency, safety, and stability.

SEC. 7. Section 1822 of the Probate Code is amended to read:

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be mailed to the following persons:

(1) The spouse, if any, or registered domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the Office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

(f) The Judicial Council shall, on or before January 1, 2008, develop a form to effectuate the notice required in subdivision (a).

SEC. 8. Section 1826 of the Probate Code is amended to read:

1826. Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally. The court investigator also shall do all of the following:

(1) Interview the petitioner and the proposed conservator, if different from the petitioner.

(2) Interview the proposed conservatee's spouse or registered domestic partner and relatives within the first degree.

(3) To the greatest extent possible, interview the proposed conservatee's relatives within the second degree, as set forth in

subdivision (b) of Section 1821, neighbors, and, if known, close friends, before the hearing.

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Review the allegations of the petition as to why the appointment of the conservator is required and, in making his or her determination, do the following:

(1) Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(2) Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(j) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed

conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(k) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(*l*) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (k) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) The proposed conservatee.

(4) The spouse, registered domestic partner, and relatives within the first degree of the proposed conservatee who are required to be named in the petition for appointment of the conservator, unless the court determines that the mailing will result in harm to the conservatee.

(5) Any other persons as the court orders.

(m) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long-term care ombudsman.

(n) The report required by this section is confidential and shall be made available only to parties, persons described in subdivision (*l*), persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.

(o) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

(p) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

(q) Any investigation by the court investigator related to a temporary conservatorship also may be a part of the investigation for the general petition for conservatorship, but the court investigator shall make a second visit to the proposed conservatee and the report required by this

section shall include the effect of the temporary conservatorship on the proposed conservatee.

SEC. 9. Section 1829 of the Probate Code is amended to read:

1829. Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse or registered domestic partner of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

SEC. 10. Section 1830 of the Probate Code is amended to read:

1830. (a) The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

(1) The conservator.

(2) The conservatee's attorney, if any.

(3) The court investigator, if any.

(b) In the case of a limited conservator for a developmentally disabled adult, any order the court may make shall include the findings of the court specified in Section 1828.5. The order shall specify the powers granted to and duties imposed upon the limited conservator, which powers and duties may not exceed the powers and duties applicable to a conservator under this code. The order shall also specify the following:

(1) The properties of the limited conservatee to which the limited conservator is entitled to possession and management, giving a description of the properties that will be sufficient to identify them.

(2) The debts, rentals, wages, or other claims due to the limited conservatee which the limited conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage.

(3) The contractual or other obligations which the limited conservator may incur on behalf of the limited conservatee.

(4) The claims against the limited conservatee which the limited conservator may pay, compromise, or defend, if necessary.

(5) Any other powers, limitations, or duties with respect to the care of the limited conservatee or the management of the property specified in this subdivision by the limited conservator which the court shall specifically and expressly grant.

(c) An information notice of the rights of conservatees shall be attached to the order. The conservator shall mail the order and the attached information notice to the conservatee and the conservatee's relatives, as set forth in subdivision (b) of Section 1821. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.

SEC. 11. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court as follows:

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. The court may, in response to the investigator's report, take appropriate action including, but not limited to:

(A) Ordering a review of the conservatorship pursuant to subdivision (b).

(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

SEC. 11.5. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court as follows:

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. The court may, in response to the investigator's report, take appropriate action including, but not limited to:

(A) Ordering a review of the conservatorship pursuant to subdivision (b).

(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interest interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(e) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 11.7. Section 1850.5 is added to the Probate Code, to read:

1850.5. (a) Notwithstanding Section 1850, each limited conservatorship for a developmentally disabled adult, as defined in subdivision (d) of Section 1801, shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action, including, but not limited to, ordering a review of the limited conservatorship, including at a noticed hearing, at any time.

SEC. 12. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or

registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

SEC. 12.5. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 13. Section 2113 is added to the Probate Code, to read:

2113. A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate.

SEC. 14. Section 2215 of the Probate Code is amended to read:

2215. (a) Any of the following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition:

(1) Any person required to be listed in the petition.

(2) Any creditor of the ward or conservatee or of the estate.

(3) Any other interested person.

(b) (1) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the other county.

(2) In those cases in which the court has approved a change of residence of the conservatee, it shall be presumed to be in the best interests of the conservatee to transfer the proceedings if the ward or

conservatee has moved his or her residence to another county within the state in which any person set forth in subdivision (b) of Section 1821 also resides. The presumption that the transfer is in the best interests of the ward or conservatee, may be rebutted by clear and convincing evidence that the transfer will harm the ward or conservatee.

SEC. 15. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, at least five days before the hearing on the petition, notice of the hearing shall be given as follows:

(1) Notice of the hearing shall be personally delivered to the proposed ward if he or she is 12 years of age or older, to the parent or parents of the proposed ward, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the hearing shall not be delivered to the proposed ward if he or she is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be served on the persons required to be named in the petition for appointment of conservator.

(3) A copy of the petition for temporary appointment shall be served with the notice of hearing.

(d) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.

(e) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(f) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship shall be given at least 10 days prior to the hearing. If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court shall set the hearing at the same time that the hearing on the general petition is set.

(g) The appointment of a guardian or conservator and the appointment of a temporary guardian or conservator may be requested in a single petition or by separate petitions. If the appointment of both a guardian or conservator and also a temporary guardian or conservator is requested in a single petition, the court may not appoint a guardian or conservator without the investigations and reviews otherwise required.

(h) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(i) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

(j) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (c), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

SEC. 15.5. Section 2250.2 is added to the Probate Code, to read:

2250.2. (a) On or after the filing of a petition for appointment of a conservator, any person entitled to petition for appointment of the conservator may file a petition for appointment of a temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed conservatee.

(d) One petition may request the appointment of a conservator and also the appointment of a temporary conservator or these appointments may be requested in separate petitions.

(e) If the court suspends powers of the conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary conservator to exercise those powers until the powers are restored to the conservator or a new conservator is appointed.

(f) If for any reason a vacancy occurs in the office of conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary conservator to exercise the powers of the conservator until a new conservator is appointed.

(g) This section shall only apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

SEC. 16. Section 2250.4 is added to the Probate Code, to read:

2250.4. The proposed temporary conservatee shall attend the hearing except in the following cases:

(a) If the proposed temporary conservatee is out of the state when served and is not the petitioner.

(b) If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.

(c) If the court investigator has visited the proposed conservatee prior to the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:

(1) The proposed conservatee is not willing to attend the hearing.

(2) The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.

(3) The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.

(d) If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and holding the hearing in the absence

of the proposed conservatee is necessary to protect the conservatee from substantial harm.

SEC. 17. Section 2250.6 is added to the Probate Code, to read:

2250.6. (a) Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator shall do all of the following prior to the hearing, unless it is not feasible to do so, in which case the court investigator shall comply with the requirements set forth in subdivision (b):

(1) Interview the proposed conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.

(2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(3) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(4) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(5) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(6) Report to the court, in writing, concerning all of the foregoing.

(b) If not feasible before the hearing, the court investigator shall do all of the following within two court days after the hearing:

(1) Interview the conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.

(2) Inform the conservatee of the nature, purpose, and effect of the temporary conservatorship, as well as the right of the conservatee to oppose the proposed general conservatorship, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) If the investigator does not visit the conservatee until after the hearing at which a temporary conservator was appointed, and the conservatee objects to the appointment of the temporary conservator, or requests an attorney, the court investigator shall report this information promptly, and in no event more than three court days later, to the court. Upon receipt of that information, the court may proceed with appointment of an attorney as provided in Chapter 4 (commencing with Section 1470) of Part 1.

(d) If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator shall immediately, and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion.

SEC. 17.5. Section 2250.8 is added to the Probate Code, to read:

2250.8. Sections 2250, 2250.4, and 2250.6 shall not apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

SEC. 18. Section 2253 of the Probate Code is amended to read:

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided prior to the commencement of the proceedings, that power shall be requested of the court in writing, unless the change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(b) Unless the court for good cause orders otherwise, the court investigator shall do all of the following:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.

(3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

(c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall hold a hearing on the request.

(d) The conservatee shall be present at the hearing except in the following cases:

(1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need not attend the hearing.

(e) If the conservatee is unable to attend the hearing because of medical inability, that inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf.

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent that harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from this state unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.

(h) Subject to subdivision (e) of Section 2252, the court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence.

SEC. 19. Section 2320 of the Probate Code is amended to read:

2320. (a) Except as otherwise provided by statute, every person appointed as guardian or conservator shall, before letters are issued, give a bond approved by the court.

(b) The bond shall be for the benefit of the ward or conservatee and all persons interested in the guardianship or conservatorship estate and shall be conditioned upon the faithful execution of the duties of the office, according to law, by the guardian or conservator.

(c) Except as otherwise provided by statute, unless the court increases or decreases the amount upon a showing of good cause, the amount of a bond given by an admitted surety insurer shall be the sum of all of the following:

(1) The value of the personal property of the estate.

(2) The probable annual gross income of all of the property of the estate.

(3) The sum of the probable annual gross payments from the following:

(A) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(B) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(C) Any other public entitlements of the ward or conservatee.

(4) On or after January 1, 2008, a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs. The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this paragraph.

(d) If the bond is given by personal sureties, the amount of the bond shall be twice the amount required for a bond given by an admitted surety insurer.

(e) The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this article, except to the extent inconsistent with this article.

SEC. 20. Section 2321 of the Probate Code is amended to read:

2321. (a) Notwithstanding any other provision of law, the court in a conservatorship proceeding may not waive the filing of a bond or reduce the amount of bond required, without a good cause determination by the court which shall include a determination by the court that the conservatee will not suffer harm as a result of the waiver or reduction of the bond. Good cause may not be established merely by the conservator having filed a bond in another or prior proceeding.

(b) In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

SEC. 21. Section 2401 of the Probate Code is amended to read:

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

(c) Notwithstanding any other law, a guardian or conservator who is not a trust company, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation, or (3) being an officer or a director of a corporation.

(d) Notwithstanding any other law, a guardian or conservator who is a trust company, in exercising its powers may not, except upon authorization of the court, invest in securities of the trust company or an affiliate or subsidiary, or other securities from which the trust company or affiliate or subsidiary receives a financial benefit or in a mutual fund, other than a mutual fund authorized in paragraph (5) of subdivision (a) of Section 2574, registered under the Investment Company Act of 1940 (Subchapter 1 (commencing with Sec. 80a-1) of Chapter 2D of Title 15 of the United States Code), to which the trust company or its affiliate provides services, including, but not limited to, services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator, servicer, or manager, and for which the trust company or its affiliate receives compensation.

Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing the trust company's financial interest.

SEC. 22. Section 2410 is added to the Probate Code, to read:

2410. On or before January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require uniform standards of conduct for actions that conservators and guardians may take under this chapter on behalf of conservatees and wards to ensure that the estate of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule

shall include at a minimum standards for determining the fees that may be charged to conservatees or wards and standards for asset management.

SEC. 23. Section 2610 of the Probate Code is amended to read:

2610. (a) Within 90 days after appointment, or within any further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court and mail to the conservatee and to the attorneys of record for the ward or conservatee, along with notice of how to file an objection, an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator. A copy of this inventory and appraisal, along with notice of how to file an objection, also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisal of estates of decedents. The guardian or conservator may appraise the assets that a personal representative could appraise under Section 8901.

(d) If a conservatorship is initiated pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), and no sale of the estate will occur:

(1) The inventory and appraisal required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory may be appraised by the conservator and need not be appraised by a probate referee.

(e) By January 1, 2008, the Judicial Council shall develop a form to effectuate the notice required in subdivision (a).

SEC. 24. Section 2620 of the Probate Code is amended to read:

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court to be more frequent, the guardian or conservator shall present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3. By January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of

Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, and the California Society of Certified Public Accountants, shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. After January 1, 2008, all accountings submitted pursuant to this section shall be submitted on the Judicial Council form.

(b) The final court accounting of the guardian or conservator following the death of the ward or conservatee shall include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death.

(c) Along with each court accounting, the guardian or conservator shall file supporting documents, as provided in this section.

(1) For purposes of this subdivision, the term "account statement" shall include any original account statement from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited.

(2) The filing shall include all account statements showing the balance as of the close of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court all account statements showing the account balance immediately preceding the date the conservator or guardian was appointed and all account statements showing the account through the closing date of the first court accounting.

(3) If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator shall also file all original account statements, as described above, showing the balance as of all periods covered by the accounting. However, courts may instead provide by local rule that the court shall retain all documents lodged with it under this subdivision until the court's determination of the guardian's or conservator's account has become final, at which time the documents shall be returned to the depositing guardian or conservator or delivered to any successor appointed by the court.

(4) The filing shall include the original, closing escrow statement received showing the charges and credits for any sale of real property of the estate.

(5) If the ward or conservatee is in a residential care facility or a long-term care facility, the filing shall include the original bill statements for the facility.

(6) This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640)

of Chapter 4 of Part 1 of Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court.

(7) If any document to be filed or lodged with the court under this section contains the ward's or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement or other document shall be attached to a separate affidavit describing the character of the document, captioned "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court. The guardian or conservator may redact the ward's or conservatee's social security number from any document lodged with the court under this section.

(d) Each accounting is subject to random or discretionary, full or partial review by the court. The review may include consideration of any information necessary to determine the accuracy of the accounting. If the accounting has any material error, the court shall make an express finding as to the severity of the error and what further action is appropriate in response to the error, if any. Among the actions available to the court is immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or removal of the guardian or conservator pursuant to Section 2650 and appointment of a temporary guardian or conservator.

(e) The guardian or conservator shall make available for inspection and copying, upon reasonable notice, to any person designated by the court to verify the accuracy of the accounting, all books and records, including receipts for any expenditures, of the guardianship or conservatorship.

SEC. 25. Section 2620.2 of the Probate Code is amended to read:

2620.2. (a) Whenever the conservator or guardian has failed to file an accounting as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator or guardian is a public agency, within 45 days of the date of the notice. The court may, upon cause shown, grant an additional 30 days to file the accounting.

(b) Failure to file the accounting within the time specified under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an accounting with all appropriate supporting documentation and set the accounting for hearing as required by Section 2620, the court shall do one or more of the following and shall report that action to the board established pursuant to Section 6510 of the Business and Professions Code:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required accounting to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be immediately removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond.

(4) (A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455, to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment

of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) If the conservator or guardian is exempt from the licensure requirements of Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, upon ex parte application or any notice as the court may require, extend the time to file the accounting, not to exceed an additional 30 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the accounting has not been filed, the court shall take action as described in paragraphs (1) to (3), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner.

SEC. 26. Section 2623 of the Probate Code is amended to read:

2623. (a) Except as provided in subdivision (b) of this section, the guardian or conservator shall be allowed all of the following:

(1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable).

(2) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(3) All reasonable disbursements made before appointment as guardian or conservator.

(4) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the guardianship or conservatorship but prior to the discharge of the guardian or conservator by the court.

(5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

(b) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 27. Section 2640 of the Probate Code is amended to read:

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(d) Notwithstanding the provisions of subdivision (c), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 28. Section 2640.1 of the Probate Code is amended to read:

2640.1. (a) If a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before the expiration of 90 days from the issuance of letters, the person who petitioned for the appointment of a

conservator but was not appointed and that person's attorney may petition the court for an order fixing and allowing compensation and reimbursement of costs, provided that the court determines that the petition was filed in the best interests of the conservatee.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order to allow both of the following:

(1) Any compensation or costs requested in the petition the court determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.

(2) Any compensation or costs requested in the petition the court determines is just and reasonable to the attorney for that person, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.

Any compensation and costs allowed shall be charged to the estate of the conservatee. If a conservator of the estate is not appointed, but a conservator of the person is appointed, the compensation and costs allowed shall be ordered by the court to be paid from property belonging to the conservatee, whether held outright, in trust, or otherwise.

(d) It is the intent of the Legislature for this section to have retroactive effect.

SEC. 29. Section 2641 of the Probate Code is amended to read:

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing any compensation the court determines is just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.

(c) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 30. Section 2653 of the Probate Code is amended to read:

2653. (a) The guardian or conservator, the ward or conservatee, the spouse of the ward or the spouse or registered domestic partner of the conservatee, any relative or friend of the ward or conservatee, and any interested person may appear at the hearing and support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the accounting as ordered, the court may compel the accounting pursuant to Section 2620.2.

(c) If the court removes the guardian or conservator for cause, as described in subdivisions (a) to (g), inclusive, of Section 2650 or Section 2655, both of the following shall apply:

(1) The court shall award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, incurred under this article, unless the court determines that the guardian or conservator has acted in good faith, based on the best interests of the ward or conservatee.

(2) The guardian or conservator may not deduct from, or charge to, the estate his or her costs of litigation, and is personally liable for those costs and expenses.

SEC. 31. Section 2701 of the Probate Code is amended to read:

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

SEC. 32. Section 2920 of the Probate Code is amended to read:

2920. (a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:

(1) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate.

(2) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate in all other cases.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court

so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

(c) The public guardian shall begin an investigation within two business days of receiving a referral for conservatorship or guardianship.

SEC. 33. Section 2923 is added to the Probate Code, to read:

2923. On or before January 1, 2008, the public guardian shall comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.

SEC. 34. Section 11.5 of this bill incorporates amendments to Section 1850 of the Probate Code proposed by both this bill and SB 1716. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1850 of the Probate Code, and (3) this bill is enacted after SB 1716, in which case Section 11 of this bill shall not become operative.

SEC. 35. Section 12.5 of this bill incorporates amendments to Section 1851 of the Probate Code proposed by both this bill and SB 1716. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1851 of the Probate Code, and (3) this bill is enacted after SB 1716, in which case Section 12 of this bill shall not become operative.

SEC. 36. Sections 8, 11, 11.7, 12, 15, 15.5, 16, 17, 18, and 24 of this act shall become operative on July 1, 2007.

SEC. 37. 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. 38. This act shall become operative only if Senate Bill 1116, Senate Bill 1550, and Senate Bill 1716 of the 2005–06 Regular Session are enacted and become effective on or before January 1, 2007.

CHAPTER 494

An act to amend Sections 18973.5, 18974.5, and 18978 of, and to add Section 18973.1 to, the Government Code, relating to military benefits.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. It is the intent of the Legislature to ensure that all men and women faithfully serving their state and nation receive those rights and benefits commensurate with their service, training, and overseas assignments, and to prevent undue hardship and economic loss on themselves and their families due to current and long-term enlistment requirements.

SEC. 2. Section 18973.1 is added to the Government Code, to read:

18973.1. (a) Except as provided in Section 18978, and in addition to the veterans' credits set forth in Section 18973, in the case of all other entrance examinations, there shall be allowed a credit for veterans, widows or widowers of veterans, and spouses of 100 percent disabled veterans, who become eligible for certification from eligible lists by attaining the passing mark established for the examination, as set forth below:

(1) Disabled veterans, 15 points.

(2) Veterans, 10 points.

(3) Widows or widowers of veterans, and spouses of 100 percent disabled veterans, five points.

(b) For purposes of this section:

(1) "Veteran" means any member of the California National Guard who meets the following requirements:

(A) Served in federal active duty for 90 days or more.

(B) Not more than two years have passed since the member was released from federal active duty.

(2) "Disabled veteran" means any member of the California National Guard who is currently declared by the United States Veterans

Administration to be 10 percent or more disabled as a result of his or her service.

(3) "100 percent disabled veteran" means any member of the California National Guard who is currently declared by the United States Veterans Administration to be 100 percent disabled as a result of his or her service.

(c) No veteran who has been dishonorably discharged or released shall be allowed a credit under this section.

(d) Proof of disability shall be deemed conclusive if it is of record in the United States Veterans Administration.

SEC. 3. Section 18973.5 of the Government Code is amended to read:

18973.5. (a) For purposes of Sections 18973, 18973.1, and 18978, an entrance examination is any open competitive examination other than one for a class having a requirement of both college graduation and two or more years of experience.

(b) For purposes of Sections 18973, 18973.1, and 18978, veterans' credits shall be awarded in all qualifying examinations in which the veteran competes. No veterans' credits shall be awarded once a veteran achieves permanent civil service status.

SEC. 4. Section 18974.5 of the Government Code is amended to read:

18974.5. Any member of the Armed Forces who successfully passes any state civil service examination and whose name as a result is placed on an employment list and who within six months after the establishment of the employment list for which the examination was given qualifies for veteran's preference as provided for in Sections 18973 and 18973.1 shall be allowed the appropriate veterans' credit to the same effect as though he or she were entitled to that credit at the time of the establishing of the employment list. When and if that person is allowed veterans' credit under this section his or her name shall be placed on the employment list in accordance with Section 18937 as the employment list stands at the time of qualifying for veterans' credit.

SEC. 5. Section 18978 of the Government Code is amended to read:

18978. (a) For any entrance examination held on an open, nonpromotional basis under Section 18950, a veteran who becomes eligible for certification from eligible lists by attaining the passing mark established for the examination, shall be allowed the following additional credits:

(1) Disabled veterans, 10 points.

(2) Other veterans, five points.

(b) For purposes of this section, "veteran" and "disabled veteran" have the same meaning as those terms are used in Sections 18973 and 18973.1.

(c) Individuals who received veterans points under this section are not eligible for career credits pursuant to Sections 18950.1, 18951, and 18951.5.

CHAPTER 495

An act to amend Sections 16601, 16602.5, and 17900 of the Business and Professions Code, to amend Sections 167.5, 171.05, 1107.5, 1113, 1152, 1157, 2113, 6019.1, 6020.5, 8019.1, 8020.5, 12540.1, 12550.5, 15800, 16101, 16901, 16903, 16908, 16911, 16915.5, 17001, 17540.3, 17540.8, 17554.5, 17555, and 25005.1 of, to add Chapter 5.5 (commencing with Section 15900) to Title 2 of, and to add and repeal Sections 15534 and 15724 of, the Corporations Code, to amend Section 12197 of, and to repeal and add Section 12188 of, the Government Code, and to amend Section 17935 of the Revenue and Taxation Code, relating to business entities.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 16601 of the Business and Professions Code is amended to read:

16601. Any person who sells the goodwill of a business, or any owner of a business entity selling or otherwise disposing of all of his or her ownership interest in the business entity, or any owner of a business entity that sells (a) all or substantially all of its operating assets together with the goodwill of the business entity, (b) all or substantially all of the operating assets of a division or a subsidiary of the business entity together with the goodwill of that division or subsidiary, or (c) all of the ownership interest of any subsidiary, may agree with the buyer to refrain from carrying on a similar business within a specified geographic area in which the business so sold, or that of the business entity, division, or subsidiary has been carried on, so long as the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein.

For the purposes of this section, "business entity" means any partnership (including a limited partnership or a limited liability

partnership), limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), or corporation.

For the purposes of this section, "owner of a business entity" means any partner, in the case of a business entity that is a partnership (including a limited partnership or a limited liability partnership), or any member, in the case of a business entity that is a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), or any owner of capital stock, in the case of a business entity that is a corporation.

For the purposes of this section, "ownership interest" means a partnership interest, in the case of a business entity that is a partnership (including a limited partnership a limited liability partnership), a membership interest, in the case of a business entity that is a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), or a capital stockholder, in the case of a business entity that is a corporation.

For the purposes of this section, "subsidiary" means any business entity over which the selling business entity has voting control or from which the selling business entity has a right to receive a majority share of distributions upon dissolution or other liquidation of the business entity (or has both voting control and a right to receive these distributions.)

SEC. 2. Section 16602.5 of the Business and Professions Code is amended to read:

16602.5. Any member may, upon or in anticipation of a dissolution of, or the termination of his or her interest in, a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction recognizing such a series), agree that he or she or it will not carry on a similar business within a specified geographic area where the limited liability company business has been transacted, so long as any other member of the limited liability company, or any person deriving title to the business or its goodwill from any such other member of the limited liability company, carries on a like business therein.

SEC. 3. Section 17900 of the Business and Professions Code is amended to read:

17900. (a) As used in this chapter, "fictitious business name" means:

(1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners.

(2) In the case of a partnership or other association of persons, other than a limited partnership that has filed a certificate of limited partnership

with the Secretary of State pursuant to Section 15621 or 15902.01 of the Corporations Code, a foreign limited partnership that has filed an application for registration with the Secretary of State pursuant to Section 15692 or 15909.02 of the Corporations Code, a registered limited liability partnership that has filed a registration pursuant to Section 15049 or 16953 of the Corporations Code, or a foreign limited liability partnership that has filed an application for registration pursuant to Section 15055 or 16959 of the Corporations Code, a name that does not include the surname of each general partner or a name that suggests the existence of additional owners.

(3) In the case of a corporation, any name other than the corporate name stated in its articles of incorporation.

(4) In the case of a limited partnership that has filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 or 15902.01 of the Corporations Code and in the case of a foreign limited partnership that has filed an application for registration with the Secretary of State pursuant to Section 15692 or 15902.02 of the Corporations Code, any name other than the name of the limited partnership as on file with the Secretary of State.

(5) In the case of a limited liability company, any name other than the name stated in its articles of organization and in the case of a foreign limited liability company that has filed an application for registration with the Secretary of State pursuant to Section 17451 of the Corporations Code, any name other than the name of the limited liability company as on file with the Secretary of State.

(b) A name that suggests the existence of additional owners within the meaning of subdivision (a) is one which includes such words as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business being conducted.

SEC. 4. Section 167.5 of the Corporations Code is amended to read:

167.5. "Domestic limited partnership" means any limited partnership formed under the laws of this state.

SEC. 5. Section 171.05 of the Corporations Code is amended to read:

171.05. "Foreign limited partnership" means any limited partnership, including a limited liability limited partnership, formed under the laws of any state other than this state or of the District of Columbia or under the laws of a foreign country.

SEC. 6. Section 1107.5 of the Corporations Code is amended to read:

1107.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10

(commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 6.5. Section 1107.5 of the Corporations Code is amended to read:

1107.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 7. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger.

Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if required the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests or other securities of the surviving party, the agreement of merger shall state (i) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests or other securities of the surviving party, or (ii) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or, if a domestic limited partnership is a party to the merger, Section 15678.2 or 15911.12, or, if a domestic

partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17551.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the unredeemable common shares of a constituent corporation may be converted only into unredeemable common shares of a surviving corporation or a parent party (Section 1200) or unredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a

corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision

of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or subdivision (a) of Section 15911.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each

constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or subdivision (a) of Section 15911.14.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger that is taxed under the Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Corporation Tax Law have been paid or secured. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 or in subdivision (a) of Section 15901.14 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 or in paragraph (3) of subdivision (a) of Section 15909.02 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner

approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 7.6 (commencing with Section 15679.1) of Chapter 3, and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5, of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (a) of Section 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing pursuant to this subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically cancels the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

(7) A certificate of satisfaction of the Franchise Tax Board for each disappearing party to the merger shall be filed when required by subdivision (g) or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 7.5. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if required the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each

party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests or other securities of the surviving party, the agreement of merger shall state (i) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests or other securities of the surviving party, or (ii) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or, if a domestic limited partnership is a party to the merger, Section 15678.2 or 15911.12, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17551.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the unredeemable common shares of a constituent corporation may be converted only into unredeemable common shares of a surviving corporation or a parent party (Section 1200) or unredeemable equity

securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the

merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or subdivision (a) of Section 15911.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent

foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal

insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or subdivision (a) of Section 15911.14.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at

the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 or in subdivision (a) of Section 15901.14 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 or paragraph (3) of subdivision (a) of Section 15909.02 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a

disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 7.6 (commencing with Section 15679.1) of Chapter 3, and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but,

except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (a) of Section 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing pursuant to this subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically cancels the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

SEC. 8. Section 1152 of the Corporations Code is amended to read:

1152. (a) A corporation that desires to convert to a domestic other business entity shall approve a plan of conversion. The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The jurisdiction of the organization of the converted entity and of the converting corporation and the name of the converted entity after conversion.

(3) The manner of converting the shares of each of the shareholders of the converting corporation into securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the converting corporation.

(b) The plan of conversion shall be approved by the board of the converting corporation (Section 151), and the principal terms of the plan of the conversion shall be approved by the outstanding shares (Section 152) of each class of the converting corporation. The approval of the outstanding shares may be given before or after approval by the board. Notwithstanding the foregoing, if a converting corporation is a close corporation, the conversion shall be approved by the affirmative vote of at least two-thirds of each class of outstanding shares of that converting corporation; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(c) If the corporation is converting into a general or limited partnership or into a limited liability company, then in addition to the approval of the shareholders set forth in subdivision (b), the plan of conversion shall be approved by each shareholder who will become a general partner or manager, as applicable, of the converted entity pursuant to the plan of conversion unless the shareholders have dissenters' rights pursuant to Section 1159 and Chapter 13 (commencing with Section 1300).

(d) Upon the effectiveness of the conversion, all shareholders of the converting corporation, except those that exercise dissenters' rights as provided in Section 1159 and Chapter 13 (commencing with Section 1300), shall be deemed parties to any agreement or agreements constituting the governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not a shareholder has executed the plan of conversion or those governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval by the board and the outstanding shares or either of them, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the board and, if it changes any of the principal terms of the plan of conversion, by the shareholders of the converting corporation in the same manner and to the same extent as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the board of a converting corporation, or by the shareholders of a converting corporation

if the abandonment is approved by the outstanding shares, in each case in the same manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at (1) the principal place of business of the converted entity if the converted entity is a domestic partnership or (2) at the office at which records are to be kept under Section 15614 or 15901.11 if the converted entity is a domestic limited partnership or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a shareholder of a converting corporation, the authorized person on behalf of the converted entity shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be unenforceable.

SEC. 9. Section 1157 of the Corporations Code is amended to read:

1157. (a) An other business entity or a foreign other business entity or a foreign corporation may be converted into a corporation pursuant to this chapter only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign corporation that desires to convert into a corporation shall approve a plan of conversion or other instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign corporation shall be approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation or other governing document in accordance with applicable laws.

(d) The conversion by an other business entity or a foreign other business entity or a foreign corporation shall be effective under this chapter upon the filing with the Secretary of State of the articles of incorporation of the converted corporation, containing a statement of conversion that complies with subdivision (e).

(e) A statement of conversion of an entity converting into a corporation pursuant to this chapter shall set forth all of the following:

(1) The name, form, and jurisdiction of organization of the converting entity.

(2) The Secretary of State's file number, if any, of the converting entity.

(3) If the converting entity is a foreign other business entity or a foreign corporation, the statement of conversion shall contain the following:

(A) A statement that the converting entity is authorized to effect the conversion by the laws under which it is organized.

(B) A statement that the converting entity has approved a plan of conversion or other instrument as is required to be approved to effect the conversion pursuant to the laws under which the converting entity is organized.

(C) A statement that the conversion has been approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation, or other governing document in accordance with applicable laws.

(f) The filing with the Secretary of State of articles of incorporation containing a statement pursuant to subdivision (e) shall have the effect of the filing of a certificate of cancellation by a converting foreign limited liability company or foreign limited partnership, and no converting foreign limited liability company or foreign limited partnership that has made the filing is required to file a certificate of cancellation under Section 15696, 15909.06, or 17455 as a result of that conversion. If a converting entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 10. Section 2113 of the Corporations Code is amended to read:

2113. (a) The filing of an agreement of merger of a foreign disappearing corporation qualified to transact intrastate business in this state pursuant to Section 1103, or the filing pursuant to subdivision (d) of Section 1108 of an agreement, certificate, or other document as to a merger that includes a disappearing foreign corporation qualified to transact intrastate business, or the filing of a certificate of ownership as to a foreign subsidiary corporation qualified to transact intrastate business in this state pursuant to Section 1110, or the filing by a foreign corporation qualified to transact intrastate business in this state of an organizational document containing a statement of conversion pursuant to Section 15677.8, 15911.08, 16908, or 17540.8, constitutes the surrender by the foreign corporation of its right to engage in intrastate business within this state.

(b) With respect to corporations for which documents have not been filed as provided in subdivision (a), a certificate of surrender as prescribed by Section 2112 shall be filed by a foreign corporation qualified to transact intrastate business upon its merger into another foreign corporation.

(c) In lieu of a signature as prescribed by Section 2112, a certificate of surrender pursuant to subdivision (b) for a merged foreign corporation may be signed in the name of the surviving corporation by an officer thereof. In that case, the certificate of surrender shall be accompanied by a certificate of an authorized public official of the state or place of incorporation of the merged foreign corporation stating that the corporation has been merged into another foreign corporation and setting forth the name and state or place of incorporation of the surviving foreign corporation.

SEC. 11. Section 6019.1 of the Corporations Code is amended to read:

6019.1. (a) Subject to the provisions of Sections 6010 and 9640, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations and foreign corporations (Section 5053) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 5810 and 5816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b) of Section 5122 and subdivision (b) of Section 9122, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships are to receive in exchange for the memberships, which cash, rights, securities, or other property may be in addition to, or in lieu of, shares, memberships, interests, or other securities of the surviving corporation or surviving other business entity.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12 or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(d) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(e) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(f) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of

each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class, if any, entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class entitled to vote, if any, which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (h). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary, or, if a constituent reciprocal

insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(g) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(h) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (f) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation

and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (f) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 11.5. Section 6019.1 of the Corporations Code is amended to read:

6019.1. (a) Subject to the provisions of Sections 6010 and 9640, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations and foreign corporations (Section 5053) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 5810 and 5816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b) of Section 5122 and subdivision (b) of Section 9122, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships are to receive in exchange for the memberships, which cash, rights, securities, or other property may be in addition to, or in lieu of, shares, memberships, interests, or other securities of the surviving corporation or surviving other business entity.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(d) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(e) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(f) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class, if any, entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class entitled to vote, if any, which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (h). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and also by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(g) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(h) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (f) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (f) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 12. Section 6020.5 of the Corporations Code is amended to read:

6020.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 12.5. Section 6020.5 of the Corporations Code is amended to read:

6020.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing

with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 13. Section 8019.1 of the Corporations Code is amended to read:

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Sections 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 7122, the same as or similar to the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further

approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic corporation, foreign corporation, and foreign business corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote required of each class, and, if applicable, by such other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general

partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the

merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation or foreign business corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17522, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective

date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 13.5. Section 8019.1 of the Corporations Code is amended to read:

8019.1. (a) Subject to the provisions of Section 8010, any one or more corporations may merge with one or more other business entities (Section 5063.5). One or more other domestic corporations, foreign corporations (Sections 5053), and foreign business corporations (Section 5052) may be parties to the merger. Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation which desires to merge, and each other person or persons, if any, whose approval of an amendment of the articles of that corporation is required by the articles or bylaws shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 5064.5), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 7122, the same as or similar to the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party; and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other

securities of the surviving party, cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 5034) or other persons, at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic corporation, foreign corporation, and foreign business corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required),

that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote required of each class, and, if applicable, by such other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of a constituent other

business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation or foreign business corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other

business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17522, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity as of the date of filing in this state or, if later, the effective date of the merger, without the necessity of the filing of a certificate of cancellation.

SEC. 14. Section 8020.5 of the Corporations Code is amended to read:

8020.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the

Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 14.5. Section 8020.5 of the Corporations Code is amended to read:

8020.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 15. Section 12540.1 of the Corporations Code is amended to read:

12540.1. (a) Any one or more corporations may merge with one or more other business entities (Section 12242.5). Subject to the provisions of Section 12530, one or more other domestic corporations or foreign corporations (Section 12237) may be parties to the merger.

Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation, other domestic corporation, foreign corporation, and other business entity which desires to merge shall approve an agreement of merger. The board and the members of each corporation which desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.

The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 12242.6), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 12302, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions

of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 12224), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 12242.6) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. If a domestic reciprocal insurer organized after 1974 to provide medical

malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent general partnership or foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other

business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 12214 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915 or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the

merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

SEC. 15.5. Section 12540.1 of the Corporations Code is amended to read:

12540.1. (a) Any one or more corporations may merge with one or more other business entities (Section 12242.5). Subject to the provisions of Section 12530, one or more other domestic corporations or foreign corporations (Section 12237) may be parties to the merger.

Notwithstanding the provisions of this section, such a merger may be effected only if:

(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation, other domestic corporation, foreign corporation, and other business entity which desires to merge shall approve an agreement of merger. The board and the members of each corporation which desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.

The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 12242.6), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by

the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 12302, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or 15911.12, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

(c) Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a party to the merger or its parent or a wholly owned subsidiary of either in another constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights, or securities unless (i) all members of the class consent or (ii) the commissioner has approved the terms and conditions of the transaction and the fairness of those terms pursuant to Section 25142.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger if the amendment is approved by each constituent corporation in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, as so amended it shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the members (Section 12224), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also

by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and, if applicable, by that other person or persons whose approval is required.

If equity securities of a parent party (Section 12242.6) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent general partnership or foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed such officers, by the chairperson of the board, president,

or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for such party the provision of law or other basis for the authority of the signing persons.

The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger or its principal terms, as required, were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 or 15911.14, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger.

The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.

(2) Subject to subdivision (c) of Section 12214 and paragraph (3), the merger shall be effective as to each domestic constituent corporation

and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (g).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915 or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (g) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger pursuant to subdivision (g) automatically has the effect of a cancellation of registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

SEC. 16. Section 12550.5 of the Corporations Code is amended to read:

12550.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 16.5. Section 12550.5 of the Corporations Code is amended to read:

12550.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 17. Section 15534 is added to the Corporations Code, to read:

15534. This chapter shall become inoperative and be repealed on January 1, 2010, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 15724 is added to the Corporations Code, to read:

15724. This chapter shall become inoperative and be repealed on January 1, 2010, unless a later enacted statute, which becomes effective

on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 15800 of the Corporations Code is amended to read:

15800. (a) Every partnership, other than a foreign limited partnership, subject to Chapter 3 (commencing with Section 15611) or Chapter 5.5 (commencing with Section 15900), or a commercial or banking partnership established and transacting business in a place outside the United States, that is domiciled without this state and has no regular place of business within this state, shall, within 40 days from the time it commences to do business in this state, file a statement in the office of the Secretary of State in accordance with Section 16309 designating some natural person or corporation as the agent of the partnership upon whom process issued by authority of or under any law of this state directed against the partnership may be served. A copy of the designation, duly certified by the Secretary of State, is sufficient evidence of the appointment.

(b) The process may be served in the manner provided in subdivision (b) of Section 16310 on the person so designated, or, in the event that no person has been designated, or if the agent designated for the service of process is a natural person and cannot be found with due diligence at the address stated in the designation, or if the agent is a corporation and no person can be found with due diligence to whom the delivery authorized by subdivision (b) of Section 16310 may be made for the purpose of delivery to the corporate agent, or if the agent designated is no longer authorized to act, then service may be made by personal delivery to the Secretary of State, Assistant Secretary of State, or a Deputy Secretary of State of the process, together with a written statement signed by the party to the action seeking the service, or by the party's attorney, setting forth the last known address of the partnership and a service fee as set forth in Section 12197 of the Government Code. The Secretary of State shall immediately give notice of the service to the partnership by forwarding the process to it by registered mail, return receipt requested, at the address given in the written statement.

(c) Service on the person designated, or personal delivery of the process and statement of address together with a service fee as set forth in Section 12197 of the Government Code to the Secretary of State, Assistant Secretary of State, or a Deputy Secretary of State, pursuant to this section is a valid service on the partnership. The partnership so served shall appear within 30 days after service on the person designated or within 30 days after delivery of the process to the Secretary of State, Assistant Secretary of State, or a Deputy Secretary of State.

SEC. 20. Chapter 5.5 (commencing with Section 15900) is added to Title 2 of the Corporations Code, to read:

Chapter 5.5. Uniform Limited Partnership Act of 2008

Article 1. General Provisions

15900. This chapter may be cited as the Uniform Limited Partnership Act of 2008.

15901.02. In this chapter, the following terms have the following meanings:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: "It is hereby declared that I am the person who executed this instrument, which execution is my act and deed. Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated."

(b) "Certificate of limited partnership" means the certificate required by Section 15902.01. The term includes the certificate as amended or restated.

(c) "Contribution," except in the phrase "right of contribution," means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

(d) "Debtor in bankruptcy" means a person that is the subject of:

(1) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(2) a comparable order under federal, state, or foreign law governing insolvency.

(e) "Designated office" means:

(1) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Section 15901.14; and

(2) with respect to a foreign limited partnership, its principal office.

(f) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(g) "Domestic corporation" means a corporation formed under the laws of this state.

(h) "Electronic transmission by the partnership" means a communication that meets both of the following requirements:

(1) It is delivered by any of the following means:

(A) Facsimile transmission or electronic mail when directed to the facsimile number or electronic mail address, respectively, for the recipient on the record with the partnership.

(B) Posting on an electronic message board or other electronic database, that the partnership has designated for the communication, together with a separate notice to the recipient of the posting, which shall be validly delivered upon the later of either the posting or delivery of the separate notice thereof.

(C) Other means of electronic communication.

(2) It is to a recipient that has provided an unrevoked consent to the use of the means of transmission used by the partnership in the electronic transmission.

(i) "Electronic transmission to the partnership" means a communication that meets both of the following requirements:

(1) It is delivered by any of the following means:

(A) Facsimile communication or other electronic mail when directed to the facsimile number or electronic mail address, respectively, that the partnership has provided from time to time to the partners for sending communications to the partnership.

(B) Posting on an electronic message board or electronic database that the partnership has designated for the communication. A transmission shall have been validly delivered upon the posting.

(C) Other means of electronic communication.

(2) It is a communication as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner purporting to send the transmission, either in person or by proxy.

(j) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership.

(k) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.

(*l*) "Foreign other business entity" means an other business entity formed under the laws of any state other than this state or under the laws of a foreign country.

(m) "General partner" means:

(1) with respect to a limited partnership, a person that:

(A) becomes a general partner under Section 15904.01; or

(B) was a general partner in a limited partnership when the limited partnership became subject to this chapter under subdivision (a) or (b) of Section 15912.06; and

(2) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(n) "Interests of all partners" means the aggregate interests of all partners in the current profits derived from business operations of the partnership.

(o) "Interests of limited partners" means the aggregate interests of all limited partners in their respective capacities as limited partners in the current profits derived from business operations of the partnership.

(p) "Limited partner" means:

(1) with respect to a limited partnership, a person that:

(A) becomes a limited partner under Section 15903.01 or subdivision (g) of 15907.02; or

(B) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under subdivision (a) or (b) of Section 15912.06; and

(2) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(q) "Limited partnership or domestic limited partnership," except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under Article 11 (commencing with Section 15911.01) or subdivisions (a) or (b) of Section 15912.06.

(r) "Mail" means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(s) "Majority in interest of all partners" means more than 50 percent of the interests of all partners.

(t) "Majority in interest of the limited partners" means more than 50 percent of the interests of limited partners.

(u) "Other business entity" means a corporation, general partnership, limited liability company, business trust, real estate investment trust, or an unincorporated association other than a nonprofit association, but excludes a limited partnership.

(v) "Parent" of a limited partnership means any of the following:

(1) A general partner of the limited partnership.

(2) A person possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of a general partner of the limited partnership.

(3) A person owning, directly or indirectly, limited partnership interests possessing more than 50 percent of the aggregate voting power of the limited partnership.

(w) "Partner" means a limited partner or general partner.

(x) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

(y) "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(z) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(aa) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(ab) "Proxy" means a written authorization signed by a partner or the partner's attorney in fact giving another person the power to vote with respect to the interest of that partner. "Signed," for the purpose of this subdivision, means the placing of the partner's name on the proxy, whether by manual signature, typewriting, telegraphic transmission, or otherwise, by the partner or the partner's attorney in fact.

(ac) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(ad) "Required information" means the information that a limited partnership is required to maintain under Section 15901.11.

(ae) "Return of capital" means any distribution to a partner to the extent that the aggregate distributions to that partner do not exceed that partner's contributions to the partnership.

(af) "Sign" means:

(1) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(2) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

(ag) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(ah) "Time a notice is given or sent," unless otherwise expressly provided, means any of the following:

(1) The time a written notice to a partner or the limited partnership is deposited in the United States mail.

(2) The time any other written notice is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic means to the recipient.

(3) The time any oral notice is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(ai) (1) "Transact intrastate business" means, for purposes of registration, entering into repeated and successive transactions of business in this state, other than interstate or foreign commerce.

(2) A foreign limited partnership shall not be considered to be transacting intrastate business within the meaning of paragraph (1) solely because of its status as one or more of the following:

(A) A shareholder of a foreign corporation transacting intrastate business.

(B) A shareholder of a domestic corporation.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.

(3) Without excluding other activities that may not constitute transacting intrastate business, a foreign limited partnership shall not be considered to be transacting intrastate business within the meaning of paragraph (1) solely by reason of carrying on in this state one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims and disputes.

(B) Holding meetings of its partners or carrying on other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositories with relation to its securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests on real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

(J) Transacting business in interstate commerce.

(4) A person shall not be deemed to be transacting intrastate business in this state within the meaning of paragraph (1) solely because of the person's status as a limited partner of a domestic limited partnership or a foreign limited partnership registered to transact intrastate business in this state.

This definition shall not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, jurisdiction, or other regulation under any other law of this state.

(aj) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, creation of a security interest or encumbrance, gift, and transfer by operation of law.

(ak) "Transferable interest" means a partner's right to receive distributions.

(al) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

15901.03. (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it;

(3) has reason to know it exists from all of the facts known to the person at the time in question; or

(4) has notice of it under subdivision (c) or (d).

(c) A certificate of limited partnership on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subdivision (d), the certificate is not notice of any other fact.

(d) A person has notice of:

(1) another person's dissociation as a general partner, 90 days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated or 90 days after the effective date of a certificate of dissociation pertaining to the other person, whichever occurs first;

(2) a limited partnership's dissolution, 90 days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(3) a limited partnership's termination, 90 days after the effective date of a certificate of cancellation;

(4) a limited partnership's conversion under Article 11 (commencing with Section 15911.01), 90 days after the effective date of the certificate of conversion; or

(5) a merger under Article 11 (commencing with Section 15911.01), 90 days after the effective date of the certificate of merger.

(e) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(f) A person receives a notification when the notification:

(1) comes to the person's attention; or

(2) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(g) Except as otherwise provided in subdivision (h), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(h) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

15901.04. (a) A limited partnership is an entity distinct from its partners.

(b) A limited partnership may be organized under this chapter for any lawful purpose. A limited partnership may engage in any lawful business

activity, whether or not for profit, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business.

(c) A limited partnership has a perpetual duration.

15901.05. A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

15901.06. The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

15901.07. (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in Section 3289 of the Civil Code.

15901.08. (a) The name of a limited partnership may contain the name of any partner.

(b) The name of a limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" at the end of its name.

(c) The name of a foreign limited liability limited partnership that is applying for a certificate of registration pursuant to Section 15909.02 must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "L.P." or "LP."

(d) Unless authorized by subdivision (e), the name of a limited partnership must be distinguishable in the records of the Secretary of State from:

(1) the name of any limited partnership that has previously filed a certificate pursuant to Section 15902.01 or any foreign limited partnership registered pursuant to Section 15909.01; and

(2) each name reserved under Section 15901.09.

(e) A limited partnership may apply to the Secretary of State for authorization to use a name that does not comply with subdivision (d). The Secretary of State shall authorize use of the name applied for if, as to each conflicting name:

(1) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with subdivision (d) and is distinguishable in the records of the Secretary of State from the name applied for;

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(3) the applicant delivers to the Secretary of State proof satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(A) has merged into the applicant;

(B) has been converted into the applicant; or

(C) has transferred substantially all of its assets, including the conflicting name, to the applicant.

(f) Subject to Section 15909.05, this section applies to any foreign limited partnership transacting business in this state, having a certificate of registration to transact business in this state, or applying for a certificate of registration.

(g) The name of a limited partnership may not contain the words "bank," "insurance," "trust," "trustee," "incorporated," "inc.," "corporation" or "corp."

15901.09. (a) The exclusive right to the use of a name that complies with Section 15901.08 may be reserved by:

(1) a person intending to organize a limited partnership under this chapter and to adopt the name;

(2) a limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(3) a foreign limited partnership intending to obtain a certificate of registration to transact business in this state and adopt the name;

(4) a person intending to organize a foreign limited partnership and intending to have it obtain a certificate of registration to transact business in this state and adopt the name;

(5) a foreign limited partnership formed under the name; or

(6) a foreign limited partnership formed under a name that does not comply with subdivision (b) or (c) of Section 15901.08, but the name reserved under this paragraph may differ from the foreign limited partnership's name only to the extent necessary to comply with subdivision (b) or (c) of Section 15901.08.

(b) A person may apply to reserve a name under subdivision (a) by delivering to the Secretary of State an application that states the name to be reserved and the paragraph of subdivision (a) which applies. If the Secretary of State finds that the name is available for use by the applicant, the Secretary of State shall issue a certificate of name reservation and thereby reserve the name for the exclusive use of the applicant for 60 days.

(c) An applicant that has reserved a name pursuant to subdivision (b) may reserve the same name for an additional 60-day period. The

Secretary of State shall not issue a certificate reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person.

(d) A person that has reserved a name under this section may transfer the reserved name to another person, effective upon delivery to the Secretary of State of a notice of transfer that states the reserved name, the name and address of the person to which the reservation is to be transferred, and the paragraph of subdivision (a) which applies to the other person.

15901.10. (a) Except as otherwise provided in subdivision (b), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) A partnership agreement may not:

(1) vary a limited partnership's power under Section 15901.05 to sue, be sued, and defend in its own name;

(2) vary the law applicable to a limited partnership under Section 15901.06;

(3) vary the requirements of Section 15902.04;

(4) vary the information required under Section 15901.11 or unreasonably restrict the right to information under Section 15903.04 or 15904.07, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(5) eliminate the duty of loyalty under Section 15904.08, but the partnership agreement may:

(A) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(B) specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(6) unreasonably reduce the duty of care under subdivision (c) of Section 15904.08;

(7) eliminate the obligation of good faith and fair dealing under subdivision (b) of Section 15903.05 and subdivision (d) of Section 15904.08, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(8) vary the power of a person to dissociate as a general partner under subdivision (a) of Section 15906.04 except to require that the notice under subdivision (a) of Section 15906.03 be in a record;

(9) eliminate the power of a court to decree dissolution in the circumstances specified in subdivision (a) of Section 15908.02;

(10) vary the requirement to wind up the partnership's business as specified in Section 15908.03;

(11) unreasonably restrict the right to maintain an action under Article 10 (commencing with Section 15910.01);

(12) restrict the right of a partner to approve a conversion or merger;

(13) vary the provisions of Article 11.5 (commencing with Section 15911.14), except to the extent expressly permitted by such provisions; or

(14) restrict rights under this chapter of a person other than a partner or a transferee.

15901.11. A limited partnership shall maintain at its designated office the following information:

(1) a current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) a copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) a copy of any filed certificate of conversion or merger;

(4) a copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the six most recent years;

(5) a copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) a copy of any financial statement of the limited partnership for the six most recent years;

(7) a copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(8) unless contained in a partnership agreement made in a record, a record stating:

(A) the amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;

(B) (1) the times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(C) for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(D) any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

15901.12. A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

15901.13. A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties and restrictions under this chapter and the partnership agreement for limited partners.

15901.14. (a) A limited partnership shall designate and continuously maintain in this state:

(1) an office, which need not be a place of its activity in this state; and

(2) an agent for service of process.

(b) A foreign limited partnership shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited partnership or foreign limited partnership must be an individual who is a resident of this state or a corporation that has complied with Section 1505 of the Corporations Code and whose capacity to act as an agent has not terminated.

15901.15. Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

15901.16. (a) In addition to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon limited partnerships and foreign limited partnerships as provided in this section.

(b) Personal service of a copy of any process against the limited partnership or the foreign limited partnership will constitute valid service on the limited partnership if delivered either (1) to any individual designated by it as agent or, if a limited partnership, to any general partner or (2) if the designated agent or, if a limited partnership, general partner is a corporation, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 of the Corporations Code at the office of the corporate agent or to any officer of the general partner, shall constitute valid service on the limited partnership or the foreign limited partnership. No change in the address of the agent for

service of process where the agent is an individual or appointment of a new agent for service of process shall be effective (1) for a limited partnership until an amendment to the certificate of limited partnership is filed or (2) for a foreign limited partnership until an amendment to the application for registration is filed. In the case of a foreign limited partnership that has appointed the Secretary of State as agent for service of process by reason of subdivision (e) of Section 15909.07, process shall be delivered by hand to the Secretary of State, or to any person employed in the capacity of assistant or deputy, which shall be one copy of the process for each defendant to be served, together with a copy of the court order authorizing the service and the fee therefor. The order shall include and set forth an address to which such process shall be sent by the Secretary of State.

(c) (1) If an agent for service of process has resigned and has not been replaced or if the agent designated cannot with reasonable diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the satisfaction of the court that process against a limited partnership or foreign limited partnership cannot be served with reasonable diligence upon the designated agent or, if a foreign limited partnership, upon any general partner by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20 or subdivision (a) of Section 415.30, of the Code of Civil Procedure, the court may make an order that the service shall be made upon a domestic limited partnership which has filed a certificate or upon a foreign limited partnership which has a certificate of registration to transact business in this state by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing the service. Service in this manner shall be deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of any such copy of process and the fee therefor, the Secretary of State shall give notice of the service of the process to the limited partnership or foreign limited partnership, at its principal office, by forwarding to that office, by registered mail with request for return receipt, the copy of the process.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State under this chapter and shall record therein the time of service and the Secretary of State's action with reference thereto. A certificate under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the limited partnership or foreign limited partnership, and the forwarding of the

process pursuant to this section, shall be competent and prima facie evidence of the matters stated therein.

(d) (1) The certificate of a limited partnership and the application for a certificate of registration of a foreign limited partnership shall designate, as the agent for service of process, an individual residing in this state or a corporation which has complied with Section 1505 of the Corporations Code and whose capacity to act as an agent has not terminated. If an individual is designated, the statement shall set forth that person's complete business or residence address in this state. If a corporate agent is designated, no address for it shall be set forth.

(2) An agent designated for service of process may file with the Secretary of State a signed and acknowledged written statement of resignation as an agent. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the certificate of resignation by mail to the limited partnership or foreign limited partnership addressed to its designated office.

(3) If an individual who has been designated agent for service of process dies or resigns or no longer resides in the state or if the corporate agent for that purpose, resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers and privileges suspended or ceases to exist, (A) the limited partnership shall promptly file an amendment to the certificate designating a new agent or (B) the foreign limited partnership shall promptly file an amendment to the application for registration.

(e) In addition to any other discovery rights which may exist, in any case pending in a California court having jurisdiction in which a party seeks records from a partnership formed under this chapter, whether or not the partnership is a party, the court shall have the power to order the production in California of the books and records of the partnership on the terms and conditions that the court deems appropriate.

15901.17. (a) A partner may, in a written partnership agreement or other writing, consent to be subject to the nonexclusive jurisdiction of the courts of a specified jurisdiction, or the exclusive jurisdiction of the courts of this state.

(b) If a partner desires to use the arbitration process, that partner may in a written partnership agreement or other writing, consent to be nonexclusively subject to arbitration in a specified state, or to be exclusively subject to arbitration in this state.

(c) Along with this consent to the jurisdiction of courts or arbitration, a partner may consent to be served with legal process in the manner prescribed in the partnership agreement or other writing.

Article 2. Formation; Certificate of Limited Partnership and Other Filings

15902.01. (a) In order for a limited partnership to be formed, a certificate of limited partnership must be filed with and on a form prescribed by the Secretary of State and, either before or after the filing of a certificate of limited partnership, the partners shall have entered into a partnership agreement. The certificate must state:

(1) the name of the limited partnership, which must comply with Section 15901.08;

(2) the address of the initial designated office; and

(3) the name and address of the initial agent for service of process in accordance with paragraph (1) of subdivision (d) of Section 15901.16.

(4) the name and the address of each general partner.

(b) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in subdivision (b) of Section 15901.10 in a manner inconsistent with that section.

(c) Subject to subdivision (c) of Section 15902.06 a limited partnership is formed when the Secretary of State files the certificate of limited partnership.

(d) Subject to subdivision (b), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed certificate of dissociation, cancellation, or amendment or filed certificate of conversion or merger:

(1) the partnership agreement prevails as to partners and transferees; and

(2) the filed certificate of limited partnership, certificate of dissociation, cancellation, or amendment or filed certificate of conversion or merger prevails as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

(e) A limited partnership may record in the office of the county recorder of any county in this state a certified copy of the certificate of limited partnership, or any amendment thereto, which has been filed by the Secretary of State. A foreign limited partnership may record in the office of the county recorder of any county in the state a certified copy of the application for registration to transact business, together with the certificate of registration, referred to in Section 15909.02, or any amendment thereto, which has been filed by the Secretary of State. The recording shall create a conclusive presumption in favor of any bona fide purchaser or encumbrancer for value of the partnership real property located in the county in which the certified copy has been recorded, that the persons named as general partners therein are the general partners

of the partnership named and that they are all of the general partners of the partnership.

(f) The Secretary of State may cancel the filing of certificates of limited partnership if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. For partners and transferees, the partnership agreement is paramount. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

(g) The Secretary of State shall include with instructional materials, provided in conjunction with the form for filing a certificate of limited partnership under subdivision (a), a notice that the filing of the certificate of limited partnership will obligate the limited partnership to pay an annual tax for that taxable year to the Franchise Tax Board pursuant to Section 17935 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of the annual tax.

15902.02. (a) In order to amend its certificate of limited partnership, a limited partnership must deliver to and on a form prescribed by the Secretary of State for filing an amendment stating:

(1) the name and the Secretary of State's file number of the limited partnership; and

(2) the changes the amendment makes to the certificate as most recently amended or restated.

(b) A limited partnership shall promptly deliver to the Secretary of State for filing an amendment to a certificate of limited partnership to reflect:

(1) the admission of a new general partner;

(2) the dissociation of a person as a general partner; or

(3) the appointment of a person to wind up the limited partnership's activities under subdivisions (c) or (d) of Section 15908.03.

(c) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the Secretary of State for filing an amendment or a certificate of correction pursuant to Section 15902.07.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(e) A restated certificate of limited partnership may be delivered to and on a form prescribed by the Secretary of State for filing in the same manner as an amendment.

(1) A restated certificate of limited partnership may be filed that embodies all of the provisions that are in effect contained in the different certificates that have been filed with the Secretary of State.

(2) A restated certificate of limited partnership may include an amendment of the certificate of limited partnership not previously filed with the Secretary of State.

(3) The restated certificate of limited partnership shall supersede the initial certificate of limited partnership and all amendments thereto previously filed with the Secretary of State.

(4) Any amendment effected in connection with the restatement of the certificate of limited partnership shall be subject to any other provision of this chapter not inconsistent with this section that would apply if a separate certificate of amendment were filed to effect that amendment.

(f) Subject to subdivision (c) of Section 15902.06, an amendment or restated certificate is effective when filed by the Secretary of State.

15902.03. A dissolved limited partnership that has completed winding up shall deliver to and on a form prescribed by the Secretary of State for filing a certificate of cancellation that states:

(1) the name of the limited partnership and the Secretary of State's file number;

(2) the date of filing of its initial certificate of limited partnership; and

(3) any other information as determined by the general partners filing the certificate or by a person appointed pursuant to subdivisions (c) or (d) of Section 15908.03.

15902.04. (a) Each record delivered to the Secretary of State for filing pursuant to this chapter must be signed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(2) An amendment designating as general partner a person admitted under paragraph (2) of subdivision (c) of Section 15908.01 following the dissociation of a limited partnership's last general partner must be signed by that person.

(3) An amendment required by subdivision (c) of Section 15908.03 following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(4) Any other amendment must be signed by:

(A) at least one general partner listed in the certificate of limited partnership;

(B) each other person designated in the amendment as a new general partner; and

(C) each person that the amendment indicates has dissociated as a general partner, unless:

(i) the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(ii) the person has previously delivered to the Secretary of State for filing a certificate of dissociation.

(5) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subdivision, the restated certificate must be signed in a manner that satisfies that paragraph.

(6) A certificate of cancellation must be signed by all general partners listed in the certificate of limited partnership or, if the certificate of limited partnership of a dissolved limited partnership lists no general partners, by the person appointed pursuant to subdivisions (c) or (d) of Section 15908.03 to wind up the dissolved limited partnership's activities.

(7) Certificates of conversion must be signed as provided in subdivision (b) of Section 15911.06.

(8) Certificates of merger must be signed as provided in subdivision (a) of Section 15911.14.

(9) Any other record delivered on behalf of a limited partnership to the Secretary of State for filing must be signed by at least one general partner listed in the certificate of limited partnership.

(10) A certificate of dissociation by a person pursuant to paragraph (4) of subdivision (a) of Section 15906.05 stating that the person has dissociated as a general partner must be signed by that person.

(11) A certificate of withdrawal by a person pursuant to Section 15903.06 must be signed by that person.

(12) A record delivered on behalf of a foreign limited partnership to the Secretary of State for filing must be signed by at least one general partner of the foreign limited partnership.

(13) Any other record delivered on behalf of any person to the Secretary of State for filing must be signed by that person.

(b) Any person may sign by an attorney in fact any record to be filed pursuant to this chapter.

(c) The Secretary of State shall not be required to verify that the person withdrawing or dissociating was ever actually named in an official filing as a general or limited partner.

15902.05. (a) If a person required by this chapter to sign a record or deliver a record to the Secretary of State for filing does not do so, any other person that is aggrieved may petition the superior court to order:

(1) the person to sign the record;

(2) deliver the record to the Secretary of State for filing; or

(3) the Secretary of State to file the record unsigned.

(b) If the person aggrieved under subdivision (a) is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subdivision (a) may seek the remedies provided in subdivision (a) in the same action in combination or in the alternative. In any action under this subdivision, if the court finds the failure of the person to comply with the requirement to sign a record or deliver a record to the Secretary of State for filing to have been without justification, the court may award an amount sufficient to reimburse the persons aggrieved under subdivision (a) bringing the action for the reasonable expenses incurred by such persons, including attorneys' fees, in connection with the action or proceeding.

(c) A record filed unsigned pursuant to this section is effective without being signed.

(d) Any person, other than a general partner, delivering a record to the Secretary of State for filing, shall state the statutory authority for such action after the signature on the appropriate record.

15902.06. (a) A record authorized or required to be delivered to the Secretary of State for filing under this chapter must be completed on a form prescribed by and in a medium permitted by the Secretary of State, and be delivered to the Secretary of State. Unless the Secretary of State determines that a record does not comply with the filing requirements of this chapter, and if all requisite fees have been paid, the Secretary of State shall file the record.

(b) Except as otherwise provided in Sections 15901.16, 15902.01, and 15902.07, a record delivered to the Secretary of State for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the Secretary of State is effective:

(1) if the record does not specify a delayed effective date, on the date the record is filed as evidenced by the Secretary of State's endorsement of the date on the record;

(2) if the record specifies a delayed effective date on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed; or

(c) In case a delayed effective date is specified, the record may be prevented from becoming effective by a certificate stating that by

appropriate action it has been revoked and is null and void, executed in the same manner as the original record and delivered to the Secretary of State for filing before the specified effective date. In the case of certificate of merger, a certificate revoking the earlier filing need only be executed on behalf of one of the constituent parties to the merger. If no such revocation certificate is filed, the record becomes effective on the date specified.

(d) If the Secretary of State determines that a record delivered to the Secretary of State for filing does not conform to the law and returns it to the person delivering it, the record may be resubmitted accompanied by a written opinion of the member of the State Bar of California delivering the record or representing the person delivering it, to the effect that the specific provisions of the record objected to by the Secretary of State do conform to law and stating the points and authorities upon which the opinion is based. The Secretary of State shall rely, with respect to any disputed point of law, other than the application of Sections 15901.08, 15901.09, 15909.02, and 15909.05, upon that written opinion in determining whether the record conforms to law. When filed by the Secretary of State upon resubmission, such record is effective retroactively as of the date that the original record was delivered to the Secretary of State for filing.

15902.07. (a) A limited partnership or foreign limited partnership may deliver to and on a form prescribed by the Secretary of State for filing a certificate of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained false or erroneous information or was defectively signed.

(b) A certificate of correction may not state a delayed effective date and must:

(1) describe the record to be corrected, including its filing date and file number;

(2) specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(3) correct the incorrect information or defective signature.

(c) When filed by the Secretary of State, a certificate of correction is effective retroactively as of the effective date of the record the certificate corrects, but the certificate is effective when filed:

(1) for the purposes of subdivisions (c) and (d) of Section 15901.03; and

(2) as to persons relying on the uncorrected record and adversely affected by the correction.

15902.08. (a) If a record delivered to the Secretary of State for filing under this chapter and filed by the Secretary of State contains false

information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed; and

(2) a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 15902.02, file a petition pursuant to Section 15902.05, or deliver to the Secretary of State for filing a certificate of correction pursuant to Section 15902.07.

(b) Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true.

15902.09. (a) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to Section 15902.03 may be revived by filing with, and on a form prescribed by, the Secretary of State a certificate of revival. The certificate of revival shall be accompanied by written confirmation by the Franchise Tax Board that all of the following have been paid to the Franchise Tax Board:

(1) The annual tax due under Section 17935 of the Revenue and Taxation Code.

(2) All penalties and interest thereof for each year for which the domestic limited partnership failed to pay such annual tax, including each year between the cancellation of its certificate of limited partnership and its revival.

(b) The certificate of revival shall set forth all of the following:

(1) The name of the limited partnership at the time its certificate of limited partnership was cancelled, and if the name is not available at the time of revival, the name under which the limited partnership is to be revived.

(2) The date of filing of the original certificate of limited partnership.

(3) The address of the limited partnership's designated office.

(4) The name and address of the initial agent for service of process in accordance with paragraph (1) of subdivision (d) of Section 15901.16.

(5) A statement that the certificate of revival is filed by one or more general partners of the limited partnership authorized to execute and file the certificate of revival to revive the limited partnership.

(6) The Secretary of State's file number for the original limited partnership.

(7) The name and address of each general partner.

(8) Any other matters the general partner or partners executing the certificate of revival determine to include therein.

(c) The certificate of revival should be deemed to be an amendment to the certificate of limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership pursuant to Section 15902.02 with respect to the matter set forth in the certificate of revival.

(d) Upon the filing of the certificate of revival, the limited partnership shall be revived with the same force and effect as if the certificate of limited partnership had not been canceled pursuant to Section 15902.03. The revival shall validate all contracts, acts, matters, and things made, done, and performed by the limited partnership, its partners, employees, and agents following the time its certificate of limited partnership was canceled pursuant to Section 15902.03 with the same force and effect and all intents and purposes as if the certificate of limited partnership had remained in full force and effect. This provision shall apply provided that third parties are relying on the acts of the partnership, its partners, employees, and agents. All real and personal property, and all rights and interests, that belong to a limited partnership at the time its certificate of limited partnership was cancelled pursuant to Section 15902.03 or that were acquired by the limited partnership following the cancellation of the certificate of limited partnership, that were not disposed of prior to the time of its revival, shall be vested in the limited partnership after its revival as fully as if they were held by the limited partnership at, and during the time after, as the case may be, the time the certificate of limited partnership was cancelled. After its revival, the limited partnership and its partners shall have all of the same liability for contracts, acts, matters, and things made, done, or performed in the limited partnership's name and on behalf of its partners, employees, and agents, as the limited partnership and its partners would have had if the limited partnership's certificate of limited partnership had at all times remained in full force and effect.

Article 3. Limited Partners

15903.01. A person becomes a limited partner:

(a) as provided in the partnership agreement;

(b) as the result of a conversion or merger under Article 11 (commencing with Section 15911.01); or

(c) with the consent of all the partners.

15903.02. A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

15903.03. (a) A limited partner is not liable for any obligation of a limited partnership unless named as a general partner in the certificate or, in addition to exercising the rights and powers of a limited partner, the limited partner participates in the control of the business. If a limited partner participates in the control of the business without being named as a general partner, that partner may be held liable as a general partner only to persons who transact business with the limited partnership with actual knowledge of that partner's participation in control and with a reasonable belief, based upon the limited partner's conduct, that the partner is a general partner at the time of the transaction. Nothing in this chapter shall be construed to affect the liability of a limited partner to third parties for the limited partner's participation in tortious conduct.

(b) A limited partner does not participate in the control of the business within the meaning of subdivision (a) solely by doing, attempting to do, or having the right or power to do, one or more of the following:

(1) Being any of the following:

(A) An independent contractor for, an agent or employee of, or transacting business with, the limited partnership or a general partner of the limited partnership.

(B) An officer, director, or shareholder of a corporate general partner of the limited partnership.

(C) A member, manager, or officer of a limited liability company that is a general partner of the limited partnership.

(D) A limited partner of a partnership that is a general partner of the limited partnership.

(E) A trustee, administrator, executor, custodian, or other fiduciary or beneficiary of an estate or trust that is a general partner.

(F) A trustee, officer, advisor, shareholder, or beneficiary of a business trust that is a general partner.

(2) Consulting with and advising a general partner with respect to the business of the limited partnership.

(3) Acting as surety for the limited partnership or for a general partner, guaranteeing one or more specific debts of the limited partnership, providing collateral for the limited partnership or general partner, borrowing money from the limited partnership or a general partner, or lending money to the limited partnership or a general partner.

(4) Approving or disapproving an amendment to the partnership agreement.

(5) Voting on, proposing, or calling a meeting of the partners.

(6) Winding up the partnership pursuant to Section 15908.03.

(7) Executing and filing a certificate pursuant to Section 15902.05, a certificate of withdrawal pursuant to paragraph (12) of subdivision (a) of Section 15902.04, or a certificate of cancellation of certificate of

limited partnership pursuant to paragraph (7) of subdivision (a) of Section 15902.04.

(8) Serving on an audit committee or committee performing the functions of an audit committee.

(9) Serving on a committee of the limited partnership or the limited partners for the purpose of approving actions of the general partner.

(10) Calling, requesting, attending, or participating at any meeting of the partners or the limited partners.

(11) Taking any action required or permitted by law to bring, pursue, settle, or terminate a derivative action on behalf of the limited partnership.

(12) Serving on the board of directors or a committee of, consulting with or advising, being or acting as an officer, director, stockholder, partner, member, manager, agent, or employee of, or being or acting as a fiduciary for, any person in which the limited partnership has an interest.

(13) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subdivision.

(c) The enumeration in subdivision (b) does not mean that any other conduct or the possession or exercise of any other power by a limited partner constitutes participation by the limited partner in the control of the business of the limited partnership.

15903.04. (a) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy any information required to be maintained pursuant to Section 15901.11 during regular business hours in the limited partnership's designated office. The limited partner need not have any particular purpose for seeking the information.

(b) Subject to subdivision (g), during regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership, which may be transmitted via electronic transmission, and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

(1) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(2) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) the information sought is directly connected to the limited partner's purpose.

(c) Within 10 days after receiving a demand pursuant to subdivision (b), the limited partnership in a record shall inform the limited partner that made the demand:

(1) what information the limited partnership will provide in response to the demand;

(2) when and where the limited partnership will provide the information; and

(3) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(d) Subject to subdivision (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if:

(1) the information pertains to the period during which the person was a limited partner;

(2) the person seeks the information in good faith; and

(3) the person meets the requirements of subdivision (b).

(e) The limited partnership shall respond to a demand made pursuant to subdivision (d) in the same manner as provided in subdivision (c).

(f) If a limited partner dies, Section 15907.04 applies.

(g) The limited partnership shall have the right to keep confidential from limited partners for such period of time as the limited partnership deems reasonable, any information which the limited partnership reasonably believes to be in the nature of trade secrets or other information the disclosure of which the limited partnership in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or which the limited partnership is required by law or by agreement with a third party to keep confidential.

(h) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subdivision, the limited partnership has the burden of proving reasonableness.

(i) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(j) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(k) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subdivision (g), subdivision (h) or by the

partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(*l*) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

15903.05. (a) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(b) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(c) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

15903.06. (a) Except as otherwise provided in subdivision (b), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(1) causes an appropriate certificate of limited partnership, amendment, or certificate of correction to be signed and delivered to the Secretary of State for filing; or

(2) withdraws from future participation as an owner in the enterprise by signing and delivering to and on a form prescribed by the Secretary of State for filing a certificate of withdrawal under this section.

(b) A person that makes an investment described in subdivision (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the Secretary of State files a certificate of withdrawal, certificate of limited partnership, amendment, or certificate of correction to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with paragraph (1) of subdivision (a) and is unable to cause the appropriate certificate of limited partnership, amendment, or certificate of correction to be signed and delivered to the Secretary of State for filing, the person has the right to withdraw from the enterprise pursuant to paragraph (2) of subdivision (a) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

15903.07. (a) The partnership agreement may provide for the creation of classes of limited partners. The partnership agreement shall define the rights, powers, and duties of those classes, including rights, powers, and duties senior to other classes of limited partners.

(b) The partnership agreement may provide to all or certain specified classes of limited partners the right to vote separately or with all or any class or the general partners on any matter.

Article 4. General Partners

15904.01. A person becomes a general partner:

(a) as provided in the partnership agreement:

(b) under paragraph (2) of subdivision (c) of Section 15908.01 following the dissociation of a limited partnership's last general partner;

(c) as the result of a conversion or merger under Article 11 (commencing with Section 15911.01); or

(d) with the consent of all the partners.

15904.02. (a) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under subdivision (d) of Section 15901.03 that the general partner lacked authority.

(b) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

15904.03. (a) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(b) If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

15904.04. (a) Except as otherwise provided in subdivision (b), all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

15904.05. (a) To the extent not inconsistent with Section 15904.04, a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(c) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under Section 15904.04 and:

(1) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) the limited partnership is a debtor in bankruptcy;

(3) the general partner has agreed that the creditor need not exhaust limited partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

15904.06. (a) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) The consent of each partner is necessary to:

(1) amend the partnership agreement; and

(2) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will,

other than in the usual and regular course of the limited partnership's activities.

(c) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(d) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(e) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subdivision (c) or (d) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(f) A general partner is not entitled to remuneration for services performed for the partnership.

15904.07. (a) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(1) in the limited partnership's designated office, required information; and

(2) at a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(b) Each general partner and the limited partnership shall furnish to a general partner which may be transmitted via electronic transmission:

(1) without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(2) on demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) Subject to subdivision (e), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subdivision (a) at the location specified in subdivision (a) if:

(1) the information or record pertains to the period during which the person was a general partner;

(2) the person seeks the information or record in good faith; and

(3) the person satisfies the requirements imposed on a limited partner by subdivision (b) of Section 15903.04.

(d) The limited partnership shall respond to a demand made pursuant to subdivision (c) in the same manner as provided in subdivision (c) of Section 15903.04.

(e) If a general partner dies, Section 15907.04 applies.

(f) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subdivision, the limited partnership has the burden of proving reasonableness.

(g) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subdivision (f) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(i) The rights under this section do not extend to a person as transferee, but the rights under subdivision (c) of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under paragraph (2) or (3) of subdivision (g) of Section 15906.03.

15904.08. (a) The fiduciary duties that a general partner owes to the limited partnership and the other partners are the duties of loyalty and care under subdivisions (b) and (c).

(b) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(1) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(2) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(3) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(c) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement

and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

15904.09. (a) A partnership agreement may provide for the creation of classes of general partners. The partnership agreement shall define the rights, powers, and duties of those classes including rights, powers, and duties senior to other classes of general partners.

(b) The partnership agreement may provide to all or certain specified classes of general partners the right to vote separately or with all or any class of the general partners on any matters.

Article 5. Contributions and Distributions

15905.01. A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

15905.02. (a) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(b) If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to the value of that portion, as stated in the required information, of the stated contribution which has not been made.

(c) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subdivision (a), without notice of any compromise under this subdivision, may enforce the original obligation.

(d) A partnership agreement may provide that the interest of a partner who fails to make any contribution or other payment that the partner is required to make will be subject to specific remedies for, or specific consequences of, the failure. A provision shall be enforceable in accordance with its terms unless the partner seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made. The specific remedies or consequences may include loss of voting, approval, or other rights, loss of the partner's ability to actively participate in the management and operations of the partnership, liquidated damages, or

a reduction of the defaulting partner's economic rights. The reduction of the defaulting partner's economic rights may include one or more of the following provisions:

(1) Diluting, reducing or eliminating the defaulting partner's proportionate interest in the partnership.

(2) Subordinating the defaulting partner's interest in the partnership to that of nondefaulting partners.

(3) Permitting a forced sale of the partnership interest.

(4) Permitting the lending or contribution by other partners of the amount necessary to meet the defaulting partner's commitment.

(5) Adjusting the interest rates or other rates of return, preferred, priority, or otherwise, with respect to contributions by or capital accounts of the other partners.

(6) Fixing the value of the defaulting partner's interest in the partnership by appraisal, formula and redemption, or sale of the defaulting partner's interest in the partnership at a percentage of that value.

(7) Nothing in this section shall be construed to affect the rights of third-party creditors of the partnership to seek equitable remedies nor any rights existing 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).

15905.03. A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

15905.035. The profits and losses of a limited partnership shall be allocated among the partners in the manner provided in the partnership agreement. If the partnership agreement does not otherwise provide, profits and losses shall be allocated in the same manner as the partners share distributions.

15905.04. A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

15905.05. A person does not have a right to receive a distribution on account of dissociation.

15905.06. A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to subdivision (b) of Section 15908.11, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

15905.07. When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled

to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

15905.08. (a) A limited partnership may not make a distribution in violation of the partnership agreement.

(b) A limited partnership may not make a distribution if after the distribution:

(1) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(2) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(c) A limited partnership may base a determination that a distribution is not prohibited under subdivision (b) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(d) Except as otherwise provided in subdivision (g), the effect of a distribution under subdivision (b) is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within 120 days after that date; or

(B) the payment is made, if payment occurs more than l20 days after the distribution is authorized.

(e) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general unsecured creditors.

(f) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subdivision (b) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(g) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

15905.09. (a) A general partner that consents to a distribution made in violation of Section 15905.08 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with Section 15904.08.

(b) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of Section 15905.08 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under Section 15905.08.

(c) A general partner against which an action is commenced under subdivision (a) may:

(1) implead in the action any other person that is liable under subdivision (a) and compel contribution from the person; and

(2) implead in the action any person that received a distribution in violation of subdivision (b) and compel contribution from the person in the amount the person received in violation of subdivision (b).

(d) An action under this section is barred if it is not commenced within four years after the distribution.

Article 6. Dissociation

15906.01. (a) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(b) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(1) the limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(3) the person's expulsion as a limited partner pursuant to the partnership agreement;

(4) the person's expulsion as a limited partner by the unanimous consent of the other partners if:

(A) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(B) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(B) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under subdivision (b) of Section 15903.05; or

(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;

(6) in the case of a person who is an individual, the person's death;

(7) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(8) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(9) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(10) the limited partnership's participation in a conversion or merger under Article 11 (commencing with Section 15911.01), if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

15906.02. (a) Upon a person's dissociation as a limited partner:

(1) subject to Section 15907.04, the person does not have further rights as a limited partner;

(2) the person's obligation of good faith and fair dealing as a limited partner under subdivision (b) of Section 15903.05 continues only as to matters arising and events occurring before the dissociation; and

(3) subject to Section 15907.04 and Article 11 (commencing with Section 15911.01), any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(b) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

15906.03. A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(a) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(b) an event agreed to in the partnership agreement as causing the persons dissociation as a general partner;

(c) the person's expulsion as a general partner pursuant to the partnership agreement;

(d) the person's expulsion as a general partner by the unanimous consent of the other partners if:

(1) it is unlawful to carry on the limited partnership's activities with the person as a general partner;

(2) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(3) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(4) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) on application by the limited partnership, the person's expulsion as a general partner by judicial order because:

(1) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(2) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 15904.08; or

(3) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(f) the person's:

(1) becoming a debtor in bankruptcy;

(2) execution of an assignment for the benefit of creditors;

(3) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(4) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(g) in the case of a person who is an individual:

(1) the person's death;

(2) the appointment of a guardian or general conservator for the person; or

(3) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(h) in the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(i) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(j) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(k) the limited partnership's participation in a conversion or merger under Article 11 (commencing with Section 15911.01), if the limited partnership:

(1) is not the converted or surviving entity; or

(2) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

15906.04. (a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to subdivision (a) of Section 15906.03.

(b) A person's dissociation as a general partner is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) it occurs before the termination of the limited partnership, and:

(A) the person withdraws as a general partner by express will;

(B) the person is expelled as a general partner by judicial determination under subdivision (e) of Section 15906.03;

(C) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 15910.01, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

15906.05. (a) Upon a person's dissociation as a general partner:

(1) the person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(2) the person's duty of loyalty as a general partner under paragraph (3) of subdivision (b) of Section 15904.08 terminates;

(3) the person's duty of loyalty as a general partner under paragraphs (1) and (2) of subdivision (b) of Section 15904.08 and duty of care under subdivision (c) of Section 15904.08 continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(4) the person may sign and deliver to the Secretary of State for filing , on a form prescribed by the Secretary of State, a certificate of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and

(5) subject to Section 15907.04 and Article 11 (commencing with Section 15911.01), any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(b) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

15906.06. (a) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under Article 11 (commencing with Section 15911.01), or merged out of existence under that article, the limited partnership is bound by an act of the person only if:

(1) the act would have bound the limited partnership under Section 15904.02 before the dissociation; and

(2) at the time the other party enters into the transaction:

(A) less than two years have passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subdivision (a), the person dissociated as a general partner which caused the limited partnership to be bound is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subdivision (a); and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

15906.07. (a) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subdivisions (b) and (c), the person is not liable for a limited partnership's obligation incurred after dissociation.

(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under Section 15904.04 on an obligation incurred by the limited partnership under Section 15908.04.

(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(1) a general partner would be liable on the transaction; and

(2) at the time the other party enters into the transaction:

(A) less than two years have passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(d) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability to the creditor for an obligation of the limited partnership.

(e) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Article 7. Transferable Interests and Rights of Transferees and Creditors

15907.01. The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

15907.02. (a) A transfer, in whole or in part, of a partner's transferable interest:

(1) is permissible;

(2) does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

(3) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subdivision (c), or to inspect or copy the required information or the limited partnership's other records or to exercise any other rights or powers of a partner.

(b) A transferee has a right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) A transferee is entitled to an account of the limited partnership's transactions only upon the dissolution and winding up of the limited partnership.

(d) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(f) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 15905.02 and 15905.09. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

(h) A transferee of a partnership interest, including a transferee of a general partner, may become a limited partner if and to the extent that

(1) the partnership agreement provides or (2) all general partners and a majority in interest of the limited partners consent.

15907.03. (a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than limited partnership property, by one or more of the other partners; or

(3) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(d) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

(f) No creditor of a partner shall have any right to obtain possession or otherwise exercise legal or equitable remedies with respect to the property of the limited partnership.

15907.04. If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in Section 15907.02 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under Section 15903.04.

Article 8. Dissolution

15908.01. Except as otherwise provided in Section 15908.02, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

(a) the happening of an event specified in the partnership agreement;

(b) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(c) after the dissociation of a person as a general partner:

(1) if the limited partnership has at least one remaining general partner, and a consent to dissolve the limited partnership is given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(2) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(A) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(B) at least one person is admitted as a general partner in accordance with the consent; or

(d) the passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner.

15908.02. (a) On application by a partner, a court of competent jurisdiction may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

(b) In any suit for judicial dissolution, the other partners may avoid the dissolution of the limited partnership by purchasing for cash the partnership interests owned by the partners so initiating the proceeding (the "moving parties") at their fair market value. In fixing the value, the amount of any damages resulting if the initiation of the dissolution is a breach by any moving party or parties of an agreement with the purchasing party or parties, including, without limitation, the partnership agreement, may be deducted from the amount payable to the moving party or parties.

(c) If the purchasing parties (1) elect to purchase the partnership interests owned by the moving parties, (2) are unable to agree with the moving parties upon the fair market value of the partnership interests, and (3) give bond with sufficient security to pay the estimated reasonable expenses, including attorneys' fees, of the moving parties if the expenses are recoverable under paragraph (3), the court, upon application of the purchasing parties, either in the pending action or in a proceeding initiated in the superior court of the proper county by the purchasing parties, shall

stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair market value of the partnership interests owned by the moving parties.

(d) The court shall appoint three disinterested appraisers to appraise the fair market value of the partnership interests owned by the moving parties, and shall make an order referring the matter to the appraisers so appointed for the purpose of ascertaining that value. The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or a majority of them, when confirmed by the court, shall be final and conclusive upon all parties. The court shall enter a decree that shall provide in the alternative for winding up and dissolution of the limited partnership unless payment is made for the partnership interests within the time specified by the decree. If the purchasing parties do not make payment for the partnership interests within the time specified, judgment shall be entered against them and the surety or sureties on the bond for the amount of the expenses, including attorneys' fees, of the moving parties. Any member aggrieved by the action of the court may appeal therefrom.

(e) If the purchasing parties desire to prevent the winding up and dissolution of the limited partnership, they shall pay to the moving parties the value of their partnership interests ascertained and decreed within the time specified pursuant to this section, or, in the case of an appeal, as fixed on appeal. On receiving that payment or the tender thereof, the moving parties shall transfer their partnership interests to the purchasing parties.

(f) For the purposes of this section, the valuation date shall be the date upon which the action for judicial dissolution was commenced. However, the court may, upon the hearing of a motion by any party, and for good cause shown, designate some other date as the valuation date.

15908.03. (a) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(b) In winding up its activities, the limited partnership:

(1) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a certificate of cancellation as provided in Section 15902.03, and perform other necessary acts; and

(2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subdivision:

(1) has the powers of a general partner under Section 15908.04; and

(2) shall promptly amend the certificate of limited partnership to state:

(A) that the limited partnership does not have a general partner;

(B) the name of the person that has been appointed to wind up the limited partnership; and

(C) the address of the person.

(d) On the application of any partner, the appropriate court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(1) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subdivision (c); or

(2) the applicant establishes other good cause.

(e) Unless otherwise provided in the partnership agreement, the limited partners winding up the affairs of the partnership pursuant to this section shall be entitled to reasonable compensation.

15908.04. (a) A limited partnership is bound by a general partner's act after dissolution which:

(1) is appropriate for winding up the limited partnership's activities; or

(2) would have bound the limited partnership under Section 15904.02 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) at the time the other party enters into the transaction:

(A) less than two years have passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) the act:

(A) is appropriate for winding up the limited partnership's activities; or

(B) would have bound the limited partnership under Section 15904.02 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

15908.05. (a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under

subdivision (a) of Section 15908.04 by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under subdivision (b) of Section 15908.04, the person is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

15908.06. (a) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subdivision (b).

(b) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

(1) specify the information required to be included in a claim;

(2) provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited partnership is barred if the requirements of subdivision (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) in the case of a claim that is timely received but rejected in writing by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of a written notice of the rejection.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

15908.07. (a) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(b) The notice must:

(1) be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office

is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within four years after publication of the notice.

(c) If a dissolved limited partnership publishes a notice in accordance with subdivision (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within four years after the publication date of the notice:

(1) a claimant that did not receive notice in a record under Section 15908.06;

(2) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) against the dissolved limited partnership, to the extent of its undistributed assets;

(2) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(3) against any person liable on the claim under Section 15904.04.

(e) Publication of a notice of dissolution of a limited partnership pursuant to this section shall not bar the collection of any tax, interest, penalty or addition to tax under Part 10 (commencing with Section 17001) of, Part 10.20 (commencing with Section 18401) of, and Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code.

15908.08. If a claim against a dissolved limited partnership is barred under Section 15908.06 or 15908.07, any corresponding claim under Section 15904.04 is also barred.

15908.09. (a) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(b) Any surplus remaining after the limited partnership complies with subdivision (a) must be returned to the partners as they share in distributions.

(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subdivision (a) the following rules apply:

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under Section 15906.07 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

(d) A person that makes an additional contribution under paragraph (2) or (3) of subdivision (c) may recover from any person whose failure to contribute under paragraph (1) or (2) of subdivision (c) necessitated the additional contribution. A person may not recover under this subdivision more than the amount additionally contributed. A person's liability under this subdivision may not exceed the amount the person failed to contribute.

(e) The estate of a deceased individual is liable for the person's obligations under this section.

(f) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subdivision (c).

Article 9. Foreign Limited Partnership

15909.01. (a) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners

for an obligation of the foreign limited partnership, except as to foreign limited liability limited partnerships, which shall be treated as if they were foreign limited partnerships.

(b) A foreign limited partnership may not be denied a certificate of registration by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

(c) A certificate of registration does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.

15909.02. (a) A foreign limited partnership may apply for a certificate of registration to transact business in this state by delivering an application signed and acknowledged by a general partner of the foreign limited partnership to, and on a form prescribed by, the Secretary of State for filing. The application must state:

(1) the name of the foreign limited partnership and, if the name does not comply with Section 15901.08, an alternate name adopted pursuant to subdivision (a) of Section 15909.05.

(2) the name of the state or other jurisdiction under whose law the foreign limited partnership is organized and the date of its formation;

(3) the address of the foreign limited partnership's designated office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the address of the required office;

(4) the name and address of the foreign limited partnership's initial agent for service of process in this state in accordance with paragraph (1) of subdivision (d) of Section 15901.16;

(5) the name and address of each of the foreign limited partnership's general partners; and

(6) whether the foreign limited partnership is a foreign limited liability limited partnership.

(b) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.

15909.03. (a) Activities of a foreign limited partnership that do not constitute transacting business in this state for registration purposes within the meaning of this article include the activities set forth in subdivision (ai) of Section 15901.02.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than

property excluded under subdivision (a), constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation jurisdiction, or regulation under any other law of this state.

15909.04. Unless the Secretary of State determines that an application for a certificate of registration does not comply with the filing requirements of this chapter, the Secretary of State, upon payment of all requisite fees, shall file the application and shall issue to the foreign limited partnership a certificate of registration stating the date of filing of the application and that the foreign limited partnership is qualified to transact intrastate business, subject, however, to any licensing requirements otherwise imposed by the laws of this state.

15909.05. (a) A foreign limited partnership whose name does not comply with Section 15901.08 may not obtain a certificate of registration until it adopts, for the purpose of transacting business in this state, an alternate name that complies with Section 15901.08.

(b) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with Section 15901.08, it may not thereafter transact business in this state until it complies with subdivision (a) and obtains an amended certificate of registration.

(c) The Secretary of State may cancel the application and certificate of registration of a foreign limited partnership if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

15909.06. If any statement in the application for registration of a foreign limited partnership was false when made or any statements made have become erroneous, the foreign limited partnership shall promptly deliver to, and on a form prescribed by, the Secretary of State an amendment to the application for registration signed and acknowledged by the general partner amending the statement.

15909.07. (a) In order to cancel its certificate of registration to transact business in this state, a foreign limited partnership must deliver to and on a form prescribed by the Secretary of State for filing a

certificate of cancellation signed and acknowledged by a general partner of the foreign limited partnership. The registration is canceled when the certificate becomes effective under Section 15902.06.

(b) A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of registration to transact business in this state.

(c) Any foreign limited partnership that transacts intrastate business in this state without registration is subject to a penalty of twenty dollars ($20) for each day that the unauthorized intrastate business is transacted, up to a maximum of ten thousand dollars ($10,000). An action to recover this penalty may be brought, and any recovery shall be paid, as provided in Section 2258.

(d) The failure of a foreign limited partnership to have a certificate of registration to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

(e) A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of registration.

(f) If a foreign limited partnership transacts business in this state without a certificate of registration or cancels its certificate of registration, it appoints the Secretary of State as its agent for service of process for rights of action arising out of the transaction of business in this state.

15909.08. The Attorney General may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

Article 10. Actions by Partners

15910.01. (a) Subject to subdivision (b), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(b) A partner bringing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an

accounting upon a dissolution and winding up does not revive a claim barred by law.

15910.02. A partner may bring a derivative action to enforce a right of a limited partnership if:

(1) the partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) a demand would be futile.

15910.03. (a) A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) that was a partner when the conduct giving rise to action occurred; or

(2) whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of that conduct.

(b) Notwithstanding the foregoing, any partner who does not meet the foregoing requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing, at which the court shall consider such evidence, by affidavit or testimony, as it deems material that (1) there is a strong prima facie case in favor of the claim asserted on behalf of the partnership, (2) no other similar action has been or is likely to be instituted, (3) the plaintiff acquired the shares before there was disclosure to the public and to the plaintiff of the wrongdoing of which plaintiff complains, (4) unless the action can be maintained the defendant may retain a gain derived from the defendant's willful breach of a fiduciary duty, and (5) the requested relief will not result in unjust enrichment of the partnership or any partner.

15910.04. In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the general partners' response to the demand; or

(2) why demand is excused as futile.

15910.05. (a) Except as otherwise provided in subdivision (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(2) if the derivative plaintiff receives any of those proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership.

15910.06. (a) In any derivative action, at any time within 30 days after service of summons upon the limited partnership or the general partner, the limited partnership or general partner may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish a bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:

(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the limited partnership or its partners.

(2) That the moving party, if other than the partnership, did not participate in the transaction complained of in any capacity. The court on application of the limited partnership or the general partner may, for good cause shown, extend the 30-day period for an additional period or periods not exceeding 60 days.

(b) At the hearing upon any motion pursuant to subdivision (a) the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground or grounds upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the limited partnership and the general partner which will be incurred in defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the amount of the bond, not to exceed fifty thousand dollars ($50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys fees, which may be incurred by the moving party and the limited partnership in connection with the action, including expenses for which the limited partnership may become liable pursuant to subdivision (c) of Section 15904.06. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon motion, makes a determination that a bond shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court.

(c) If the plaintiff shall, either before or after a motion is made pursuant to subdivision (a), or any order or determination pursuant to the motion, furnish a bond in the aggregate amount of fifty thousand dollars ($50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff has complied with the requirements of

this section and with any order for a bond theretofore made, any such motion then pending shall be dismissed and no further additional bond shall be required.

(d) If a motion is filed pursuant to subdivision (a), no pleadings need to be filed by the limited partnership or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.

Article 11. Conversion and Merger

15911.01. For purposes of this article, the following definitions apply:

(a) "Converted entity" means the other business entity or foreign other business entity or foreign limited partnership that results from a conversion of a domestic limited partnership under this chapter.

(b) "Converted limited partnership" means a domestic limited partnership that results from a conversion of an other business entity or a foreign other business entity or a foreign limited partnership pursuant to Section 15911.08.

(c) "Converting limited partnership" means a domestic limited partnership that converts to an other business entity or a foreign other business entity or a foreign limited partnership pursuant to this chapter.

(d) "Converting entity" means an other business entity or a foreign other business entity or a foreign limited partnership that converts to a domestic limited partnership pursuant to the terms of Section 15911.08.

(e) "Constituent corporation" means a corporation that is merged with or into one or more limited partnerships or other business entities, and that includes a surviving corporation.

(f) "Constituent limited partnership" means a limited partnership that is merged with or into one or more other limited partnerships or other business entities, and that includes a surviving limited partnership.

(g) "Constituent other business entity" means an other business entity that is merged with or into one or more limited partnerships, and that includes a surviving other business entity.

(h) "Disappearing limited partnership" means a constituent limited partnership that is not the surviving limited partnership.

(i) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(j) "Foreign other business entity" means an other business entity formed under the laws of any state other than this state or under the laws of a foreign country.

(k) "Other business entity" means a corporation, general partnership, limited liability company, business trust, real estate investment trust, or

unincorporated association, other than a nonprofit association, but excludes a limited partnership.

(*l*) "Surviving limited partnership" means a limited partnership into which one or more other limited partnerships or other business entities are merged.

(m) "Surviving other business entity" means another business entity into which one or more limited partnerships are merged.

15911.02. (a) A limited partnership may be converted into another business entity or a foreign other business entity or a foreign limited partnership pursuant to this article if both of the following apply:

(1) Pursuant to a conversion into a domestic or foreign partnership or limited liability company or into a foreign limited partnership, each of the partners of the converting limited partnership receives a percentage interest in the profits and capital of the converted entity equal to that partner's percentage interest in profits and capital of the converting limited partnership as of the effective time of the conversion.

(2) Pursuant to a conversion into an other business entity or foreign other business entity not specified in paragraph (1), both of the following occur:

(A) Each limited partnership interest of the same class is treated equally with respect to any distribution of cash, property, rights, interests, or securities of the converted entity, unless all limited partners of the class consent.

(B) The nonredeemable limited partnership interests of the converting limited partnership are converted only into nonredeemable interests or securities of the converted entity, unless all holders of the unredeemable interests consent.

(b) The conversion of a limited partnership to an other business entity or a foreign other business entity or a foreign limited partnership may be effected only if both of the following conditions are satisfied:

(1) The law under which the converted entity will exist expressly permits the formation of that entity pursuant to a conversion.

(2) The limited partnership complies with all other requirements of any other law that applies to conversion to the converted entity.

15911.03. (a) A limited partnership that desires to convert to an other business entity or a foreign other business entity or a foreign limited partnership shall approve a plan of conversion. The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting limited partnership and the name of the converted entity after conversion.

(3) The manner of converting the limited and general partnership interests of each of the partners into shares of, securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the partnership agreement, limited liability company articles of organization and operating agreement, or articles or certificate of incorporation if the converted entity is a corporation, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the parties.

(b) The plan of conversion shall be approved by all general partners of the converting limited partnership and by a majority in interest of each class of limited partners of the converting limited partnership, unless a greater or lesser approval is required by the partnership agreement of the converting limited partnership. However, if the limited partners of the limited partnership would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the limited partners of the converting limited partnership, unless the plan of conversion provides that all limited partners will have dissenters' rights as provided in Article 11.5 (commencing with Section 15911.20).

(c) Upon the effectiveness of the conversion, all partners of the converting limited partnership, except those that exercise dissenters' rights as provided in Article 11.5 (commencing with Section 15911.20), shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not the partner has executed the plan of conversion or the governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(d) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by all general partners of the converting limited partnership and, if the amendment changes any of the principal terms of the plan of conversion, the amendment is approved by the limited partners of the converting limited partnership in the same manner and to the same extent as required for the approval of the original plan of conversion.

(e) The general partners of a converting limited partnership may, by unanimous approval at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the limited partners, subject to the contractual rights of third parties other than limited partners.

(f) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership or foreign other business entity, at the principal executive office of, or registrar or transfer agent of, the converted entity, if the converted entity is a domestic corporation, or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a partner of a converting limited partnership, the authorized person on behalf of the converted entity shall promptly deliver to the partner or the holder of shares, interests, or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.

15911.04. (a) A conversion into an other business entity or a foreign other business entity or a foreign limited partnership shall become effective upon the earliest date that all of the following occur:

(1) The plan of conversion is approved by the partners of the converting limited partnership, as provided in Section 15911.03.

(2) All documents required by law to create the converted entity are filed, which documents shall also contain a statement of conversion if required under Section 15911.06.

(3) The effective date, if set forth in the plan of conversion, occurs.

(b) A copy of the statement of partnership authority or articles of organization complying with Section 15911.06, if applicable, duly certified by the Secretary of State, is conclusive evidence of the conversion of the limited partnership.

15911.05. (a) The conversion of a limited partnership into a foreign limited partnership or foreign other business entity shall be required to comply with Section 15911.02.

(b) If the limited partnership is converting into a foreign limited partnership or foreign other business entity, those conversion proceedings shall be in accordance with the laws of the state or place of organization of the foreign limited partnership or foreign other business entity and the conversion shall become effective in accordance with that law.

(c) (1) To enforce an obligation of a limited partnership that has converted to a foreign limited partnership or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against that converted foreign entity if the agent designated for the service of process for that entity is a natural person and cannot be found with due diligence or if the agent is a corporation and no person to whom delivery may be made may be located with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of that entity may be located after diligent search and it is so shown by affidavit to the satisfaction of

the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall provide notice to that entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the providing of notice thereof to that entity, and the forwarding of the process shall be competent and prima facie evidence of the matters stated therein.

15911.06. (a) Upon conversion of a limited partnership, one of the following applies:

(1) If the limited partnership is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity and shall be filed with the Secretary of State.

(2) If the limited partnership is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity. If no statement of partnership authority is filed, a certificate of conversion shall be filed separately with the Secretary of State.

(3) If the limited partnership is converting into a domestic corporation, a statement of conversion shall be completed on the articles of incorporation for the converted entity and shall be filed with the Secretary of State.

(4) If the limited partnership is converting to a foreign limited partnership or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any certificate or statement of conversion shall be executed and acknowledged by all general partners, unless a lesser number is provided in the certificate of limited partnership, and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting limited partnership.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the partners, that equaled or exceeded the vote required under Section 15911.03, specifying each class entitled to vote and the percentage vote required of each class.

(3) The form of organization of the converted entity.

(4) The mailing address of the converted entity's agent for service of process and the chief executive office of the converted entity.

(c) The filing with the Secretary of State of a certificate of conversion or a statement of partnership authority, articles of organization, or articles of incorporation containing a statement of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting limited partnership, and no converting limited partnership that has made the filing is required to file a certificate of cancellation under Section 15902.03 as a result of that conversion.

15911.07. (a) Whenever a limited partnership or other business entity having any real property in this state converts into a limited partnership or an other business entity pursuant to the laws of this state or of the state or place in which the limited partnership or other business entity was organized, and the laws of the state or place of organization, including this state, of the converting limited partnership or other converting entity provide substantially that the conversion vests in the converted limited partnership or other converted entity all the real property of the converting limited partnership or other converting entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the converting limited partnership or other converting entity is located of either of the following shall evidence record ownership in the converted limited partnership or other converted entity of all interest of the converting limited partnership or other converting entity in and to the real property located in that county:

(1) A certificate of conversion or statement of partnership authority, a certificate of limited partnership, articles of incorporation, or articles of organization complying with Section 15911.06, in the form prescribed and certified by the Secretary of State.

(2) A copy of a certificate of conversion or a statement of partnership authority, certificate of limited partnership, articles of organization, articles of incorporation, or other certificate or document evidencing the creation of a foreign other business entity or foreign limited partnership by conversion, containing a statement of conversion, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the conversion is effected.

(b) A filed and, if appropriate, recorded certificate of conversion or a statement of partnership authority, certificate of limited partnership,

articles of organization, articles or certificate of incorporation, or other certificate evidencing the creation of a foreign other business entity or foreign limited partnership by conversion, containing a statement of conversion, filed pursuant to subdivision (a) of Section 15911.06, stating the name of the converting limited partnership or other converting entity in whose name property was held before the conversion and the name of the converted entity or converted limited partnership, but not containing all of the other information required by Section 15911.06, operates with respect to the entities named to the extent provided in subdivision (a).

(c) Recording of a certificate of conversion, or a statement of partnership authority, certificate of limited partnership, articles of organization, articles of incorporation, or other certificate evidencing the creation of another business entity or a limited partnership by conversion, containing a statement of conversion, in accordance with subdivision (a), shall create, in favor of bona fide purchasers or encumbrances for value, a conclusive presumption that the conversion was validly completed.

15911.08. (a) An other business entity or a foreign other business entity or a foreign limited partnership may be converted to a domestic limited partnership pursuant to this article only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign limited partnership that desires to convert into a domestic limited partnership shall approve a plan of conversion or another instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign limited partnership into a domestic limited partnership shall be approved by the number or percentage of the partners, members, shareholders, or holders of interest of the converting entity as is required by the laws under which that entity is organized, or a greater or lesser percentage, subject to applicable laws, as set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles or certificate of incorporation, or other governing document.

(d) The conversion by an other business entity or a foreign other business entity or a foreign limited partnership into a domestic limited partnership shall be effective under this article at the time the conversion is effective under the laws under which the converting entity is organized, as long as a certificate of limited partnership containing a statement of conversion has been filed with the Secretary of State. If the converting

entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this title to form a limited partnership.

(e) The filing with the Secretary of State of a certificate of conversion or a certificate of limited partnership containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited partnership or foreign limited liability company and no converting foreign limited partnership or foreign limited liability company that has made the filing is required to file a certificate of cancellation under Section 15902.03 or 17455 as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

15911.09. (a) An entity that converts into another entity pursuant to this article is, for all purposes, other than for the purposes of Part 10 (commencing with Section 17001) of, Part 10.20 (commencing with Section 18401) of, and Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code, the same entity that existed before the conversion and the conversion shall not be deemed a transfer of property.

(b) Upon a conversion taking effect, all of the following apply:

(1) All the rights and property, whether real, personal, or mixed, of the converting entity or converting limited partnership are vested in the converted entity or converted limited partnership.

(2) All debts, liabilities, and obligations of the converting entity or converting limited partnership continue as debts, liabilities, and obligations of the converted entity or converted limited partnership.

(3) All rights of creditors and liens upon the property of the converting entity or converting limited partnership shall be preserved unimpaired and remain enforceable against the converted entity or converted limited partnership to the same extent as against the converting entity or converting limited partnership as if the conversion had not occurred.

(4) Any action or proceeding pending by or against the converting entity or converting limited partnership may be continued against the converted entity or converted limited partnership as if the conversion had not occurred.

(c) A partner of a converting limited partnership is liable for the following:

(1) All obligations of the converting limited partnership for which the partner was personally liable before the conversion.

(2) All obligations of the converted entity incurred after the conversion takes effect, but those obligations may be satisfied only out of property

of the entity if that partner is a limited partner or a shareholder in a corporation, or unless expressly provided otherwise in the articles of organization or other governing documents, a member of a limited liability company, or a holder of equity securities in another converted entity if the holders of equity securities in that entity are not personally liable for the obligations of that entity under the law under which the entity is organized or its governing documents.

(d) A partner of a converted limited partnership remains liable for any and all obligations of the converting entity for which the partner was personally liable before the conversion, but only to the extent that the partner was liable for the obligations of the converting entity prior to the conversion.

(e) If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner.

15911.10. Mergers of limited partnerships shall be governed by Sections 15911.11 to 15911.19, inclusive.

15911.11. The following entities may be merged pursuant to this article:

(a) Two or more limited partnerships into one limited partnership.

(b) One or more limited partnerships and one or more other business entities into one of those other business entities.

(c) One or more limited partnerships and one or more other business entities into one limited partnership. Notwithstanding this section, the merger of any number of limited partnerships with any number of other business entities may be effected only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and (1) if a limited partnership is the surviving limited partnership, the foreign other business entities are not prohibited by the laws under which they are organized from effecting that merger, and (2) if a foreign limited partnership or foreign other business entity is the survivor of the merger, the laws of the jurisdiction under which the survivor is organized authorize that merger. Notwithstanding the first sentence of this paragraph, if one or more domestic corporations is also a party to the merger described in that sentence, the merger may be effected only if, with respect to any foreign other business entity that is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger.

15911.12. (a) Each limited partnership and other business entity that desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by all general partners of each constituent limited partnership and the principal terms of the merger shall be approved by a majority in interest of each class of limited partners of each constituent limited partnership, unless a greater approval is required by the partnership agreement of the constituent limited partnership. Notwithstanding the previous sentence, if the limited partners of any constituent limited partnership become personally liable for any obligations of a constituent limited partnership or constituent other business entity as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the limited partners of the constituent limited partnership, unless the agreement of merger provides that all limited partners will have the dissenters' rights provided in Article 11.5 (commencing with Section 15911.20). The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons, including a parent of a constituent limited partnership, may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving limited partnership or surviving other business entity, and of each disappearing limited partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving limited partnership, which new name may be the same as or similar to the name of a disappearing domestic or foreign limited partnership, subject to Section 15901.08.

(3) The manner of converting the partnership interests of each of the constituent limited partnerships into interests, shares, or other securities of the surviving limited partnership or surviving other business entity, and if partnership interests of any of the constituent limited partnerships are not to be converted solely into interests, shares, or other securities of the surviving limited partnership or surviving other business entity, the cash, property, rights, interests, or securities that the holders of the partnership interests are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests, shares, or other securities of the surviving limited partnership or surviving other business entity, or that the partnership interests are canceled without consideration.

(4) Any other details or provisions that are required by the laws under which any constituent other business entity is organized, including, if a

domestic corporation is a party to the merger, subdivision (b) of Section 1113.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) Each limited partnership interest of the same class of any constituent limited partnership, other than a limited partnership interest in another constituent limited partnership that is being canceled and that is held by a constituent limited partnership or its parent or a limited partnership of which the constituent limited partnership is a parent, shall, unless all limited partners of the class consent, be treated equally with respect to any distribution of cash, property, rights, interests, or securities. Notwithstanding this subdivision, except in a merger of a limited partnership with a limited partnership in which it controls at least 90 percent of the limited partnership interests entitled to vote with respect to the merger, the unredeemable limited partnership interests of a constituent limited partnership may be converted only into unredeemable interests or securities of the surviving limited partnership or other business entity or a parent if a constituent limited partnership or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger, limited partnership interests of another constituent limited partnership or interests or securities of a constituent other business entity representing more than 50 percent of the interests or securities entitled to vote with respect to the merger of the other constituent limited partnership or constituent other business entity or more than 50 percent of the voting power, as defined in Section 194.5, of a constituent other business entity that is a domestic corporation, unless all of the limited partners of the class consent. This subdivision shall apply only to constituent limited partnerships with over 35 limited partners.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the certificate of merger or the agreement of merger, as provided in Section 15911.14, if the amendment is approved by the general partners of each constituent limited partnership in the same manner as required for approval of the original agreement of merger and, if the amendment changes any of the principal terms of the agreement of merger, the amendment is approved by the limited partners of each constituent limited partnership in the same manner and to the same extent as required for the approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The general partners of a constituent limited partnership may, in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent limited partnerships and constituent other business entities, without further approval by the limited partnership interests, at any time before the merger is effective.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any constituent limited partnership or (2) effect the adoption of a new partnership agreement for a constituent limited partnership if it is the surviving limited partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger. Notwithstanding the above provisions of this subdivision, if a greater number of limited partners is required to approve an amendment to the partnership agreement of a constituent limited partnership than is required to approve the agreement of merger pursuant to subdivision (a), and the number of limited partners that approve the agreement of merger is less than the number of limited partners required to approve an amendment to the partnership agreement of the constituent limited partnership, any amendment to the partnership agreement or adoption of a new partnership agreement of that constituent limited partnership made pursuant to the first sentence of this subdivision shall be effective only if the agreement of merger provides that all of the limited partners shall have the dissenters' rights provided in Article 7.6 (commencing with Section 15911.20).

(f) The surviving limited partnership or surviving other business entity shall keep the agreement of merger at its designated office or at the business address specified in paragraph (5) of subdivision (a) of Section 15911.14, as applicable, and, upon the request of a limited partner of a constituent limited partnership or a holder of shares, interests, or other securities of a constituent other business entity, the general partners of the surviving limited partnership or the authorized person of the surviving other business entity shall promptly deliver to the limited partner or the holder of shares, interests, or other securities, at the expense of the surviving limited partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of shares, interests, or other securities of the rights provided in this subdivision shall be unenforceable.

15911.13. Subdivision (b) of Section 15911.12 shall not apply to any transaction if the commissioner has approved the terms and conditions of the transaction and the fairness of such terms and conditions pursuant to Section 25142.

15911.14. (a) If the surviving entity is a limited partnership or an other business entity, other than a corporation in a merger in which a domestic corporation is a constituent party, after approval of a merger by the constituent limited partnerships and any constituent other business entities, the constituent limited partnerships and constituent other business entities shall file a certificate of merger in the office of, and on a form

prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each domestic constituent limited partnership by all general partners, unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership, and by each foreign constituent limited partnership by one or more general partners, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent limited partnerships and constituent other business entities, separately identifying the disappearing limited partnerships and disappearing other business entities and the surviving limited partnership or surviving other business entity.

(2) If a vote of the limited partners was required under Section 15911.12, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class.

(3) If the surviving entity is a limited partnership and not an other business entity, any change required to the information set forth in the certificate of limited partnership of the surviving limited partnership resulting from the merger, including any change in the name of the surviving limited partnership resulting from the merger. The filing of a certificate of merger setting forth any such changes to the certificate of limited partnership of the surviving limited partnership shall have the effect of the filing of a certificate of amendment by the surviving limited partnership, and the surviving limited partnership need not file a certificate of amendment under Section 15902.02 to reflect those changes.

(4) The future effective date or time, which shall be a date or time certain not more than 90 days subsequent to the date of filing, of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign limited partnership, the full name of the entity, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger,

paragraph (2) of subdivision (g) of Section 1113. If the surviving entity is a foreign limited partnership in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments as required under paragraph (1) of subdivision (g) of Section 1113 shall be filed at the same time as the filing of the certificate of merger.

(b) If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, after approval of the merger by the constituent limited partnerships and constituent other business entities, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113. The certificate of merger shall be executed and acknowledged by each domestic constituent limited partnership by all general partners, unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership.

(c) A certificate of merger or the agreement of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a certificate of cancellation for each disappearing limited partnership, and no disappearing limited partnership need file a certificate of cancellation under Section 15902.03 as a result of the merger.

(d) If the organization disappearing into the other business entity is a foreign corporation qualified to transact intrastate business in this state, a certificate of satisfaction of the Franchise Tax Board as required by Section 23334 of the Revenue and Taxation Code shall be filed with the certificate of merger or agreement of merger, as is applicable under subdivision (a) or (b). By the filing of the certificate of merger or agreement of merger, as is applicable, the foreign corporation shall automatically surrender its right to transact intrastate business.

15911.15. (a) Unless a future effective date or time is provided in a certificate of merger or the agreement of merger, if an agreement of merger is required to be filed under Section 15911.14, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger or the agreement of merger, as is applicable, in the office of the Secretary of State.

(b) (1) For all purposes, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of (A) the constituent limited partnerships, either by themselves or together with constituent other business entities, into the surviving other business entity, or (B) the constituent limited partnerships or the constituent other business entities, or both, into the surviving limited partnership.

(2) In a merger in which the surviving entity is a corporation in a merger in which a domestic corporation and a domestic limited partnership are parties to the merger, a copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation, and the performance of the conditions necessary to the adoption of any amendment to the articles of incorporation of the surviving corporation, if applicable, contained in the agreement of merger.

15911.16. (a) Upon a merger of limited partnerships or limited partnerships and other business entities pursuant to this chapter, the separate existence of the disappearing limited partnerships and disappearing other business entities ceases and the surviving limited partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property, whether real, personal, or mixed, of each of the disappearing limited partnerships and disappearing other business entities, and shall be subject to all the debts and liabilities of each in the same manner as if the surviving limited partnership or surviving other business entity had itself incurred them.

(b) All rights of creditors and all liens upon the property of each of the constituent limited partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving limited partnership or the surviving other business entity to the same extent as if the debt, liability, or duty which gave rise to that lien had been incurred or contracted by the surviving limited partnership or the surviving other business entity, provided that such liens upon the property of a disappearing limited partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing limited partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving limited partnership or surviving other business entity, or the surviving limited partnership or surviving other business entity may be proceeded against or be substituted in the place of the disappearing limited partnership or disappearing other business entity.

(d) Nothing in this article is intended to affect the liability a general partner of a disappearing limited partnership may have in connection with the debts and liabilities of the disappearing limited partnership existing prior to the time the merger is effective.

15911.17. (a) The merger of any number of domestic limited partnerships with any number of foreign limited partnerships or foreign other business entities shall be required to comply with Section 15911.10.

(b) If the surviving entity is a domestic limited partnership or a domestic other business entity, the merger proceedings with respect to that limited partnership or other business entity and any domestic disappearing limited partnership shall conform to the provisions of this chapter governing the merger of domestic limited partnerships, but if the surviving entity is a foreign limited partnership or a foreign other business entity, then, subject to the requirements of subdivision (d) and Article 11.5 (commencing with Section 15911.20) and, with respect to any domestic constituent corporation, Section 1113 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) of Division 1 of Title 1, the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving limited partnership or surviving other business entity.

(c) If the surviving entity is a domestic limited partnership or domestic other business entity, other than a domestic corporation, the certificate of merger shall be filed as provided in subdivision (a) of Section 15911.14, and thereupon, subject to subdivision (a) of Section 15911.15, the merger shall be effective as to each domestic constituent limited partnership and domestic constituent other business entity. If the surviving entity is a domestic corporation, the agreement of merger with attachments shall be filed as provided in subdivision (b) of Section 15911.14, and thereupon, subject to subdivision (a) of Section 15911.15, the merger shall be effective as to each domestic constituent limited partnership and domestic constituent other business entity unless another effective date is provided in Chapter 11 (commencing with Section 1100) of Division 1 of Title 1, with respect to any constituent corporation or constituent limited partnership.

(d) If the surviving entity is a foreign limited partnership or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving limited partnership or surviving other business entity is organized, but shall be effective as to any domestic disappearing limited partnership as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a certificate of merger or agreement of merger as provided in Section 15911.14.

(e) If a merger described in subdivision (c) or (d) also includes a foreign disappearing limited partnership previously registered for the transaction of intrastate business in this state pursuant to Section 15909.02, the filing of the certificate of merger or agreement of merger, as is applicable under Section 15911.14, automatically has the effect of

a cancellation of registration for that foreign limited partnership pursuant to Section 15909.06 without the necessity of the filing of a certificate of cancellation.

(f) The provisions of subdivision (b) of Section 15911.12 and Article 11.5 (commencing with Section 15911.20) apply to the rights of the limited partners of any of the constituent limited partnerships that are domestic limited partnerships and of any domestic limited partnership that is a parent of any foreign constituent limited partnership.

15911.18. Whenever a domestic or foreign limited partnership or other business entity having any real property in this state merges with another limited partnership or other business entity pursuant to the laws of this state or of the state or place in which any constituent limited partnership or constituent other business entity was organized, and the laws of the state or place of organization, including this state, of any disappearing limited partnership or disappearing other business entity provide substantially that the making and filing of the agreement of merger or certificate of merger vests in the surviving limited partnership or surviving other business entity all the real property of any disappearing limited partnership and disappearing other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing limited partnership or disappearing other business entity is located of either of the following shall evidence record ownership in the surviving limited partnership or surviving other business entity of all interest of such disappearing limited partnership or disappearing other business entity in and to the real property located in that county:

(a) A certificate of merger certified by the Secretary of State, or other certificate prescribed by the Secretary of State.

(b) A copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected.

15911.19. Recording of the certificate of merger in accordance with Section 15911.18 shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.

Article 11.5 Dissenting Limited Partners' Rights

15911.20. (a) For purposes of this article, "reorganization" refers to any of the following:

(1) A conversion pursuant to Article 11 (commencing with Section 15911.01).

(2) A merger pursuant to Article 11 (commencing with Section 15911.10).

(3) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity that is in control of the acquiring limited partnership) of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership or other business entity.

(4) The acquisition by one limited partnership in exchange in whole or in part for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity which is in control of the acquiring limited partnership) or for its debts securities (or debt securities of a limited partnership or other business entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity.

(b) For purposes of this article, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited partnership or other business entity.

15911.21. (a) If the approval of outstanding limited partnership interests is required for a limited partnership to participate in a reorganization, pursuant to the limited partnership agreement of the partnership, or otherwise, then each limited partner of the limited partnership holding those interests may, by complying with this article, require the limited partnership to purchase for cash, at its fair market value, the interest owned by the limited partner in the limited partnership, if the interest is a dissenting interest as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization, excluding any appreciation or depreciation in consequence of the proposed reorganization.

(b) As used in this article, "dissenting interest" means the interest of a limited partner that satisfies all of the following conditions:

(1) Either:

(A) Was not, immediately prior to the reorganization, either (i) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100, or (ii) listed on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, provided that in either such instance the limited partnership whose outstanding interests are so listed provides, in its

notice to limited partners requesting their approval of the proposed reorganization, a summary of the provisions of this section and Sections 15911.22, 15911.23, 15911.24, and 15911.25.

(B) If the interest is of a class of interests listed as described in clause (i) or (ii) of subparagraph (A), demands for payment are filed with respect to 5 percent or more of the outstanding interests of that class.

(2) Was outstanding on the date for the determination of limited partners entitled to vote on the reorganization.

(3) (A) Was not voted in favor of the reorganization, or (B) if the interest is described in clause (i) or (ii) of subparagraph (A) of paragraph (1), was voted against the reorganization; provided, however, that clause (A) rather than clause (B) of this paragraph applies in any event where the approval for the proposed reorganization is sought by written consent rather than at a meeting.

(4) The limited partner has demanded that it be purchased by the limited partnership at its fair market value in accordance with Section 15911.22.

(5) The limited partner has submitted it for endorsement, if applicable, in accordance with Section 15911.23.

(c) As used in this article, "dissenting limited partner" means the recordholder of a dissenting interest, and includes an assignee of record of such an interest.

15911.22. (a) If limited partners have a right under Section 15911.21, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, to require the limited partnership to purchase their limited partnership interests for cash, such limited partnership shall mail to each such limited partner a notice of the approval of the reorganization by the requisite vote or consent of the limited partners, within 10 days after the date of such approval, accompanied by a copy of this section and Sections 15911.21, 15911.23, 15911.24, and 15911.25, a statement of the price determined by the limited partnership to represent the fair market value of its outstanding interests, and a brief description of the procedure to be followed if the limited partner desires to exercise the limited partner's rights under such sections. The statement of price constitutes an offer by the limited partnership to purchase at the price stated any dissenting interests as defined in subdivision (b) of Section 15911.21, unless they lose their status as dissenting interests under Section 15911.30.

(b) Any limited partner who has a right to require the limited partnership to purchase the limited partner's interest for cash under Section 15911.21, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, and who desires the limited partnership to purchase such interest, shall make written demand upon the limited

partnership for the purchase of such interest and the payment to the limited partner in cash of its fair market value. The demand is not effective for any purpose unless it is received by the limited partnership or any transfer agent thereof (1) in the case of interests described in clause (i) or (ii) of subparagraph (A) of paragraph (1) of subdivision (b) of Section 15911.21, not later than the date of the limited partners' meeting to vote upon the reorganization, or (2) in any other case, within 30 days after the date on which notice of the approval of the reorganization by the requisite vote or consent of the limited partners is mailed by the limited partnership to the limited partners.

(c) The demand shall state the number or amount of the limited partner's interest in the limited partnership and shall contain a statement of what such limited partner claims to be the fair market value of that interest on the day before the announcement of the proposed reorganization. The statement of fair market value constitutes an offer by the limited partner to sell the interest at such price.

15911.23. Within 30 days after the date on which notice of the approval of the outstanding interests of the limited partnership is mailed to the limited partner pursuant to subdivision (a) of Section 15911.22, the limited partner shall submit to the limited partnership at its principal office or at the office of any transfer agent thereof, (a) if the interest is evidenced by a certificate, the limited partner's certificate representing the interest which the limited partner demands that the limited partnership purchase, to be stamped or endorsed with a statement that the interest is a dissenting interest or to be exchanged for certificates of appropriate denominations so stamped or endorsed, or (b) if the interest is not evidenced by a certificate, written notice of the number or amount of interest which the limited partner demands that the limited partnership purchase. Upon subsequent transfers of the dissenting interest on the books of the limited partnership, the new certificates or other written statement issued therefor shall bear a like statement, together with the name of the original holder of the dissenting interest.

15911.24. (a) If the limited partnership and the dissenting limited partner agree that such limited partner's interest is a dissenting interest and agree upon the price to be paid for the dissenting interest, the dissenting limited partner is entitled to the agreed price with interest thereon at the legal rate on judgments from the date of consummation of the reorganization. All agreements fixing the fair market value of any dissenting limited partner's interest as between the limited partnership and such limited partner shall be in writing and filed in the records of the limited partnership.

(b) Subject to the provisions of Section 15911.27, payment of the fair market value for a dissenting interest shall be made within 30 days after

the amount thereof has been agreed to or within 30 days after any statutory or contractual conditions to the reorganization are satisfied, whichever is later, and in the case of dissenting interests evidenced by certificates of interest, subject to surrender of such certificates of interest, unless provided otherwise by agreement.

15911.25. (a) If the limited partnership denies that a limited partnership interest is a dissenting interest, or the limited partnership and a dissenting limited partner fail to agree upon the fair market value of a dissenting interest, then such limited partner or any interested limited partnership, within six months after the date on which notice of the approval of the reorganization by the requisite vote or consent of the limited partners was mailed to the limited partner, but not thereafter, may file a complaint in the superior court of the proper county praying the court to determine whether the interest is a dissenting interest, or the fair market value of the dissenting interest, or both, or may intervene in any action pending on such a complaint.

(b) Two or more dissenting limited partners may join as plaintiffs or be joined as defendants in any such action and two or more such actions may be consolidated.

(c) On the trial of the action, the court shall determine the issues. If the status of the limited partnership interest as a dissenting interest is in issue, the court shall first determine that issue. If the fair market value of the dissenting interest is in issue, the court shall determine, or shall appoint one or more impartial appraisers to determine, the fair market value of the dissenting interest.

15911.26. (a) If the court appoints an appraiser or appraisers, they shall proceed forthwith to determine the fair market value per interest of the outstanding limited partnership interests of the limited partnership, by class if necessary. Within the time fixed by the court, the appraisers, or a majority of them, shall make and file a report in the office of the clerk of the court. Thereupon, on the motion of any party, the report shall be submitted to the court and considered on such additional evidence as the court considers relevant. If the court finds the report reasonable, the court may confirm it.

(b) If a majority of the appraisers appointed fails to make and file a report within 30 days from the date of their appointment, or within such further time as may be allowed by the court, or the report is not confirmed by the court, the court shall determine the fair market value per interest of the outstanding limited partnership interests of the limited partnership, by class if necessary.

(c) Subject to Section 15911.27, judgment shall be rendered against the limited partnership for payment of an amount equal to the fair market value, as determined by the court, of each dissenting interest which any

dissenting limited partner who is a party, or has intervened, is entitled to require the limited partnership to purchase, with interest thereon at the legal rate on judgments from the date of consummation of the reorganization.

(d) Any such judgment shall be payable forthwith, provided, however, that with respect to limited partnership interests evidenced by transferable certificates of interest, only upon the endorsement and delivery to the limited partnership of those certificates representing the interests described in the judgment. Any party may appeal from the judgment.

(e) The costs of the action, including reasonable compensation for the appraisers, to be fixed by the court, shall be assessed or apportioned as the court considers equitable, but, if the appraisal exceeds the price offered by the limited partnership, the limited partnership shall pay the costs (including, in the discretion of the court, if the value awarded by the court for the dissenting interest is more than 125 percent of the price offered by the limited partnership under subdivision (a) of Section 15912.03, attorneys' fees and fees of expert witnesses).

15911.27. To the extent that the payment to dissenting limited partners of the fair market value of their dissenting interests would require the dissenting limited partners to return such payment or a portion thereof by reason of Section 15905.09 or the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code), then that payment or portion thereof shall not be made and the dissenting limited partners shall become creditors of the limited partnership for the amount not paid, together with interest thereon at the legal rate on judgments until the date of payment, but subordinate to all other creditors in any proceeding relating to the winding up and dissolution of the limited partnership, such debt to be payable when permissible.

15911.28. Any cash distributions made by a limited partnership to a dissenting limited partner after the date of consummation of the reorganization, but prior to any payment by the limited partnership for such dissenting limited partner's interest, shall be credited against the total amount to be paid by the limited partnership for such dissenting interest.

15911.29. Except as expressly limited by this article, dissenting limited partners shall continue to have all the rights and privileges incident to their interests immediately prior to the reorganization, including limited liability, until payment by the limited partnership for their dissenting interests. A dissenting limited partner may not withdraw a demand for payment unless the limited partnership consents thereto.

15911.30. A dissenting interest loses its status as a dissenting interest and the holder thereof ceases to be a dissenting limited partner and ceases

to be entitled to require the limited partnership to purchase the interest upon the happening of any of the following:

(a) The limited partnership abandons the reorganization. Upon abandonment of the reorganization, the limited partnership shall pay, on demand, to any dissenting limited partner who has initiated proceeding in good faith under this article, all reasonable expenses incurred in such proceedings and reasonable attorneys' fees.

(b) The interest is transferred prior to its submission for endorsement in accordance with Section 15911.23.

(c) The dissenting limited partner and the limited partnership do not agree upon the status of the interest as a dissenting interest or upon the purchase price of the dissenting interest, and neither files a complaint nor intervenes in a pending action, as provided in Section 15911.25, within six months after the date upon which notice of the approval of the reorganization by the requisite vote or consent of limited partners was mailed to the limited partner.

(d) The dissenting limited partner, with the consent of the limited partnership, withdraws such limited partner's demand for purchase of the dissenting interest.

15911.31. If litigation is instituted to test the sufficient or regularity of the vote or consent of the limited partners in authorizing a reorganization, any proceedings under Sections 15911.25 and 15911.26 shall be suspended until final determination of that litigation.

15911.32. (a) This article applies to the following:

(1) A domestic limited partnership formed on or after January 1, 1991.

(2) A foreign limited partnership if (A) the foreign limited partnership was formed on or after January 1, 1991, or filed an application to qualify to do business on or after January 1, 1991, and (B) limited partners holding more than 50 percent of the voting power held by all limited partners of the foreign limited partnership reside in this state.

(3) A limited partnership if the partnership agreement so provides or if all general partners and a majority in interest of the limited partners determine that this article shall apply.

(b) This article does not apply to limited partnership interests governed by limited partnership agreements whose terms and provisions specifically set forth the amount to be paid in respect of such interests in the event of a reorganization of the limited partnership, or to limited partnerships with 35 or fewer limited partners, unless the partnership agreement provides that this article shall apply or unless all general partners and a majority in interest of the limited partners agree that this article shall apply.

15911.33. (a) No limited partner of a limited partnership who has a right under this article to demand payment of cash for the interest owned

by such limited partner in a limited partnership shall have any right at law or in equity to attack the validity of the reorganization, or to have the reorganization set aside or rescinded, except in an action to test whether the vote or consent of limited partners required to authorize or approve the reorganization has been obtained in accordance with the procedures established therefor by the partnership agreement of the limited partnership.

(b) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, subdivision (a) shall not apply to any limited partner of such controlled party who has not demanded payment of cash for such limited partner's interest pursuant to this article; but if such limited partner institutes any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, the limited partner shall not thereafter have any right to demand payment of cash for such limited partner's interest pursuant to this article.

(c) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, then, in any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, (1) a party to a reorganization which controls another party to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the limited partners of the controlled party, and (2) a person who controls two or more parties to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the limited partners of any party so controlled.

(d) Subdivisions (b) and (c) shall not apply if a majority in interest of the limited partners other than limited partners who are directly or indirectly controlled by, or under common control with, another party to the reorganization approve or consent to the reorganization.

(e) This section shall not prevent a partner of a limited partnership that is a party to a reorganization from bringing an action against a general partner of the limited partnership, the limited partnership, or any person controlling a general partner at law or in equity as to any matters (including, without limitation, an action for breach of fiduciary obligation or fraud) other than to attack the validity of the reorganization or to have the reorganization set aside or rescinded.

Article 12. Miscellaneous Provisions

15912.01. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

15912.02. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

15912.03. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this chapter does not modify, limit, or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

15912.04. This chapter shall become operative on January 1, 2008.

15912.06. (a) Before January 1, 2010, this chapter governs only:

(1) a limited partnership formed on or after January 1, 2008; and

(2) except as otherwise provided in subdivisions (c) and (d), a limited partnership formed before January 1, 2008, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(b) Except as otherwise provided in subdivision (c), on and after January 1, 2010, this chapter governs all limited partnerships.

(c) With respect to a limited partnership formed before January 1, 2008, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(1) Section 15901.04(c) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before January 1, 2008.

(2) Sections 15906.01 and 15906.02 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before January 1, 2008.

(3) Subdivision (d) of Section 15906.03 does not apply.

(4) Subdivision (e) of Section 15906.03 does not apply and a court has the same power to expel a general partner as the court had immediately before January 1, 2008.

(5) Subdivision (c) of Section 15908.01 does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before January 1, 2008.

(d) With respect to a limited partnership that elects pursuant to paragraph (2) of subdivision (a) to be subject to this chapter, after the election takes effect, the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(1) before January 1, 2010, to:

(A) a third party that had not done business with the limited partnership in the year before the election took effect; and

(B) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(2) on and after January 1, 2010, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under subparagraph (B) of paragraph (1).

15912.07. This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter becomes operative.

SEC. 21. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Electronic transmission by the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a partnership to an individual partner is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(5) "Electronic transmission to the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the partnership has provided from time to time to partners for sending communications to the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(6) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership

services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(9) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2 (commencing with Section 15501), Chapter 3 (commencing with Section 15611), or Chapter 5.5 (commencing with Section 15900).

(10) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) "Professional limited liability partnership services" means the practice of architecture, the practice of public accountancy, or the practice of law.

(15) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(18) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(19) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2007.

SEC. 21.5. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Electronic transmission by the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the partnership, (2) posting on an electronic message board or network that the partnership

has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a partnership to an individual partner is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(5) "Electronic transmission to the partnership" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the partnership has provided from time to time to partners for sending communications to the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(6) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(9) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes,

for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2 (commencing with Section 15501), Chapter 3 (commencing with Section 15611), or Chapter 5.5 (commencing with Section 15900).

(10) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) "Professional limited liability partnership services" means the practice of architecture, the practice of public accountancy, or the practice of law.

(15) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(18) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(19) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2012.

SEC. 22. Section 16901 of the Corporations Code is amended to read:

16901. In this article, the following terms have the following meanings:

(1) "Constituent other business entity" means any other business entity that is merged with or into one or more partnerships and includes a surviving other business entity.

(2) "Constituent partnership" means a partnership that is merged with or into one or more other partnerships or other business entities and includes a surviving partnership.

(3) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(4) "Disappearing partnership" means a constituent partnership that is not the surviving partnership.

(5) "Domestic" means organized under the laws of this state when used in relation to any partnership, other business entity, or person (other than an individual).

(6) "Foreign other business entity" means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(7) "Foreign partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country.

(8) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(9) "Limited liability company" means a limited liability company created under Title 2.5 (commencing with Section 17000), or comparable law of another jurisdiction.

(10) "Limited partner" means a limited partner in a limited partnership.

(11) "Limited partnership" means a limited partnership created under Chapter 3 (commencing with Section 15611) or Chapter 5.5 (commencing with Section 15900), predecessor law, or comparable law of another jurisdiction.

(12) "Other business entity" means a limited partnership, limited liability company, corporation, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a partnership.

(13) "Partner" includes both a general partner and a limited partner.

(14) "Surviving other business entity" means an other business entity into which one or more partnerships are merged.

(15) "Surviving partnership" means a partnership into which one or more other partnerships or other business entities are merged.

SEC. 23. Section 16903 of the Corporations Code is amended to read:

16903. (a) A partnership that desires to convert to a domestic or foreign other business entity shall approve a plan of conversion. The plan of conversion shall state the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting partnership and the name of the converted entity after conversion, if different from that of the converting partnership.

(3) The manner of converting the partnership interests of each of the partners into shares of, securities of, or interests in the converted entity.

(4) The provisions of the governing documents for the converted entity, including the limited partnership agreement, limited liability company articles of organization and operating agreement, or articles or certificate of incorporation if the converted entity is a corporation, to which the holders of interest in the converted entity are to be bound.

(5) Any other details or provisions as are required by laws under which the converted entity is organized.

(6) Any other details or provisions that are desired.

(b) The plan of conversion shall be approved by that number or percentage of partners required by the partnership agreement to approve a conversion of the partnership as set forth in the partnership agreement. If the partnership agreement fails to specify the required partner approval for a conversion of the partnership, the plan of conversion shall be approved by that number or percentage of partners required by the partnership agreement to approve an amendment to the partnership agreement unless the conversion effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, in which case the plan of conversion shall be approved by that greater number or percentage. If the partnership agreement fails to specify the vote required to amend the partnership agreement, the plan of conversion shall be approved by all partners.

(c) If the partnership is converting into a limited partnership, in addition to the approval of the partners as set forth in subdivision (b), the plan of conversion shall be approved by all partners who will become general partners of the converted limited partnership pursuant to the plan of conversion.

(d) All partners of the converting partnership except those that dissociate upon effectiveness of the conversion pursuant to subdivision (e) of Section 16909 shall be deemed parties to any partnership or operating agreement, articles or certificate of incorporation, or organic document for the converted entity adopted as part of the plan of conversion, regardless of whether that partner has executed the plan of conversion or the operating agreement, articles or certificate of incorporation, partnership agreement, or other organic document for the converted entity. Any adoption of a new partnership or operating agreement, articles or certificate of incorporation, or other organic

document made pursuant to the foregoing sentence shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the partnership in the same manner, and by the same number or percentage of partners, as was required for approval of the original plan of conversion.

(f) The partners of a converting partnership may, at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the partners, in the same manner, and by the same number or percentage of partners, as was required for approval of the original plan of conversion at any time before the conversion is effective, subject to the contractual rights of third parties.

(g) The converted entity shall keep the plan of conversion at: (1) the principal place of business of the converted entity, if the converted entity is a foreign other business entity or a corporation; or (2) the office at which records are to be kept under Section 15614 or 15901.14 if the converted entity is a domestic limited partnership, or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a partner of a converting partnership, the authorized person on behalf of the converted entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.

SEC. 24. Section 16908 of the Corporations Code is amended to read:

16908. (a) A domestic limited partnership, limited liability company, or corporation, or a foreign other business entity may be converted to a domestic partnership pursuant to this article, but only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An entity that desires to convert into a domestic partnership shall approve a plan of conversion or the instrument that is required to be approved to effect the conversion pursuant to the laws under which the entity is organized.

(c) The conversion of a domestic limited partnership, limited liability company, or corporation, or foreign other business entity shall be approved by the number or percentage of the partners, members, shareholders, or holders of interest of the converting entity as is required by the law under which the entity is organized, or a greater or lesser percentage (subject to applicable laws) as set forth in the limited partnership agreement, articles of organization, operating agreement, or

articles or certificate of organization, or other governing document for the converting entity.

(d) The conversion by a domestic limited partnership, limited liability company, or corporation, or a foreign other business entity into a partnership shall be effective under this article at the time that the conversion is effective under the laws under which the converting entity is organized.

(e) The filing with the Secretary of State of a certificate of conversion or a statement of partnership authority containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited partnership or foreign limited liability company, and no converting foreign limited partnership or foreign limited liability company that has made the filing is required to file a certificate of cancellation under Section 15696, 15909.07, or 17455 as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 25. Section 16911 of the Corporations Code is amended to read:

16911. (a) Each partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by the number or percentage of partners specified for merger in the partnership agreement of the constituent partnership. If the partnership agreement fails to specify the required partner approval for merger of the constituent partnership, then the agreement of merger shall be approved by that number or percentage of partners specified by the partnership agreement to approve an amendment to the partnership agreement. However, if the merger effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the merger shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the partners. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving partnership or surviving other business entity, and of each disappearing partnership and disappearing other business entity, and the agreement of merger

may change the name of the surviving partnership, which new name may be the same as, or similar to, the name of a disappearing partnership.

(3) The manner of converting the partnership interests of each of the constituent partnerships into interests or other securities of the surviving partnership or surviving other business entity, and if partnership interests of any of the constituent partnerships are not to be converted solely into interest or other securities of the surviving partnership or surviving other business entity, the cash, property, rights, interests, or securities which the holders of the partnership interest are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests or other securities of the surviving partnership or surviving other business entity, or that the partnership interests are canceled without consideration.

(4) Any other details or provisions as are required by the laws under which any constituent other business entity is organized.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) If the partnership is merging into a limited partnership, then in addition to the approval of the partners as set forth under subdivision (a), the agreement of merger must be approved by all partners who will become general partners of the surviving limited partnership upon the effectiveness of the merger.

(c) Notwithstanding its prior approval, an agreement of merger may be amended before the merger takes effect if the amendment is approved by the partners of each constituent partnership, in the same manner as required for approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The partners of a constituent partnership may in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent partnerships and constituent other business entities, if the abandonment is approved by the partners of the constituent partnership in the same manner as required for approval of the original agreement of merger.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any domestic constituent partnership or (2) effect the adoption of a new partnership agreement for a domestic constituent partnership if it is the surviving partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger.

(f) The surviving partnership or surviving other business entity shall keep the agreement of merger at the principal place of business of the

surviving entity if the surviving entity is a partnership or a foreign other business entity, at the office referred to in Section 1500 if the surviving entity is a domestic corporation, at the office referred to in subdivision (a) of Section 15614 or 15901.14 if the surviving entity is a domestic limited partnership or at the office referred to in Section 17057 if the surviving entity is a domestic limited liability company and, upon the request of a partner of a constituent partnership or a holder of interests or other securities of a constituent other business entity, the authorized person on behalf of the partnership or the surviving other business entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the surviving partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of interests or other securities of the rights provided in this subdivision shall be unenforceable.

SEC. 26. Section 16915.5 of the Corporations Code is amended to read:

16915.5. (a) Upon merger pursuant to this article, a surviving domestic or foreign partnership or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign partnership or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 26.5. Section 16915.5 of the Corporations Code is amended to read:

16915.5. (a) Upon merger pursuant to this article, a surviving domestic or foreign partnership or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign

partnership or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 27. Section 17001 of the Corporations Code is amended to read:

17001. Unless the context otherwise indicates, the following definitions govern the construction of this title:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) "Articles of organization" means articles of organization filed under Section 17050, including all amendments thereto or restatements thereof, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized.

(c) "Bankrupt" or "bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

(d) "Capital account" means, unless otherwise provided in the operating agreement, the amount of the capital interest of a member in the limited liability company consisting of that member's original contribution, as (1) increased by any additional contributions and by that

member's share of the limited liability company's profits, and (2) decreased by any distribution to that member and by that member's share of the limited liability company's losses.

(e) "Constituent limited liability company" means a limited liability company that is merged with or into one or more other limited liability companies or other business entities and includes a surviving limited liability company.

(f) "Constituent other business entity" means any other business entity that is merged with or into one or more limited liability companies and includes a surviving other business entity.

(g) "Contribution" means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this title, which a member contributes to a limited liability company as capital in that member's capacity as a member pursuant to an agreement between the members, including an agreement as to value.

(h) "Disappearing limited liability company" means a constituent limited liability company that is not the surviving limited liability company.

(i) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(j) "Distribution" means the transfer of money or property by a limited liability company to its members without consideration.

(k) "Domestic" means organized under the laws of this state when used in relation to any limited liability company, other business entity or person (other than a natural person).

(*l*) "Domestic corporation" means a corporation as defined in Section 162.

(m) "Domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(n) "Economic interest" means a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company, but does not include any other rights of a member, including, without limitation, the right to vote or to participate in management, or, except as provided in Section 17106, any right to information concerning the business and affairs of the limited liability company.

(o) (1) "Electronic transmission by the limited liability company" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the limited liability company, (2) posting on an electronic message board or network

that the limited liability company has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a limited liability company to an individual member is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(2) "Electronic transmission to the limited liability company" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the limited liability company has provided from time to time to members or managers for sending communications to the limited liability company, (2) posting on an electronic message board or network that the limited liability company has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the limited liability company has placed in effect reasonable measures to verify that the sender is the member or manager (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(p) "Foreign corporation" means a corporation formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(q) "Foreign limited liability company" means either (1) an entity formed under the limited liability company laws of any state other than this state, or (2) an entity organized under the laws of any foreign country that is (A) an unincorporated association, (B) organized under a statute pursuant to which an association may be formed that affords each of its members limited liability with respect to the liabilities of the entity, and (C) not an entity that is required to be registered or qualified pursuant to the provisions of Title 1 (commencing with Section 100) or Title 2 (commencing with Section 15001); but the term "foreign limited liability company" does not include a foreign association, as defined in Section 170.

(r) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country, including a limited liability limited partnership, and having as partners one or more general partners and one or more limited partners or their equivalents under any name.

(s) "Foreign other business entity" means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(t) "Limited liability company" or "domestic limited liability company" means an entity having one or more members that is organized under this title and is subject to the provisions of Section 17101.

(u) "Mail" unless otherwise provided in the operating agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(v) "Majority in interest of the members," unless otherwise provided in the operating agreement, means more than 50 percent of the interests of members in current profits of the limited liability company.

(w) "Manager" means a person elected by the members of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 17151 or, if the articles of organization do not contain that statement, "manager" means each of the members of the limited liability company.

(x) "Member" means a person who:

(1) Has been admitted to a limited liability company as a member in accordance with the articles of organization or operating agreement, or an assignee of an interest in a limited liability company who has become a member pursuant to Section 17303.

(2) Has not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

(y) "Member of record" means a member named as a member on the list maintained in accordance with paragraph (1) of subdivision (a) of Section 17058.

(z) "Membership interest" means a member's rights in the limited liability company, collectively, including the member's economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(aa) "Officer" means any person elected or appointed pursuant to Section 17154.

(ab) "Operating agreement" means any agreement, written or oral, between all of the members as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law

or the articles of organization, including all amendments thereto, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized. The term "operating agreement" may include, without more, an agreement between all the members to organize a limited liability company pursuant to the provisions of this title.

(ac) "Other business entity" means a corporation, limited partnership, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a domestic limited liability company and a foreign limited liability company.

(ad) "Parent," when used in relation to a specified limited liability company, means a person who owns, directly or indirectly, membership interests possessing more than 50 percent of the voting power of the specified limited liability company. When used in relation to a specified corporation or limited partnership, the term "parent" shall have the meanings set forth in Section 175 and subdivision (w) of Section 15611 or subdivision (v) of Section 15901.02 respectively.

(ae) "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(af) [RESERVED]

(ag) [RESERVED]

(ah) [RESERVED]

(ai) "Proxy," unless otherwise provided in the operating agreement, means a written authorization signed or an electronic transmission authorized by a member or the member's attorney-in-fact giving another person the power to exercise the voting rights of that member. "Signed," for the purpose of this section, means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission, or otherwise) by the member or member's attorney-in-fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the member, or by the member's attorney-in-fact.

(aj) "Return of capital," unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member's capital account, immediately after the distribution, is less than the amount of that member's contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(ak) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(a*l*) "Subsidiary of a specified limited liability company" means a limited liability company or other business entity in which shares, interests, or other securities possessing more than 50 percent of the voting power are owned by the specified limited liability company.

(am) "Surviving limited liability company" means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(an) "Surviving other business entity" means an other business entity into which one or more limited liability companies are merged.

(ao) "Time a notice is given or sent," unless otherwise expressly provided, means the time a written notice is deposited in the United States mail; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic transmission, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(ap) "Transact intrastate business" means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.

(1) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business, or merely because of its status as any one or more of the following:

(A) A shareholder of a domestic corporation.

(B) A shareholder of a foreign corporation transacting intrastate business.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.

(2) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes.

(B) Holding meetings of its managers or members or carrying on any other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's securities or maintaining trustees or depositaries with respect to those securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(3) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a member or manager of a domestic limited liability company or a foreign limited liability company registered to transact intrastate business in this state.

(aq) "Vote" includes authorization by written consent.

(ar) "Voting power" means the power to vote on any matter at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred.

(as) "Withdrawal" includes the resignation or retirement of a member as a member.

(at) "Written" or "in writing" includes facsimile, telegraphic, and other electronic communication as authorized by this code.

SEC. 28. Section 17540.3 of the Corporations Code is amended to read:

17540.3. (a) A limited liability company that desires to convert to an other business entity or a foreign other business entity or a foreign limited liability company shall approve a plan of conversion.

The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting limited liability company and the name of the converted entity after conversion.

(3) The manner of converting the membership interests of each of the members into securities of, shares of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the articles or certificate of incorporation if the converted entity is a domestic or foreign corporation, the partnership agreement, or the limited liability company articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the parties.

(b) The plan of conversion shall be approved by a vote of a majority in interest of the members of the converting limited liability company, or a greater percentage of the voting interests of members as may be specified in the articles of organization or written operating agreement of the converting limited liability company. However, if the members of the limited liability company would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the members of the converting limited liability company, unless the plan of conversion provides that all members will have dissenters' rights as provided in Chapter 13 (commencing with Section 17600).

(c) If the limited liability company is converting into a limited partnership, then in addition to the approval of the members set forth in subdivision (b), the plan of conversion shall be approved by those members who will become general partners of the converted limited partnership pursuant to the plan of conversion.

(d) Upon the effectiveness of the conversion, all members of the converting limited liability company, except those that exercise dissenters' rights as provided in Chapter 13 (commencing with Section 17600), shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not a member has executed the plan of conversion or the governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the members of the converting limited liability company in the same manner as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the members of a converting limited liability company in the manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership or foreign other business entity, at the principal executive office of or registrar or transfer agent of the converted entity if the converted entity is a domestic corporation, or at the office at which records are to be kept under Section 15614 or 15901.14 if the converted entity is a domestic limited partnership. Upon the request of a member of a converting limited liability company, the authorized person on behalf of the converted entity shall promptly deliver to the member or the holder of interests, shares, or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a member of the rights provided in this subdivision shall be unenforceable.

SEC. 29. Section 17540.8 of the Corporations Code is amended to read:

17540.8. (a) An other business entity or a foreign other business entity or a foreign limited liability company may be converted to a domestic limited liability company pursuant to this chapter only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign limited liability company that desires to convert into a domestic limited liability company shall approve a plan of conversion or an other instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign limited liability company into a domestic limited liability company shall be approved by that number or percentage of the partners, members, shareholders, or holders of interest of the converting entity as is required by the laws under which that entity is organized, or a greater or lesser percentage, subject to applicable laws, as set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles or certificate of incorporation, or other governing document.

(d) The conversion by an other business entity or a foreign other business entity or a foreign limited liability company into a domestic limited liability company shall be effective under this chapter at the time the conversion is effective under the laws under which the converting entity is organized as long as the articles of organization containing a statement of conversion have been filed with the Secretary of State. If the converting entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this title to form a limited liability company.

(e) The filing with the Secretary of State of a certificate of conversion or articles of organization containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited liability company or foreign limited partnership, and no converting foreign limited liability company or foreign limited partnership that has made the filing is required to file a certificate of cancellation under Section 15696, 15909.07, or 17455 as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 30. Section 17554.5 of the Corporations Code is amended to read:

17554.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign limited liability company or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign limited liability company or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 30.5. Section 17554.5 of the Corporations Code is amended to read:

17554.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign limited liability company or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign limited liability company or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or

under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

SEC. 31. Section 17555 of the Corporations Code is amended to read:

17555. (a) The merger of any number of domestic limited liability companies with any number of foreign limited liability companies or foreign other business entities shall be required to comply with Section 17550.

(b) If the surviving entity is a domestic limited liability company or a domestic other business entity, the merger proceedings with respect to that limited liability company or other business entity and any domestic disappearing limited liability company shall conform to the provisions of this chapter governing the merger of domestic limited liability companies, but if the surviving entity is a foreign limited liability company or a foreign other business entity, then, subject to the requirements of subdivision (d) and Chapter 13 (commencing with Section 17600), with respect to any domestic constituent corporation, Section 1113 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) of Division 1 of Title 1, and with respect to any domestic constituent limited partnership, Article 7.6 (commencing with Section 15679.1) of Chapter 3 and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5 of Title 2, the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving limited liability company or surviving other business entity.

(c) If the surviving entity is a domestic limited liability company or domestic other business entity, other than a domestic corporation, a certificate of merger shall be filed as provided in subdivision (a) of Section 17552 and thereupon, subject to subdivision (a) of Section 17553, the merger shall be effective as to each domestic constituent limited liability company and domestic constituent other business entity. If the surviving entity is a domestic corporation, the agreement of merger with

attachments shall be filed as provided in subdivision (b) of Section 17552, and thereupon, subject to subdivision (a) of Section 17553, the merger shall be effective as to each domestic constituent limited liability company and domestic constituent other business entity unless another effective date is provided for in Chapter 11 (commencing with Section 1100) of Division 1 of Title 1, with respect to any constituent corporation or any constituent other business entity.

(d) If the surviving entity is a foreign limited liability company or foreign other business entity, the merger shall become effective in accordance with the laws of the jurisdiction in which the surviving limited liability company or surviving other business entity is organized; but the merger shall be effective as to any domestic disappearing limited liability company as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a certificate of merger or agreement of merger as provided in Section 17552.

(e) If a merger described in subdivision (c) or (d) also includes a foreign disappearing limited liability company previously registered for the transaction of intrastate business in this state pursuant to Section 17451, the filing of the certificate of merger or agreement of merger, as applicable, automatically has the effect of a cancellation of registration for that foreign limited liability company pursuant to Section 17456 without the necessity of the filing of a certificate of cancellation.

(f) The provisions of subdivision (b) of Section 17551 and Chapter 13 (commencing with Section 17600) apply to the rights of the members of any of the constituent limited liability companies that are domestic limited liability companies and of any domestic limited liability company that is a parent of any foreign constituent limited liability company.

(g) If the surviving entity is a foreign limited liability company or foreign other business entity, the surviving entity shall file the following with the Secretary of State:

(1) An agreement that it may be served in this state in a proceeding for the enforcement of an obligation of any constituent entity and in a proceeding to enforce the rights of any holder of a dissenting interest or dissenting shares in a constituent domestic limited liability company or domestic other business entity.

(2) An irrevocable appointment of the Secretary of State as its agent for service of process, and an address to which process may be forwarded.

(3) An agreement that it will promptly pay the holder of any dissenting interest or dissenting share in a constituent domestic limited liability company or domestic other business entity the amount to which that person is entitled under California law.

SEC. 32. Section 25005.1 of the Corporations Code is amended to read:

25005.1. "Entity conversion transaction" means a conversion pursuant to Section 1151, 1157, 15677.2, 15677.8, 15911.02, 15911.08, 16902, 16908, 17540.2, 17540.8, or a conversion that occurs entirely out of state, unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 33. Section 12188 of the Government Code is repealed.

SEC. 34. Section 12188 is added to the Government Code, to read:

12188. The limited partnership filing fees are the following:

(a) Issuing a certificate of reservation of limited partnership name: ten dollars ($10).

(b) Filing a certificate of limited partnership of a limited partnership: seventy dollars ($70).

(c) Filing an application for registration as a foreign limited partnership: seventy dollars ($70).

(d) Filing a certificate of amendment to the certificate of limited partnership of a limited partnership: thirty dollars ($30).

(e) Filing a restated certificate of limited partnership of a limited partnership: thirty dollars ($30).

(f) Filing an amendment to the application for registration of a foreign limited partnership: thirty dollars ($30).

(g) Filing a certificate of correction for a limited partnership or a foreign limited partnership: thirty dollars ($30).

(h) Filing a certificate of revival for a limited partnership: thirty dollars ($30).

(i) Filing a certificate of merger solely with one or more other limited partnerships (not including the merger of one or more limited partnerships with one or more other business entities) the fee for filing a certificate of merger: seventy dollars ($70).

(j) Filing a certificate of merger of one or more limited partnerships with one or more other business entities: one hundred fifty dollars ($150).

(k) Filing a certificate of conversion of a limited partnership into a foreign other business entity or general partnership: thirty dollars ($30).

(*l*) Filing articles of organization or statement of partnership authority containing a statement of conversion of a limited partnership into a domestic limited liability company or a registered general partnership: seventy dollars ($70).

(m) Filing the substitute service of a limited partnership: fifty dollars ($50).

(n) Filing a certificate of cancellation for a limited partnership or a foreign limited partnership: no fee.

(o) Filing a statement of resignation as an agent for service of process: no fee.

(p) Filing any instrument by or on behalf of a limited partnership unless another fee is specified or the law specifies that no fee is to be charged: thirty dollars ($30).

SEC. 35. Section 12197 of the Government Code is amended to read:

12197. The Secretary of State shall charge and collect, as applicable, fees for the following:

(a) Service of process, as provided in Section 15800 of the Corporations Code, for every partnership other than a foreign limited partnership subject to Article 9 (commencing with Section 15691) of Chapter 3 or Article 9 (commencing with Section 15909.01) of Chapter 5.5 of Title 2 of the Corporations Code or a commercial banking partnership established and transacting business in a place without the United States, which is domiciled without this state and has no regular place of business within the state: Fifty dollars ($50).

(b) Service of process for each registered limited liability partnership whose principal office is not in this state and each foreign limited liability partnership registered under Section 16959 of the Corporations Code: Fifty dollars ($50).

(c) Acceptance of copies of process against a corporation, firm, partnership, limited liability company, association, business trust, or natural person: Fifty dollars ($50), unless another fee is specified by law or the law specifies that no fee is to be charged.

(d) Filing a statement of resignation as an agent pursuant to paragraph (2) of subdivision (d) of Section 17061 of the Corporations Code for an individual or entity previously designated as an agent for service of process by a limited liability company: No fee.

SEC. 36. Section 17935 of the Revenue and Taxation Code is amended to read:

17935. (a) For each taxable year beginning on or after January 1, 1997, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153.

(b) (1) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to

Section 15621 or 15902.01 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of State pursuant to Section 15692 or 15909.01 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the Corporations Code.

(2) If a taxpayer files a return with the Franchise Tax Board that is designated its final return, that board shall notify the taxpayer that the tax imposed by this chapter is due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the Corporations Code.

(c) The tax imposed by this chapter shall be due and payable on the date the return is required to be filed under former Section 18432 or 18633.

(d) For purposes of this section, "limited partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

(e) Notwithstanding subdivision (b), any limited partnership that ceased doing business prior to January 1, 1997, filed a final return with the Franchise Tax Board for a taxable year ending before January 1, 1997, and filed a certificate of dissolution with the Secretary of State pursuant to Section 15623 of the Corporations Code prior to January 1, 1997, shall not be subject to the tax imposed by this chapter for any period following the date the certificate of dissolution was filed with the Secretary of State, but only if the limited partnership files a certificate of cancellation with the Secretary of State pursuant to Section 15623 of the Corporations Code. In the case where a notice of proposed deficiency assessment of tax or a notice of tax due (whichever is applicable) is mailed after January 1, 2001, the first sentence of this subdivision shall not apply unless the certificate of cancellation is filed with the Secretary of State not later than 60 days after the date of the mailing of the notice.

SEC. 37. Nothing in this act shall be construed to affect or overturn any decision of law or existing statute regarding the liability of limited partners. Except as provided herein, nothing in this act shall be construed to affect any existing statute pertaining to limited liability partnerships and limited liability companies. This act does not permit the formation of limited liability limited partnerships in this state.

SEC. 38. Section 21.5 of this bill incorporates amendments to Section 16101 of the Corporations Code proposed by both this bill and AB 2914. It shall only become operative if (1) both bills are enacted and become

effective on or before January 1, 2007, (2) each bill amends Section 16101 of the Corporations Code, and (3) this bill is enacted after AB 2914, in which case Section 21 of this bill shall not become operative.

SEC. 39. (a) Section 6.5 of this bill incorporates amendments to Section 1107.5 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 1107.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 1107.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

(b) Section 7.5 of this bill incorporates amendments to Section 1113 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 1113 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 1113 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall not become operative.

(c) Section 11.5 of this bill incorporates amendments to Section 6019.1 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 6019.1 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 6019.1 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 11.5 of this bill shall become operative, and Section 11 of this bill shall not become operative.

(d) Section 12.5 of this bill incorporates amendments to Section 6020.5 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 6020.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 6020.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 12.5 of this bill shall become operative, and Section 12 of this bill shall not become operative.

(e) Section 13.5 of this bill incorporates amendments to Section 8019.1 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 8019.1 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 8019.1 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 13.5 of this bill shall become operative, and Section 13 of this bill shall not become operative.

(f) Section 14.5 of this bill incorporates amendments to Section 8020.5 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 8020.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 8020.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 14.5 of this bill shall become operative, and Section 14 of this bill shall not become operative.

(g) Section 15.5 of this bill incorporates amendments to Section 12540.1 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 12540.1 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 12540.1 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 15.5 of this bill shall become operative, and Section 15 of this bill shall not become operative.

(h) Section 16.5 of this bill incorporates amendments to Section 12550.5 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 12550.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 12550.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 16.5 of this bill shall become operative, and Section 16 of this bill shall not become operative.

(i) Section 26.5 of this bill incorporates amendments to Section 16915.5 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 16915.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 16915.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 26.5 of this bill shall become operative, and Section 26 of this bill shall not become operative.

(j) Section 30.5 of this bill incorporates amendments to Section 17554.5 of the Corporations 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, 2007, but AB 2341 becomes operative first (2) each bill amends Section 17554.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 17554.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 30.5 of this bill shall become operative, and Section 30 of this bill shall not become operative.

CHAPTER 496

An act to add Sections 2013 and 3022.3 to, the Family Code, relating to family law.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. This act shall be known and may be cited as the Collaborative Family Law Act.

SEC. 2. Section 2013 is added to the Family Code, to read:

2013. (a) If a written agreement is entered into by the parties, the parties may utilize a collaborative law process to resolve any matter governed by this code over which the court is granted jurisdiction pursuant to Section 2000.

(b) "Collaborative law process" means the process in which the parties and any professionals engaged by the parties to assist them agree in writing to use their best efforts and to make a good faith attempt to resolve disputes related to the family law matters as referenced in subdivision (a) on an agreed basis without resorting to adversary judicial intervention.

SEC. 3. Section 3022.3 is added to the Family Code, to read:

3022.3. Upon the trial of a question of fact in a proceeding to determine the custody of a minor child, the court shall, upon the request of either party, issue a statement of the decision explaining the factual and legal basis for its decision pursuant to Section 632 of the Code of Civil Procedure.

SEC. 4. (a) The Judicial Council shall create an information sheet for parties involved in child custody and visitation matters that informs the parties that they have the right to agree to a custody or visitation arrangement, that if they do not agree, they will be required to participate in child custody mediation, and that if mediation does not result in an agreement, the court will be required to make a determination on the custody issues. The sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information on finding an attorney, information on accessing court based self-help services if they are available, and information regarding other sources of assistance in developing a custodial agreement. The Judicial Council shall adopt this sheet as a statewide form on or before January 1, 2008, and take reasonable steps to ensure that it is distributed statewide and made available to litigants in custody matters.

(b) Funding for creating the notice described in this section shall be derived from existing resources.

SEC. 5. (a) It is the intent of the Legislature that legislation be enacted during the 2007–08 legislative session to provide a procedural framework for the practice of collaborative law, as described in Section 2 of this act. Towards that end, the Committees on the Judiciary of the Senate and Assembly are requested to convene a working group to study and make recommendations for a comprehensive statute governing the practice of collaborative law.

(b) Members of the working group shall include the following:

(1) Family law attorneys, including members of the Executive Committee of the Family Law Section of the State Bar.

(2) Representatives from the judicial, executive, and legislative branches.

(3) Members of the public.

(c) The working group is requested to complete its deliberations by January 1, 2007.

CHAPTER 497

An act relating to claims, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2006. Filed with
Secretary of State September 27, 2006.]

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

SECTION 1. The sum of nine hundred fifty thousand dollars ($950,000) is hereby appropriated from the General Fund to the Attorney General to pay for the settlement in the case of Emilo Zavala, et al. v. Raul Lira, et al. (Yolo County Superior Court, Case No. PO-03-986).

Any funds appropriated in excess of the amounts actually required for the payment of this settlement claim shall revert to the General Fund on June 30 of the fiscal year in which the final payment is made.

SEC. 2. The sum of eight hundred eighty thousand dollars ($880,000) is hereby appropriated from the General Fund to the California Department of Veteran's Affairs to pay for the judgment in the case of Helga Carter v. California Department of Veterans Affairs (California Supreme Court, Case No. S127921).

Any funds appropriated in excess of the amounts actually required for the payment of this judgment claim shall revert to the General Fund on June 30 of the fiscal year in which the final payment is made.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 498

An act to amend Sections 5640, 5641, 5642, 5645, 5646, and 5647 of, and to amend the heading of Chapter 3.3 (commencing with Section 5640) of Division 5 of, the Public Resources Code, relating to parks and recreation.

[Approved by Governor September 27, 2006. Filed with
Secretary of State September 27, 2006.]

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

SECTION 1. The heading of Chapter 3.3 (commencing with Section 5640) of Division 5 of the Public Resources Code is amended to read:

CHAPTER 3.3. THE URBAN PARK ACT OF 2006

SEC. 2. Section 5640 of the Public Resources Code is amended to read:

5640. This chapter shall be known, and may be cited, as the Urban Park Act of 2006.

SEC. 3. Section 5641 of the Public Resources Code is amended to read:

5641. The Legislature hereby finds and declares as follows:

(a) The program created by this chapter will finance the acquisition and development of parks and recreation areas and facilities in the neighborhoods that are currently least served by park and recreation providers by emphasizing the expansion of neighborhood accessibility to parks. These neighborhoods are often the same areas that suffer most from high unemployment and destructive or unlawful conduct by youth.

(b) The program established by the chapter will encourage community participation in, and a greater sense of responsibility toward, new parks and recreation areas and facilities, which will help keep them clean and safe and which will enhance community pride and sustain neighborhood vitality.

(c) New parks and facilities will provide safe recreational opportunities for children and positive outlets for youth, and will meet the special recreational and social needs of senior citizens and other urban population groups.

SEC. 4. Section 5642 of the Public Resources Code is amended to read:

5642. As used in this article, the following terms shall have the following meanings:

(a) "City" means a city or a city and county.

(b) "District" means a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3, or a recreation and park district formed pursuant to Chapter 4 (commencing with Section 5780).

(c) "Facilities" includes, but is not limited to, places for organized team sports, outdoor recreation, and informal turf play; nonmotorized recreational trails; permanent play structures; landscaping; community gardens; places for passive recreation, enjoyment of scenic open space, nature appreciation and study, and outdoor education; multipurpose structures designed to meet the special recreational, educational, vocational, and social needs of youth, senior citizens, and other urban population groups; and infrastructure and other improvements that support these facilities.

(d) "Heavily urbanized county" means a county with a population of 500,000 or more, and a density of at least 1,100 persons per square mile, based on the most recent verifiable census data.

(e) "Nonprofit organization" means any nonprofit public benefit corporation formed pursuant to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of the Corporations Code), qualified to do business in California, qualified under Section 501(c)(3) of Title 26 of the United States Code, and that has among its primary purposes the preservation, protection, or enhancement of land or water resources in their natural, scenic, historical, agricultural, forested, or open-space condition or use, or the provision of conservation and environmental education and other recreational, vocational, and educational services to urban youth.

(f) "Park access" means the distance of approximately one-half mile or less from a residence to a park.

SEC. 5. Section 5645 of the Public Resources Code is amended to read:

5645. The department may award a grant pursuant to this chapter only for a project that meets all of the following criteria:

(a) The proposed project is within the jurisdiction of an eligible applicant, as specified in Section 5644.

(b) The project will result in the creation of a new urban park, new or multipurpose facility, or new recreational opportunity.

SEC. 6. Section 5646 of the Public Resources Code is amended to read:

5646. In evaluating applications for grants that meet the requirements of Section 5645, the department shall assign higher priority to applications, for each of the following criteria satisfied:

(a) The amount of the grant applied for, together with any matching contribution, will meet all the costs of acquiring or developing, or both, the new urban park or facilities, and when construction of the project is completed, the new urban park or facility will be fully usable by the residents of the project's service area.

(b) The project's service area has significant deficiencies in park access and facilities relative to other areas of the applicant's jurisdiction.

(c) The project will enhance employment opportunities for residents, including at-risk youth, of the project's service area, or of members of the California Conservation Corps or certified local conservation corps.

(d) The project will accommodate outdoor learning opportunities for school pupils or at-risk youth from the project's service area, or of members of the California Conservation Corps or certified conservation corps.

(e) The project will be usable by pupils from one or more public schools in the project's service area.

(f) The application includes a commitment for a matching contribution. The matching contributions may be in the form of moneys from any source, including funds from other state local assistance programs; gifts of real property, equipment, and consumable supplies; volunteer services; free or reduced-cost use of land, facilities, or equipment; and bequests and income from wills, estates, and trusts. The department shall evaluate the amount of the matching contribution in terms of its proportionality in relation to the economic resources of the applicant.

(g) The project will wholly or partly replace an area of blight, recycle property, replace a brownfield, or will contribute significantly to the economic revitalization of the area in the project's service area.

(h) The development phase of the project was planned with public input from the affected community.

(i) The project is a joint-use project between two or more agencies that share responsibility for ownership, development, and maintenance of the project.

(j) The project is a partnership in an infill, transit-oriented, or an affordable housing development.

(k) The project is easily accessible to pedestrians, bicycles, and public transit, and encourages use by local residents.

(*l*) The project creates a new park in a location where none currently exists.

SEC. 7. Section 5647 of the Public Resources Code is amended to read:

5647. (a) The department may adopt guidelines to amplify or clarify the criteria specified in Section 5646, and may adopt additional criteria, to supplement those criteria, but the scope of the additional criteria shall be limited to providing additional guidance in selecting projects in areas that have the greatest deficiencies in parks and facilities.

(b) The department may develop a procedural guide for the administration of this chapter and the guidance of applicants.

(c) The department shall solicit written comments and hold public hearings at convenient locations throughout the state on any guideline or procedural guide that is proposed to be adopted or developed pursuant to this section.

(d) If the department determines to adopt guidelines or to develop a procedural guide pursuant to this section, the department shall adopt the guidelines or develop the procedural guide on or before April 1, 2002.

(e) Any regulation or procedural guide adopted or developed pursuant to this section shall not be subject to the review or approval of the Office of Administrative Law or to any other requirement of Chapter 3.5

(commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(f) The department may not expend more than 5 percent of the amount annually appropriated for the purposes of this chapter for administrative costs.

(g) If funding is available, the department shall administer application requests for proposals and grant awards in no less than two cycles in two years. The department shall maintain this application schedule as long as funding is available.

CHAPTER 499

An act to amend Sections 24012, 52254, 52260, 52351, 52354, 52361, 52391, 52451, 52453, 52455, 52481, 52482, 52483, 52484, 52487, 52511, 56382.8, 77063, 78623, 78640, 78700, and 79040 of, and to add Section 5312 to, the Food and Agricultural Code, relating to agriculture omnibus, and making an appropriation therefor.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 5312 is added to the Food and Agricultural Code, to read:

5312. After the exhaustion of the appeal and review procedures provided in Section 5311, the commissioner or his or her representative may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 2. Section 24012 of the Food and Agricultural Code is amended to read:

24012. (a) To provide funds for enforcement of this chapter, the event manager of every event shall charge and collect the applicable fee for each horse entered or exhibited in the event, and each horse consigned

for public sale. The secretary may, by regulation, set the applicable fee, in consultation with the advisory committee appointed pursuant to Section 24013.5, at an amount necessary to carry out this chapter. Event managers shall be notified of the applicable fee at the time of registration of an event. The event manager of the registered event shall remit the fee established pursuant to this section, in addition to the completed assessment summary, as prescribed by the secretary, to the department within 15 days after completion of the event.

(b) Any event manager who does not pay to the department the full amount that is due pursuant to this section shall pay a civil penalty of 10 percent of the amount due plus interest at the rate of 1 ½ percent per month of the unpaid balance computed from the date of the event. The event manager is personally liable for fees and penalties owed the department pursuant to this section.

(c) Fees and penalties collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. All funds received by the department from fees and penalties pursuant to this section shall be used exclusively to carry out the intent and purpose of this chapter, including, but not limited to, pharmacological studies, drug testing, and drug research, inspection for drugs, prosecution of alleged offenders, administrative costs, attorneys and expert witness fees, and any other costs necessary to carry out this chapter.

SEC. 3. Section 52254 of the Food and Agricultural Code is amended to read:

52254. "Agricultural seed" means the seed of any domesticated grass or cereal, and of any legume or other plant that is grown as turf, cover crop, forage crop, fiber crop, or field crop, and mixtures of such seeds. It does not, however, include any variety that is generally known and sold as flower seed or vegetable seed.

SEC. 4. Section 52260 of the Food and Agricultural Code is amended to read:

52260. "Weed seed" means any noxious weed seed or vegetable seeds, and any seed that is not included in the definitions of agricultural seed, if it occurs incidentally in agricultural seed or vegetable seeds.

SEC. 5. Section 52351 of the Food and Agricultural Code is amended to read:

52351. Every labeler of agricultural or vegetable seed offered for sale or sold in this state, or any person who receives or possesses for sale or sells in this state any such seed that is not grown 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. 6. Section 52354 of the Food and Agricultural Code is amended to read:

52354. Each person who is required to be registered pursuant to Section 52351 shall pay an assessment annually to the secretary in an amount not to exceed forty cents ($0.40) per one hundred dollars ($100) gross annual dollar volume sales of agricultural or vegetable seed, or both, in this state for the preceding fiscal year defined in Section 52352, except in the following cases:

(a) No assessment shall be paid by any labeler or any other person for any agricultural or vegetable seed for which the assessment has been previously paid by another labeler or person, unless the identity of the lot has been changed.

(b) No assessment shall be paid on that portion of a person's sales of agricultural or vegetable seed, or both, that is sold in containers of four ounces or less net weight of seed.

(c) No assessment shall be paid on agricultural or vegetable seed, or both, sold and shipped out of this state.

SEC. 7. Section 52361 of the Food and Agricultural Code is amended to read:

52361. The secretary, each commissioner, and any qualified representative of the commissioner, shall sample and inspect any agricultural or vegetable seed that is subject to this chapter at the time and place and to the extent as he or she may deem necessary to determine whether the agricultural or vegetable seed is in compliance with the provisions of this chapter, and notify promptly the person who is in possession or control of the seed of any violation.

SEC. 8. Section 52391 of the Food and Agricultural Code is amended to read:

52391. The secretary or the commissioner and any qualified representative of the commissioner may issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed that he or she finds is in violation of any provision of this chapter, that shall prohibit further sale of the seed until the officer has evidence that the law has been complied with. Upon compliance, the order shall be removed.

SEC. 9. Section 52451 of the Food and Agricultural Code is amended to read:

52451. This article does not apply to any of the following:

(a) Seed or grain that is not intended for sowing purposes.

(b) Seed that is in storage in, or consigned to, a seed cleaning or conditioning establishment for cleaning or conditioning.

(c) Seed or grain that is transported without transfer of title for sowing on land that is owned by the person by whom the seed or grain was produced.

(d) Seed that is weighed and packaged in the presence of the purchaser from a bulk container, if the container is properly and conspicuously labeled as provided by this chapter.

(e) Seed or grain that is transported from one warehouse to another without transfer of title or in storage in a warehouse, if each container is plainly marked or identified with a lot number or other lot identification and the label information that is required by this article is available at the request of an enforcing officer.

SEC. 10. Section 52453 of the Food and Agricultural Code is amended to read:

52453. Except as otherwise provided in Section 52454, each container of vegetable seed that is for sale or sold within this state for sowing purposes shall bear upon it, or have attached to it, in a conspicuous place, a plainly written or printed label or tag in the English language, that gives all of the following information:

(a) Name of kind and variety of seed.

(b) For any seed that germinates less than the standard last established by the secretary under this chapter, the percentage of germination, exclusive of hard seed; the percentage of hard seed, if present; the calendar month and year the test was completed to determine those percentages; and the words "Below Standard" in not less than eight-point type.

(c) Name and address of the person that labeled the seed, or of the person that sells the seed within this state.

(d) In addition to the information required in subdivisions (a), (b), and (c), on each container of more than one-half pound (227 grams), the label shall include both the lot number or other lot identification and the calendar month and year the germination test was completed.

SEC. 11. Section 52455 of the Food and Agricultural Code is amended to read:

52455. In addition to the labeling requirements of this article, all seed at the time of sale by a retail merchant for nonfarm usage, shall conspicuously bear upon the labeling of the seed a viability assurance statement.

(a) The statement shall be "SELL BY (month) (year)," or "USE BEFORE (month) (year)". The month and year in the statement shall not exceed the 15-month retail time period allowed by subdivision (b) of Section 52481.

(b) The statement shall be conspicuous and in capital letters of the same size of type as other printed material on the labeling and contiguous to the germination date.

(c) The statement shall be affixed at the time of labeling for those containers destined for retail sales.

(d) For vegetable seed sold in containers of one-half pound (227 grams) or less, the viability assurance statement may read "Packed for (year) season" as an alternative to the "SELL BY (month) (year)" statements referenced in subdivision (a).

SEC. 12. Section 52481 of the Food and Agricultural Code is amended to read:

52481. Except as otherwise provided in this section or in Section 52486, it is unlawful for any person to ship, deliver, transport, or sell any agricultural or vegetable seed within this state, other than the seed that is described in Section 52451, unless the test to determine the percentage of germination that is required by Article 8 (commencing with Section 52451) has been completed within the following period, exclusive of the calendar month in which the test is completed, immediately prior to shipment, delivery, transportation, or sale:

(a) In the case of any agricultural or vegetable seed that is shipped, delivered, transported, or sold to a dealer for resale, eight months.

(b) In the case of any agricultural or vegetable seed that is sold at retail, 15 months.

(c) In the case of any agricultural or vegetable seed that is packaged under conditions that the secretary finds and determines will prolong the viability of the seed, the secretary may designate, in regulations that are adopted pursuant to this chapter, a longer period than otherwise specified in this section, and may require any additional labeling that may be necessary to maintain identification of seed that is packaged under these conditions.

(d) Seed labeled under Section 52455 is not subject to subdivision (b) upon expiration of the viability assurance statement. This exemption does not limit the right of the enforcing officer to enforce other applicable sections of this chapter.

SEC. 13. Section 52482 of the Food and Agricultural Code is amended to read:

52482. Except as otherwise provided in Section 52486, it is unlawful for any person to ship, deliver, transport, or sell any agricultural or vegetable seed within this state that is within any of the following classes:

(a) Is not labeled in accordance with the provisions of this chapter. This subdivision does not, however, apply to any seed that is described in Section 52451.

(b) Contains prohibited noxious weed seed, subject to tolerances and methods of determination prescribed in the regulations that are adopted pursuant to this chapter. This subdivision does not, however, apply to any of the seed that is described in subdivision (a) or (b) of Section 52451.

(c) Has false or misleading labeling, or pertaining to which there has been a false or misleading advertisement.

(d) Is represented to be certified seed or registered seed, unless it has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of a seed-certifying agency that is officially recognized under the provisions of this chapter, if produced in this state, or under the provisions of the Federal Seed Act (7 U.S.C., Sec. 1551, et seq.), as enacted, and rules and regulations that are adopted pursuant to that act, if produced outside of this state.

(e) Contains more than 1 ½ percent by weight of all weed seeds. This subdivision does not, however, apply to any seed that is described in subdivision (a), (b), or (c) of Section 52451.

(f) To sell, by variety name, seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the United States Plant Variety Protection Act (84 Stats. 1542; 7 U.S.C. Sec. 2321, et seq.) specifies sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of the owner of the variety.

SEC. 14. Section 52483 of the Food and Agricultural Code is amended to read:

52483. It is unlawful for any person to do any of the following:

(a) Detach, alter, deface, or destroy any label, warning tag, or notice that is provided for in this chapter or in the regulations that are adopted pursuant to it, or alter or substitute seed, in a manner that may defeat the purposes of this chapter.

(b) Disseminate any false or misleading advertisement concerning agricultural or vegetable seed in any manner or by any means.

(c) Hinder or obstruct in any way any authorized person in the performance of his or her duties under this chapter.

(d) Fail to comply with a "stop-sale" order.

SEC. 15. Section 52484 of the Food and Agricultural Code is amended to read:

52484. (a) Except as otherwise provided in Section 52486, it is unlawful for any person to ship, deliver, transport, or sell agricultural or

vegetable seed that is treated after harvest with any substance that is likely to be poisonous or toxic to human beings or animals unless there is conspicuously shown on the analysis tag or label, on a separate tag or label attached to each container, or upon each container all of the following information:

(1) "TREATED SEED" and the signal word for the category of treatment material all in capital letters.

(2) The chemical or generic name of the treatment material.

(3) An appropriately worded statement as to the hazards to humans and animals.

(4) An appropriately worded statement of practical treatment, if present.

(b) This information shall be derived from the technical chemical label of the substance applied to the seed.

(c) When more than one substance is applied, each substance shall be noted on the label, and the seed shall be labeled for the substance with the higher level of toxicity.

SEC. 16. Section 52487 of the Food and Agricultural Code is amended to read:

52487. A violation of this chapter for having shipped, delivered, transported, or sold agricultural or vegetable seed that has false or misleading labeling shall be construed to have been committed at the time of discovery of the violation, and a complaint charging the violation shall be filed within one year from the time of discovery. No complaint that charges such a violation shall, however, be filed after two years from the date of sale.

SEC. 17. Section 52511 of the Food and Agricultural Code is amended to read:

52511. Any lot of agricultural or vegetable seed that does not comply with this chapter is a public nuisance and is subject to seizure on complaint of the secretary or the commissioner or any enforcing officer of this chapter to a court of competent jurisdiction in the area in which the seed is located.

SEC. 18. Section 56382.8 of the Food and Agricultural Code is amended to read:

56382.8. (a) In addition to all other complaint procedures provided for in this chapter, any aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) and for which the claim for damages does not exceed thirty thousand dollars ($30,000), may file a verified complaint with the department, subject to expedited review and settlement. Informal complaints may be made for damages,

but not for disciplinary action, although the department may issue a complaint pursuant to Section 56382 as the basis for disciplinary action. Informal complaints must be received by the department within nine months of when the claimant ought to have reasonably known of its existence, as required under Section 56446.

(b) Complaints must be submitted to the department in writing and verified, and may be transmitted via United States mail, overnight delivery, or by facsimile transmission, setting forth the essential details of the transactions complained of, including the following:

(1) The name and address of each party to the dispute, of the agent representing him or her in the transaction involved, if any, as well as the party's counsel, if any.

(2) The quantity and quality or grade of each kind of produce shipped if a grade or quality is the basis of payment.

(3) The date of shipment.

(4) The carrier identification if a carrier was used.

(5) The shipping and destination points.

(6) If a sale, the date, sale price, and amount actually received.

(7) If a consignment, the date, reported proceeds, gross, and net.

(8) A precise estimate of the amount of damages claimed, if known.

(9) A brief statement of material facts in dispute, including terms of applicable contracts.

(10) The amount of damages being sought.

(c) The complaint shall also, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accountings, accounts of sale, and any special contracts or agreements.

(d) The informal complaint shall be accompanied by a nonrefundable filing fee of sixty dollars ($60) as required under Section 56382.5.

(e) Upon confirmation that a complaint has been properly and timely filed, including the securing of a denial letter from the United States Department of Agriculture under the Federal Packers and Stockyards Act, 1921, or the Federal Perishable Agricultural Commodities Act, 1930, the department shall send a copy of the complaint to the respondent by certified mail and advise the respondent that it shall have 30 days from the department's mailing of the complaint in which to answer the complaint. The answer shall contain a brief response to the complaint, including the respondent's position with respect to the claimant's description of matters in dispute, the relevant facts, and the remedy sought, together with a description of any claims it may have against the complainant, in the same manner as claims are to be set out in the

complaint. The respondent shall also include any pertinent documentation relevant to its defense with its answer.

(f) After receipt of the answer from the respondent, the department shall informally consult with the parties to clarify the nature of the dispute and to facilitate the exchange of information between the parties in order to assist the parties in reaching an expedited informal resolution of the dispute. The informal consultation process will last no longer than 60 days. The parties shall cooperate fully with the department and shall participate in the informal consultation process.

(g) If the informal consultation process provided for in this section does not result in resolution of the dispute, the complainant may then pursue arbitration against the licensee and the complaint and any counterclaim will be fully and finally adjudicated and resolved by a decision of an arbitrator under expedited arbitration procedures as follows:

(1) The complainant shall submit a fee of six hundred dollars ($600) to the department made payable to the arbitrator, arbitration service, or payee designated by the department for the arbitration and any counterclaimant shall submit a fee of six hundred dollars ($600) to the department for any counterclaim that is filed also made payable to the arbitrator, arbitration service, or payee designated by the department.

(2) An arbitrator from a panel of arbitrators registered with the department shall be selected by the department and confirmed by both the complainant and the respondent or counterclaimant after the prospective arbitrator has certified that he or she has no known conflict of interest in the dispute and after each party has had an opportunity to lodge an objection for cause to the appointment of the named arbitrator within five days of its receipt of the notice of appointment of the arbitrator. The notice of appointment shall be in writing and may be transmitted via overnight delivery or by facsimile transmission.

(3) Upon confirmation of the appointment of the arbitrator the department will transmit to the arbitrator the verified complaint, the statement of defense, and the statement of counterclaim, if one is filed.

(4) The complainant shall have 30 days after receipt of the notice of appointment of the arbitrator to submit to the department in writing sworn declarations by witnesses and any other documentary evidence not previously submitted, as well as legal authorities and arguments.

(5) Within five days of the department's receipt of the complainant's written submission the department shall transmit a copy of the complainant's written submission to the respondent. The respondent shall have 30 days from the receipt of the complainant's written submission to submit to the department in writing responsive declarations by witnesses or other documentary evidence not previously submitted,

as well as any legal authorities and arguments. The respondent's written submission in support of its counterclaim, if any, must be sent to the department at the same time as the responsive submission.

(6) If there is a counterclaim filed, within five days of the department's receipt of the counterclaimant's written submission the department shall transmit a copy of the counterclaimant's written submission to the complainant. The complainant shall have 10 days from the receipt of the counterclaimant's written submission to submit any witness statements, evidence or legal authorities and arguments in reply.

(7) Once all periods for submission of evidence and arguments have expired and the department has transmitted all written submissions to the arbitrator, the case and all evidence to be considered by the arbitrator shall be deemed to be submitted.

(8) The arbitrator may, in the interest of justice, briefly extend the time periods for written submissions by either party.

(9) The arbitrator shall issue his or her arbitration decision and award in writing within 30 days after the case has been submitted for a decision. This time period may be extended by the arbitrator if, in his or her judgment, clarification of the evidence submitted is required from either the complainant, the respondent or counterclaimant, or both.

(10) No hearings or live testimony shall be conducted under the expedited arbitration procedures.

(11) The arbitrator shall award interest at the legal rate to be paid in addition to any damages that are awarded and the arbitrator may award the recovery of costs to one party to the arbitration or apportion costs between the parties as he or she deems appropriate. Costs may include filing fees, mediation fees and expenses, fees or expenses incurred by the department, fees paid to expert witnesses, auditors or inspectors, but not attorneys' fees, unless there has been an agreement by the parties that the prevailing party in any dispute shall be entitled to recover reasonable attorneys' fees as part of any award for damages, and in that case, the arbitrator may award reasonable attorneys' fees to the prevailing party.

(h) Either party to an expedited arbitration proceeding conducted pursuant to this section may bring an action in any California court of competent jurisdiction to enforce any awards for damages made pursuant to this section. If an enforcement action is necessary to secure payment of awards for damages, the party initiating the enforcement proceeding shall be entitled to recover all additional expenses, costs and attorneys' fees incurred in connection with that proceeding.

(i) The department shall retain jurisdiction, as provided for under Section 56445, over any matter in which a licensee refuses to pay or otherwise comply with an arbitrator's decision conducted pursuant to

the expedited arbitration procedures as set forth herein, and may immediately commence an action to revoke the license of the licensee.

(j) A complainant may enforce his or her rights through the verified complaint and expedited arbitration process as provided herein, or by a civil action brought in any court of competent jurisdiction. This section shall in no way abridge, preclude, or alter other remedies available to the parties now existing under common law or by statute, and the provisions set forth herein are in addition to those other remedies.

SEC. 18.5. Section 77063 of the Food and Agricultural Code is amended to read:

77063. For the 2006 marketing year, the term of office of all members of the commission, except ex officio members, shall be from the beginning of the marketing year that commences in the year of their election and until qualified successors are elected for the 2009 marketing year. Thereafter, the term of office of all members of the commission, except ex officio members, shall be two years from the beginning of the marketing year in which they are elected and until qualified successors are elected. The same selection procedure shall apply to handler members. Terms of office of each member and alternate member of the commission shall be limited to four consecutive two-year terms.

SEC. 19. Section 78623 of the Food and Agricultural Code is amended to read:

78623. "Districts" shall consist of the following:

(a) District 1 consists of Imperial and Riverside Counties.

(b) District 2 consists of Los Angeles, Orange, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties.

(c) District 3 consists of Fresno, Kern, Kings, and Tulare Counties.

(d) District 4 consists of Monterey County.

(e) District 5 consists of Madera, Merced, and Stanislaus Counties.

(f) District 6 consists of San Joaquin County.

(g) District 7 consists of all counties in the State of California.

The boundaries of any district may be changed by a two-thirds vote of the commission, which is concurred in by the secretary. These boundaries need not coincide with county lines.

SEC. 20. Section 78640 of the Food and Agricultural Code is amended to read:

78640. There is in the state government the California Tomato Commission. The commission shall be composed of 10 producers, seven handlers, and may include one public member, at the discretion of the commission.

(a) Producers within the respective districts shall elect one producer from District 1, one producer from District 2, one producer from District

3, one producer from District 4, one producer from District 5, one producer from District 6, and four at-large producers from District 7.

(b) Handlers within Districts 1 to 6, inclusive, shall elect one handler from each district and one at-large handler from District 7.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) The secretary and other appropriate individuals, as determined by the commission, shall be ex officio members of the commission.

SEC. 21. Section 78700 of the Food and Agricultural Code is amended to read:

78700. (a) The commission shall establish the assessment for the marketing season not later than March 1 of each year or as soon thereafter as is possible. The assessment shall not exceed twenty cents ($0.20) per 100 pounds, or the equivalent, for tomatoes delivered to handlers by producers. Of the assessment, not more than ten cents ($0.10) per 100 pounds prepared for market, or the equivalent, shall be assessed against producers, and not more than ten cents ($0.10) per 100 pounds shall be assessed against handlers.

(b) An assessment greater than the amount provided for in this section may not be charged unless and until a greater fee is approved by a majority of the commission and by eligible producers and handlers pursuant to procedures specified in Section 78691.

SEC. 22. Section 79040 of the Food and Agricultural Code is amended to read:

79040. There is in the state government the California Sea Urchin Commission. The commission shall be composed of 11 voting members, including five sea urchin handlers, five sea urchin divers, and one public member, and may include any number of nonvoting members, at the discretion of the commission.

(a) Handlers shall elect five commission members from among those persons qualified pursuant to this act and licensed pursuant to the Fish and Game Code to engage in the sea urchin fishery or a person specifically representing one or more handlers.

(b) (1) Divers statewide shall elect five persons from among those persons qualified pursuant to this act and licensed pursuant to the Fish and Game Code to engage in the sea urchin fishery.

(2) One diver member shall be elected from each of the following areas:

(A) San Diego County.

(B) Orange or Los Angeles County.

(C) Ventura County.

(D) Santa Barbara County.

(E) Sonoma or Mendocino County.

(3) Persons nominated for election to the commission as a diver member shall be nominated by a petition signed by not less than five divers eligible to vote pursuant to this chapter.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) The secretary and other appropriate individuals, as determined by the commission, shall be nonvoting members of the commission.

(e) If the secretary finds, pursuant to Section 79103, that either the divers or handlers, but not both, have voted in favor of the referendum, the number of commission voting members shall be six, composed of either five divers or five handlers, depending on which portion of the industry voted in favor of the referendum, elected pursuant to this section and one public member.

(f) If the composition of the commission is determined by subdivision (e) it shall also include at least one nonvoting member appointed by the commission representing either divers or handlers, whichever did not vote in favor of the referendum.

SEC. 23. Section 18.5 of this bill shall only become operative if Assembly Bill 393 of the 2005–06 Regular Session is also enacted and becomes operative on or before January 1, 2007.

SEC. 24. 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 Section 77985 of the Food and Agricultural Code, relating to the Cut Flower Commission, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 77985 of the Food and Agricultural Code is amended to read:

77985. (a) The commission shall establish the assessment for the following marketing year not later than January 1 of each year, or as soon thereafter as is possible. The commission shall adopt bylaws that indicate when payment is due.

(b) The assessment for the 1991 marketing year shall not be less than one-half of 1 percent, nor more than 1 percent, of the gross dollar value of flowers grown and shipped by a producer. In any subsequent marketing year, the assessment shall not be more than 1 percent of the gross dollar value of flowers grown and shipped by a producer.

(c) A fee greater than the amount specified in subdivision (b) may not be charged unless approved by the vote specified in Section 77971.

(d) No producer shall be assessed more than one hundred thousand dollars ($100,000) for any marketing year, except that this limitation shall not be applicable for the entire marketing year in which a producer does not comply with the assessment collection requirements established in this article and as prescribed by the commission.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that an agreed upon settlement between the Cut Flower Commission and the producers may be implemented, as soon as possible, in furtherance of the welfare of the cut flower industry in California, it is necessary for this act to take effect immediately.

CHAPTER 501

An act to amend Sections 22962, 22971, and 22980.1 of, to add Sections 22979.21, 22979.22, 22979.23, and 22979.24 to, and to repeal Chapter 7 (commencing with Section 22995) of Division 8.6 of, the Business and Professions Code, to amend Section 308 of, to amend Section 14950 of the Health and Safety Code, to amend and repeal Section 830.11 of, the Penal Code, and to amend Sections 30019, 30142, 30168, 30435, 30473, 30474, 30474.1, and 30475 of, and to repeal Sections 30216 and 30359 of, the Revenue and Taxation Code, relating to cigarettes and tobacco products.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. It is the intent of the Legislature that all manufacturers or importers of blunt wraps place, or cause to be placed, appropriate labels for tobacco products as required by federal law.

SEC. 2. Section 22962 of the Business and Professions Code is amended to read:

22962. (a) For purposes of this section, the following terms have the following meanings:

(1) "Self-service display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

(2) "Tobacco paraphernalia" means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

(3) "Tobacco product" means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(4) "Tobacco store" means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

(B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

(C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) (1) (A) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(B) A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(2) It is unlawful for a person engaged in the retail sale of blunt wraps to place or maintain, or to cause to be placed or maintained, any blunt wraps advertising display within two feet of candy, snack, or nonalcoholic beverage displayed inside any store or business.

(3) It is unlawful for any person or business to place or maintain, or cause to be placed or maintained, any blunt wrap advertising display that is less than four feet above the floor.

(c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in this subdivision.

(d) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(e) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

SEC. 3. Section 22971 of the Business and Professions Code is amended to read:

22971. For purposes of this division, the following terms shall have the following meanings:

(a) "Board" means the State Board of Equalization.

(b) "Importer" means an importer as defined in Section 30019 of the Revenue and Taxation Code.

(c) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(d) "Manufacturer" means a manufacturer of cigarettes or tobacco products sold in this state.

(e) "Retailer" means a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state.

(f) "Retail location" means both of the following:

(1) Any building from which cigarettes or tobacco products are sold at retail.

(2) A vending machine.

(g) "Wholesaler" means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

(h) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(i) "License" means a license issued by the board pursuant to this division.

(j) "Licensee" means any person holding a license issued by the board pursuant to this division.

(k) "Sale" or "sold" means a sale as defined in Section 30006 of the Revenue and Taxation Code.

(*l*) "Tobacco products" means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.

(m) "Unstamped package of cigarettes" means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked "Not for sale in the United States."

(n) "Person" means a person as defined in Section 30010 of the Revenue and Taxation Code.

(o) "Package of cigarettes" means a package as defined in Section 30015 of the Revenue and Taxation Code.

(p) (1) "Control" or "controlling" means possession, direct or indirect, of the power:

(A) To vote 25 percent or more of any class of the voting securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

(2) For purposes of subparagraph (B) of this subdivision, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control such other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(q) "Law enforcement agency" means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

(r) "Brand family" has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

(s) The amendments made to this section by the act adding this subdivision shall become operative May 1, 2007.

SEC. 4. Section 22979.21 is added to the Business and Professions Code, to read:

22979.21. Every manufacturer or importer of tobacco products shall obtain and maintain a license under this division to engage in the sale of tobacco products. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

(a) Submit to the board a list of all tobacco products they manufacture or import.

(b) Update the list of all tobacco products brands they manufacture or import whenever a new or additional brand is manufactured or imported or a listed brand is no longer manufactured or imported.

(c) Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the board.

(d) The Legislature finds that solely appointing a registered agent for the purpose of service of process in this state pursuant to this subdivision does not establish a nexus with this state for tax purposes.

(e) This section shall become operative May 1, 2007.

SEC. 5. Section 22979.22 is added to the Business and Professions Code, to read:

22979.22. (a) An application for a license by a manufacturer or by an importer of tobacco products shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant. For applicants whose corporate offices are at a separate location, the business name, address, and telephone number of the corporate office. Citations issued to licensees shall be forwarded to all addressees on the license.

(2) If any other licenses have been issued by the board to the applicant, the license or permit numbers for each license or permit then in effect.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the

reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars ($1,000), or both imprisonment and fine.

(5) Signature of the applicant.

(6) The name, address, and telephone number of the person designated by the manufacturer or the importer as its agent for receipt of service of process in this state.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application.

(c) The board shall provide electronic means for applicants to download and submit applications.

SEC. 6. Section 22979.23 is added to the Business and Professions Code, to read:

22979.23. (a) Every manufacturer or importer of chewing tobacco or snuff shall submit with each application a one-time license fee of ten thousand dollars ($10,000).

(b) Every manufacturer or importer of tobacco products, excluding chewing tobacco or snuff, shall submit with each application a one-time license fee of two thousand dollars ($2,000).

(c) If a manufacturer or importer is required to submit an application under, and to pay the fees required by, both subdivisions (a) and (b), the total amount of fees required to be submitted under this section shall not exceed ten thousand dollars ($10,000).

SEC. 7. Section 22979.24 is added to the Business and Professions Code, to read:

22979.24. (a) Every manufacturer or importer holding a license pursuant to Section 22979.21 shall file a monthly report to the board, in a manner specified by the board, which may include, but is not limited to, electronic media. The monthly report shall include, but is not limited to, the following:

(1) A list of all distributors licensed pursuant to Section 22975 to which the manufacturer or importer shipped its tobacco products or caused its tobacco products to be shipped.

(2) The total wholesale cost of the products.

(b) The board may suspend the license or revoke the license, pursuant to the provisions applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code, of any importer or

any manufacturer that has failed to comply with the requirements of this section.

(c) All information and records provided to the board pursuant to subdivision (a) are confidential in nature and shall not be disclosed by the board. Information required under subdivision (a) are not public records under the California Public Records Act, as described in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection.

(d) The amendments made to this section by the act adding this subdivision shall become operative May 1, 2007.

SEC. 8. Section 22980.1 of the Business and Professions Code is amended to read:

22980.1. (a) No manufacturer or importer shall sell cigarettes or tobacco products to a distributor, wholesaler, retailer, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(b) (1) Except as provided in paragraph (2), no distributor or wholesaler shall sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) This subdivision does not apply to any sale of cigarettes or tobacco products by a distributor, wholesaler, or any other person to a retailer, wholesaler, distributor, or any other person that the state, pursuant to the United States Constitution, the laws of the United States, or the California Constitution, is prohibited from regulating.

(c) No retailer, distributor, or wholesaler shall purchase packages of cigarettes or tobacco products from a manufacturer or importer who is not licensed pursuant to this division or whose license has been suspended or revoked.

(d) (1) No retailer, or wholesaler shall purchase cigarettes or tobacco products from any person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) Notwithstanding subdivision (c), no distributor shall purchase cigarettes or tobacco products from any person who is required to be licensed pursuant to this division but who is not licensed or whose license has been suspended or revoked.

(e) Each separate sale to, or by, a retailer, wholesaler, distributor, importer, manufacturer, or any other person who is not licensed pursuant to this division shall constitute a separate violation.

(f) No manufacturer, distributor, wholesaler, or importer may sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for cigarette

or tobacco products are paid and the license of that retailer or wholesaler has been reinstated by the board. Any payment received from a retailer or wholesaler shall be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the board. The board shall determine the debt status of a suspended retailer or wholesaler licensee 25 days prior to the reinstatement of the license.

(g) No importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, shall purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with subdivision (b) of Section 30163 of the Revenue and Taxation Code, or any cigarettes obtained from a manufacturer or importer that cannot demonstrate full compliance with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for the reporting of ingredients added to cigarettes.

(h) (1) Failure to comply with the provisions of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

(2) Notwithstanding paragraph (1), a manufacturer or importer who uses the most up-to-date licensing information provided by the board on the board's Web site to determine a person's licensing status is presumed to be in compliance with this section.

(i) The amendments that are made to this section by the act adding this subdivision shall become operative May 1, 2007.

SEC. 9. Chapter 7 (commencing with Section 22995) of Division 8.6 of the Business and Professions Code is repealed.

SEC. 10. Section 14950 of the Health and Safety Code is amended to read:

14950. (a) This part shall be known and may be cited as the California Cigarette Fire Safety and Firefighter Protection Act.

(b) As used in this part, the following terms have the following meanings:

(1) "Board" means the State Board of Equalization.

(2) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code, but does not include a little cigar. "Little cigar" means any roll of tobacco wrapped in a leaf of tobacco or any substance containing tobacco and weighing not more than three pounds per thousand.

(3) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(4) "Manufacturer" means any of the following:

(A) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the

manufacturer intends to be sold in the state, including cigarettes intended to be sold in the United States through an importer.

(B) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States.

(C) An entity that becomes a successor of an entity described in subparagraph (A) or (B).

(5) "Offer to sell" means to offer or agree to sell.

(6) "Package" means package as defined in Section 30015 of the Revenue and Taxation Code.

(7) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in paragraph (5) of subdivision (a) of Section 14952 for all test trials used to certify cigarettes in accordance with this part.

(8) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(9) "Retailer" means a person who engages in the sale of cigarettes, but not for the purpose of resale.

(10) "Sale" or "sell" means any transfer, exchange, or barter, in any manner or by any means whatever, or any agreement for these purposes. The giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money are considered sales.

(11) "Stamp and meter impression" means stamp and meter impression as defined in Section 30018 of the Revenue and Taxation Code.

(12) "Wholesaler" means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

SEC. 11. Section 308 of the Penal Code is amended to read:

308. (a) (1) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or blunts wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars ($200) for the first

offense, five hundred dollars ($500) for the second offense, and one thousand dollars ($1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(2) For purposes of this section, "blunt wraps" means cigar papers or cigar wrappers of all types that are designed for smoking or ingestion of tobacco products and contain less than 50 percent tobacco.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars ($75) or 30 hours of community service work.

(c) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars ($50) for the first offense, one hundred dollars ($100) for the second offense, two hundred fifty dollars ($250) for the third offense, and five hundred dollars ($500)

for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

SEC. 12. Section 830.11 of the Penal Code, as amended by Section 1 of Chapter 190 of the Statutes of 2005, is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(5) Persons employed as investigators and investigator supervisors of the Consumer Services Division or the Rail Safety and Carrier Division of the Public Utilities Commission who are designated by the commission's executive director and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(6) (A) Persons employed by the State Board of Equalization, Investigations Division, who are designated by the board's executive director, provided that the primary duty of these persons shall be the enforcement of laws administered by the State Board of Equalization.

(B) Persons designated pursuant to this paragraph are not entitled to peace officer retirement benefits.

(7) Persons employed by the Department of Food and Agriculture and designated by the Secretary of Food and Agriculture as investigators, investigator supervisors, and investigator managers, provided that the primary duty of these persons shall be enforcement of, and investigations relating to, the Food and Agricultural Code or Division 5 (commencing with Section 12001) of the Business and Professions Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section may not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 13. Section 830.11 of the Penal Code, as amended by Section 2 of Chapter 190 of the Statutes of 2005, is repealed.

SEC. 14. Section 30019 of the Revenue and Taxation Code is amended to read:

30019. "Importer" means any purchaser for resale in the United States of cigarettes or tobacco products manufactured outside of the United States for the purpose of making a first sale or distribution within the United States.

SEC. 15. Section 30142 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 70 of the Statutes of 2006, is amended to read:

30142. (a) The board shall fix the amount of the security required of any distributor and may increase or reduce the amount at any time. A minimum security in the amount of one thousand dollars ($1,000) shall be furnished by every distributor that is required to be licensed.

(b) Except as provided in subdivision (d), if a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, the board shall require a security as follows:

(1) If a distributor elects, under Section 30168, to make payments on a monthly basis, the board shall require a security equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(2) If a distributor elects, under Section 30168, to make payments on a twice-monthly basis, the board shall require a security equal to not less than 50 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(3) If a distributor elects, under Section 30168, to make payments on a weekly basis, the board shall require a security equal to not less than 25 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(c) The security required by the board pursuant to subdivision (b) may be in the form of any of the following, in the amount required by paragraph (1) or (2) of subdivision (b):

(1) Cash, or a cash equivalent.

(2) A surety bond.

(d) Upon authorization by the board, no additional security shall be required for a distributor that desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, if the distributor's average monthly purchase of stamps or meter register settings for the previous 12 months does not exceed seventy-two thousand (72,000) stamps or meter register settings and if the distributor meets all of the following:

(1) Has been licensed under this part for a minimum of five years.

(2) Has not been delinquent in the filing of any reports or returns required under this part for the preceding three consecutive years.

(3) Has not been delinquent in the payment of any tax under this part, or for any other tax or fee administered or collected by the board, for the preceding three consecutive years.

(4) Provides to the board and updates, as necessary, an electronic mail address for the purpose of receiving payment information, including, but not limited to, amounts owing for stamps and meter register settings purchased.

(5) Any other criteria the board may require.

SEC. 16. Section 30168 of the Revenue and Taxation Code, as amended by Section 3 of Chapter 70 of the Statutes of 2006, is amended to read:

30168. (a) Except as provided for in subdivision (c), amounts owing for stamps and meter register settings purchased on the deferred-payment basis shall be due and payable based on the distributor's election to make the payment pursuant to subdivision (b). Payment shall be made by a remittance payable to the board.

(b) A distributor shall elect to make the payment required by subdivision (a) on either a monthly, a twice-monthly, or a weekly basis. An election made pursuant to this subdivision shall remain in effect for at least one year from the date the election is made. If the board finds that good cause exists for a distributor's inability to maintain the election for the full year, the board shall authorize the distributor to make a new election, as otherwise authorized by this subdivision, prior to the expiration of the one-year period following the prior election.

(1) If a distributor elects to make the payment required by subdivision (a) on a monthly basis, the distributor shall remit the payment on or before the 25th day of the month following the month in which the stamps and meter register settings were purchased.

(2) If a distributor elects to make the payment required by subdivision (a) on a twice-monthly basis, the distributor shall make two remittances during the month following the month in which the stamps and meter register settings were purchased. The first monthly remittance shall be made on or before the fifth day of the month and shall be equal to either one-half of the total amount of those purchases of stamps and meter register settings that were made during the preceding month or the total amount of those purchases of stamps and meter register settings that were made between the first day and the 15th day of the preceding month, whichever is greater. The second monthly remittance shall be made on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

(3) If a distributor elects to make the payment required by subdivision (a) on a weekly basis, the distributor shall remit the payment on or before Wednesday following the week in which the stamps and meter register settings were approved and released. Every distributor electing to make payment on a weekly basis shall provide to the board and update, as necessary, an electronic mail address for the purpose of receiving payment information, including but not limited to, amounts owing for stamps and meter register settings purchased.

(c) Amounts owing for stamps and meter register settings purchased on the deferred-payment basis without a security pursuant to subdivision

(d) of Section 30142 shall be due and payable on or before Wednesday following the week in which the stamps and meter register settings were purchased. Payment shall be made by a remittance payable to the board.

SEC. 17. Section 30216 of the Revenue and Taxation Code is repealed.

SEC. 18. Section 30359 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 30435 of the Revenue and Taxation Code is amended to read:

30435. (a) An employee of the board, upon presentation of the appropriate identification and credentials, is authorized to enter into, and conduct an inspection of any building, facility, site, or place described in subdivision (b).

(b) Any building, facility, site, or place at which cigarette or tobacco products are sold, produced, or stored, or any building, facility, site, or place for which there is evidence of either the evasion of the taxes imposed under this part, or the failure to comply with the requirements of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code, including, but not limited to, Section 30165.1.

(c) Any inspection performed under the authority of this section shall be performed in a reasonable manner and at a reasonable time, taking into consideration the normal business hours of the building, facility, site, or place that is inspected.

(d) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 30471.

SEC. 20. Section 30473 of the Revenue and Taxation Code is amended to read:

30473. Any person who falsely or fraudulently makes, forges, alters, reuses or counterfeits any stamp or meter impression provided for or authorized under this part, or tampers with any metering machine authorized under this part, or causes or procures to be falsely or fraudulently made, forged, altered, reused, or counterfeited, any such stamp or meter impression or knowingly and willfully utters, publishes, passes, or tenders as genuine any such false, forged, altered, reused, or counterfeited stamp or meter impression, for the purpose of evading the tax imposed by this part, is guilty of a felony and subject to imprisonment for two, three, or four years, or to a fine of not less than one thousand dollars ($1,000) and not more than twenty-five thousand dollars ($25,000), or to both fine and imprisonment.

SEC. 21. Section 30474 of the Revenue and Taxation Code is amended to read:

30474. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed twenty-five thousand dollars ($25,000), or be imprisoned for a period not to exceed one year in the county jail, or, at the discretion of the court, be subject to both fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars ($100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

(c) This section does not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

SEC. 22. Section 30474.1 of the Revenue and Taxation Code is amended to read:

30474.1. (a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit tobacco products, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, wholesaler, or retailer shall result in the seizure of the product by the board or any law enforcement agency and shall constitute a misdemeanor punishable as follows:

(1) A violation with a total quantity of less than two cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000), or imprisonment not to exceed one year in a county jail, or both fine and imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesale license.

(2) A violation with a quantity of two cartons of cigarettes or more shall be a misdemeanor punishable by a fine not to exceed fifty thousand dollars ($50,000) or imprisonment not to exceed one year in a county jail, or both fine and imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesaler license.

(b) A court shall consider a defendant's ability to pay when imposing fines pursuant to this section.

(c) For the purposes of this section, counterfeit cigarette and tobacco products include cigarette and tobacco products that have false manufacturing labels, false or fraudulent stamps or meter impressions, or a combination thereof.

(d) The board shall seize and destroy any cigarettes or other tobacco products forfeited to the state under this section.

SEC. 23. Section 30475 of the Revenue and Taxation Code is amended to read:

30475. (a) Any transporter who transports cigarettes or tobacco products upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars ($1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

(b) Any transporter who, with intent to defeat or evade or with intent to aid another to defeat or evade the taxes imposed by this part, at any given time transports 40,000 or more cigarettes or tobacco products with a value of five thousand dollars ($5,000) or more upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 shall be punished by imprisonment in the county jail for not more than one year, or in the state prison, or by fine of not more than twenty-five thousand dollars ($25,000), or be subject to both fine and imprisonment in the discretion of the court.

SEC. 24. The Legislature finds and declares that Section 7 of this act, which amends Section 22979.24 of the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow for the State Board of Equalization to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to the board to ensure that any business or trade secrets that are required to be submitted by those persons by this act be protected as confidential information.

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 Sections 8575, 8576, 8579, 8612, and 8613 of, to amend and renumber Sections 8580 and 8581 of, and to add Section 8581.5 to, the Government Code, and to amend Section 3211.91 of the Labor Code, relating to emergency services.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 8575 of the Government Code is amended to read:

8575. (a) There is hereby created a California Emergency Council, to consist of all of the following members:

(1) The Governor, or an alternate appointed by him or her.

(2) The Lieutenant Governor, or an alternate appointed by him or her.

(3) The Attorney General, or an alternate appointed by him or her.

(4) One representative of the city governments of the state and one representative of the county governments of the state, to be appointed by the Governor and to serve at his or her pleasure, except that these members shall be from different counties.

(5) One representative of the American National Red Cross, to be appointed by the Governor.

(6) One representative of the city or county fire services of the state and one representative of the city or county law enforcement services of the state, to be appointed by the Governor and to serve at his or her pleasure, except that these members shall be from different counties.

(7) One representative of a local public health agency, to be appointed by the Governor and to serve at his or her pleasure.

(b) The President pro Tempore of the Senate and the Speaker of the Assembly shall meet with and participate in the work of the Emergency

Council to the same extent as members of the council appointed by the Governor, except when that participation is constitutionally incompatible with their respective positions as Members of the Legislature.

(c) If the President pro Tempore of the Senate does not desire to serve on the Emergency Council, the Senate Rules Committee may appoint a Member of the Senate to serve in his or her stead. If the Speaker of the Assembly does not desire to serve on the Emergency Council, he or she may appoint a Member of the Assembly to serve in his or her stead.

SEC. 2. Section 8576 of the Government Code is amended to read:

8576. (a) The Governor shall be ex officio Chairperson of the Emergency Council.

(b) The Office of Emergency Services shall provide staff support to the Emergency Council as necessary.

SEC. 3. Section 8579 of the Government Code is amended to read:

8579. (a) It shall be the duty of the Emergency Council, and it is hereby empowered, to act as an advisory body to the Governor in times of emergency and with reference thereto in order to minimize the effects of those occurrences by recommending ameliorative action.

(b) The powers and duties of the Emergency Council shall include all of the following:

(1) To consider, recommend, and approve orders and regulations that are within the province of the Governor to promulgate.

(2) To consider and recommend to the Governor for approval the boundaries of any mutual aid regions of the state as may be designated.

(3) To recommend to the Governor the assignment of any responsibility, service, or activity relative to emergencies or emergency planning to a state agency having duties related to that responsibility, service, or activity.

(4) To consider and recommend the creation by the Governor of advisory committees in order to make civilian participation and cooperation in emergency planning and activities available to the state.

(5) To consider and recommend the expenditures of moneys appropriated for any of the objectives or purposes of this chapter.

(6) To consider and recommend to the Governor for approval a State Emergency Plan built around mutual aid and the integration into that plan of the several state agencies whose resources are necessary in coping with emergencies.

(7) To encourage the development and maintenance of emergency plans based on mutual aid, whereunder political subdivisions may most effectively protect life and property and mitigate other effects of emergencies.

(8) To evaluate and report to the Governor on state communications systems with particular regard to their adequacy in case of emergency.

(9) To encourage the individual and integrated emergency preparedness efforts of communities, businesses, and schools.

(c) (1) The Emergency Council shall, at a minimum, have the following two standing advisory committees, with members selected by the Governor:

(A) An advisory committee composed of representatives of volunteer organizations that aid or prepare their communities for potential disasters.

(B) An advisory committee composed of the business leaders representing businesses in the state that will work in partnership with government to prepare businesses and communities for potential disasters.

(2) The duties of the advisory committees shall include, but not be limited to, all of the following:

(A) Developing and promoting statewide initiatives and programs to better prepare communities, businesses, and schools to survive disasters.

(B) Advising the Emergency Council on how public, private, and nonprofit entities can provide resources, assets, personnel, volunteers, and any other relevant services to fully integrate the private sector into the state's emergency preparedness, mitigation, response, and recovery plans.

(C) Advising the Emergency Council on appropriate agreements to provide for quick access to emergency supplies and services in order to minimize the need to stockpile those supplies.

(3) The members of the advisory committees shall receive no compensation for their service.

(d) When the Emergency Council is not meeting, the Office of Emergency Services shall provide notice to the members of the council of any state of emergency proclaimed by the Governor pursuant to Section 8558, as soon as practical after the issuance of the proclamation. The notification shall include the status of emergency activities.

SEC. 4. Section 8580 of the Government Code is amended and renumbered to read:

8585.5. The Office of Emergency Services shall establish by rule and regulation various classes of disaster service workers and the scope of the duties of each class. The Office of Emergency Services shall also adopt rules and regulations prescribing the manner in which disaster service workers of each class are to be registered. All of the rules and regulations shall be designed to facilitate the payment of workers' compensation.

SEC. 5. Section 8581 of the Government Code is amended and renumbered to read:

8585.7. The Office of Emergency Services may certify the accredited status of local disaster councils, subject to the requirements of Section 8612.

SEC. 6. Section 8581.5 is added to the Government Code, to read:

8581.5. The Emergency Council shall publish a biennial report on the state of emergency preparedness for catastrophic disasters. This report shall include information from the after action analysis of disasters in the preceding two years, research directed by the Emergency Council, and surveys of local and state emergency response agencies. The biennial report shall also include a summary of strategic actions necessary to address identified gaps in emergency preparedness and an evaluation of previous efforts to close gaps identified in previous reports, audits, and independent analyses.

SEC. 7. Section 8612 of the Government Code is amended to read:

8612. Any disaster council that both agrees to follow the rules and regulations established by the Office of Emergency Services pursuant to Section 8585.5 and substantially complies with those rules and regulations shall be certified by the office. Upon that certification, and not before, the disaster council becomes an accredited disaster council.

SEC. 8. Section 8613 of the Government Code is amended to read:

8613. Should an accredited disaster council fail to comply with the rules and regulations of the Office of Emergency Services in any material degree, the office may revoke its certification and, upon the act of revocation, the disaster council shall lose its accredited status. It may again become an accredited disaster council in the same manner as is provided for a disaster council that has not previously been accredited.

SEC. 9. Section 3211.91 of the Labor Code is amended to read:

3211.91. "Accredited disaster council" means a disaster council that is certified by the Office of Emergency Services as conforming with the rules and regulations established by the office pursuant to Article 10 (commencing with Section 8610) of Chapter 7 of Division 1 of Title 2 of the Government Code. A disaster council remains accredited only while the certification of the Office of Emergency Services is in effect and is not revoked.

CHAPTER 503

An act to amend Section 9147.5 of the Government Code, relating to harbors and ports.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 9147.5 of the Government Code is amended to read:

9147.5. (a) Notwithstanding Section 7550.5, the Director of Homeland Security, in collaboration with the State Department of Health Services, shall, on or before February 1 of each year, report to the chairperson of the Joint Legislative Budget Committee, the chairperson of the transportation committee of each house of the Legislature, and the chairperson of the budget committee of each house of the Legislature, on their respective expenditures of federal homeland security and bioterrorism funds.

(b) The report shall include all of the following information:

(1) Descriptions of grant expenditures and coordination activities at the state and local level that have occurred over the past fiscal year.

(2) How those activities met the state's strategic goals and objectives.

(3) Funding amounts awarded to state and local agencies.

(4) Funding levels by grant and grant year, designating which funds have been expended or encumbered, or remain unencumbered.

(5) Any challenges encountered by state or local agencies that hindered their expenditure of the funds.

(6) Areas of focus for the upcoming fiscal year.

(c) The report shall also include information on the policies, projects, and funding necessary to protect the state's harbor facilities, port facilities, and the commercial marine transportation sector from terrorist attack.

(1) The director shall consult with representatives of federal, state, and local governments, harbor facilities, port facilities, the marine trade industry, the commercial marine transportation industry, marine transportation labor organizations, businesses located near harbors or ports, and residents residing near harbors or ports.

(2) For purposes of this subdivision the report shall do all of the following:

(A) Identify existing sources and amounts of funding.

(B) Identify the unmet funding need.

(C) Provide specific and verifiable information regarding the percentage of marine cargo containers that receive one or more of the following:

(i) Technical screening.

(ii) Hand inspection.

(iii) Transport tracking by technical or other means.

(d) Nothing in this section shall be construed to require the Director of Homeland Security or the State Department of Health Services to disclose or include classified information.

CHAPTER 504

An act to amend Section 43501 of, and to add Article 4 (commencing with Section 43050) to Chapter 1 of Part 4 of Division 30 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Article 4 (commencing with Section 43050) is added to Chapter 1 of Part 4 of Division 30 of the Public Resources Code, to read:

Article 4. Long-Term Threats to Landfills

43050. (a) On or before January 1, 2008, the board shall conduct a study to define the conditions that potentially affect solid waste landfills, including technologies and engineering controls designed to mitigate potential risks, in order to identify potential long-term threats to public health and safety and the environment. The board shall also study various financial assurance mechanisms that would protect the state from long-term postclosure and corrective action costs in the event that a landfill owner or operator fails to meet its legal obligations to fund postclosure maintenance or corrective action during the postclosure period. The board, on or before July 1, 2009, shall adopt regulations and develop recommendations for needed legislation to implement the findings of the study.

(b) In conducting the study described in subdivision (a), the board shall consult with representatives of the League of California Cities, the County Supervisors Association of California, private and public waste services, and environmental organizations.

SEC. 2. Section 43501 of the Public Resources Code is amended to read:

43501. (a) A person owning or operating a solid waste landfill, as defined in Section 40195.1, shall do both of the following:

(1) Upon application to become an operator of a solid waste facility pursuant to Section 44001, certify to the board and the local enforcement agency that all of the following have been accomplished:

(A) The owner or operator has prepared an initial estimate of closure and postclosure maintenance costs.

(i) The board shall adopt regulations that provide for an increase in the initial closure and postclosure maintenance cost estimates to account for cost overruns due to unforeseeable circumstances, and to provide a reasonable contingency comparable to that which is built into cost estimates for other, similar public works projects.

(ii) The board shall adopt regulations on or before January 1, 2008, that require closure and postclosure maintenance cost estimates to be based on reasonably foreseeable costs the state may incur if the state would have to assume responsibility for the closure and postclosure maintenance due to the failure of the owner or operator. Cost estimates shall include, but not be limited to, estimates in compliance with Sections 1770, 1773, and 1773.1 of the Labor Code, and the replacement and repair costs for longer lived items, including, but not limited to, repair of the environmental control systems.

(B) The owner or operator has established a trust fund or equivalent financial arrangement acceptable to the board, as specified in Article 4 (commencing with Section 43600).

(C) The amounts that the owner or operator will deposit annually in the trust fund or equivalent financial arrangement acceptable to the board will ensure adequate resources for closure and postclosure maintenance.

(2) Submit to the regional water board, the local enforcement agency, and the board a plan for the closure of the solid waste landfill and a plan for the postclosure maintenance of the solid waste landfill.

(b) Notwithstanding subparagraph (C) of paragraph (1) of subdivision (a) or any other provision of law, if the owner or operator is a county with a population of 200,000 or less, as determined by the 1990 decennial census, the county shall not be required to make annual deposits in excess of the amount required by the federal act or any other applicable federal law, or by any board-approved formula that meets the requirements of the federal act.

(c) If not in conflict with federal law or regulations, a county or city may, with regard to a solid waste landfill owned or operated by the county or city, base its estimate of closure and postclosure maintenance costs on the costs of employing county or city employees or persons under contract with the county or city in performing closure and postclosure maintenance. However, even if, to meet federal requirements, the cost estimate is based on the most expensive costs of closure and postclosure maintenance performed by a third party, the county or city

may, to effect cost savings, employ county or city employees or employ persons under contract to actually perform closure operations or postclosure maintenance operations.

CHAPTER 505

An act to amend Sections 61384, 62095.1, 62521, 62560, 62561, 62563, 62564, 62574, and 62707 of, and to add Section 62580.5 to, the Food and Agricultural Code, relating to milk, and making a appropriation therefor.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 61384 of the Food and Agricultural Code is amended to read:

61384. (a) The sale by any retailer, wholesale customer, manufacturer, or distributor, including any producer-distributor or nonprofit cooperative association acting as a distributor, of milk, cream, or any dairy product at less than cost is an unlawful practice. This subdivision applies to finished products, and does not apply to sales of bulk milk between handlers.

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

(1) "Cost," as applied to manufacturers and distributors, means the total consideration paid or exchanged for raw product, plus the total expense incurred for manufacturing, processing, handling, sale, and delivery.

(2) "Cost," as applied to wholesale customers, means the invoice price charged to the wholesale customer, or the expense of replacement, whichever is lower, plus the wholesale customer's cost of doing business.

(3) "Cost of doing business," as applied to wholesale customers, means a wholesale customer's total operating expense divided by the customer's total sales income.

(4) (A) Except as provided in subparagraph (B), "total consideration paid or exchanged for raw product," in the case of market milk or market cream, means the applicable minimum price of the market milk or market cream, if any, payable by distributors to producers pursuant to stabilization or marketing plans in effect pursuant to Chapter 2 (commending with Section 61801).

(B) Notwithstanding subparagraph (A), in situations involving sales on a bid basis to public agencies or institutions, the definition in subparagraph (A) shall only apply to market milk or market cream that is utilized for class 1 purposes, as those purposes are defined in Chapter 2 (commencing with Section 61801).

(c) Proof of cost, based on audits or surveys conducted in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, and modified, if necessary, to satisfy the requirements of this section, shall establish a rebuttable presumption of that cost at the time of the transaction of any sale. This presumption is a presumption affecting the burden of proof, but it does not apply in a criminal action.

(d) Nothing in this section shall be deemed to prohibit any of the following activities:

(1) The meeting, in good faith, of a lawful competitive price or a lawful competitive condition.

(2) A distributor's action in making conditional sales of equipment or other property, extending credit for merchandise purchased, or paying a customer's obligations not otherwise prohibited by this chapter to another distributor in connection with the transfer of the customer's business from the latter to the former.

(e) The secretary shall establish, by regulation pursuant to Section 61341, the procedures which shall be used to make the determinations required by this section, including the following:

(1) Any modifications to the generally accepted accounting principles described in subdivision (c) necessary to satisfy the requirements of this section.

(2) Procedures for evaluating efforts to meet lawful competitive prices or conditions.

(3) Other procedures necessary or appropriate to facilitate the application or enforcement of this section.

SEC. 2. Section 62095.1 of the Food and Agricultural Code is amended to read:

62095.1. The payment by a handler, either directly or indirectly, of less than the minimum producer price established under the applicable stabilization and marketing plan adopted pursuant to this chapter, is an unlawful trade practice. This section does not apply to sales of bulk milk between handlers.

SEC. 3. Section 62521 of the Food and Agricultural Code is amended to read:

62521. For purposes of this chapter, the following terms mean:

(a) "Acceptable security" means a surety bond from an admitted surety insurer, deposits of government securities, a letter of credit, or

other form of performance guarantee acceptable to the secretary and meeting the requirements as acceptable security pursuant to law. Letters of credit and any other instrument used as acceptable security shall contain provisions the secretary may prescribe, shall have an effective life of no less than five years, shall be verified to the secretary as effective by September 1 of each year preceding each calendar year for which the instrument serves as security, shall name the secretary as the beneficiary of the instrument, shall be clean and irrevocable, and shall provide that the secretary may draw upon it up to the total amount in the event of a handler payment default. Any interest accrued by the instrument shall be the property, and for the benefit, of the handler posting the instrument. Acceptable securities provided to the secretary shall not be released by the secretary unless the handler's average monthly purchases, as determined annually by the secretary, fall below thirty million dollars ($30,000,000).

(b) "Board" means the Milk Producers Security Trust Fund Board.

(c) "Covered milk" means milk that would, in the event of a default in payment by the purchasing handler, qualify for coverage under Article 5 (commencing with Section 62580) of Chapter 2.5 of Part 3.

(d) "Fund" means the Milk Producers Security Trust Fund created pursuant to Section 62506.

(e) "Fund cash" means the combined value of the security charges collected pursuant to Section 62561 and any increments received pursuant to Section 62573.

(f) (1)Except as provided in paragraph (2), "fund surplus" means the portion of fund cash at any particular time that consists of increments received by the fund pursuant to Section 62573.

(2) If payment of producer claims pursuant to Article 7 (commencing with Section 62620) reduces the fund cash to thirty million dollars ($30,000,000), "fund surplus" shall thereafter mean the amount by which the fund cash exceeds thirty million dollars ($30,000,000).

(g) "Handler" means any person who as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of milk in unprocessed or bulk form from a producer or a producer-handler for the purpose of manufacturing, processing, selling, or other handling. It includes cooperative associations that, either directly or indirectly, receive, purchase, or otherwise acquire ownership, possession, or control of milk from other handlers or producers who are nonmembers of the cooperative.

(h) "Milk" means bulk whole milk, bulk reduced-fat milk, bulk lowfat milk, bulk skim milk, bulk condensed skim, and bulk cream, and any other combination of these products which have not had nondairy

ingredients added. It does not include milk which has been packaged in bottles, cartons, dispenser cans, or other consumer packages.

(i) "Producer" means any person that produces milk from five or more cows whose bulk milk is received, acquired, or handled by a handler. It includes the nonprofit cooperative associations described in Article 3 (commencing with Section 61871) of Chapter 2 in the sale of milk of its member producers to other handlers.

SEC. 4. Section 62560 of the Food and Agricultural Code is amended to read:

62560. (a) The security charges provided for in Section 62561 shall be collected until January 1, 2007. Unless otherwise permitted by this section, the secretary shall thereafter discontinue collection of the security charges. The fund shall consist of the security charges collected, the value of any alternative financial instrument, and acceptable securities provided by handlers pursuant to subdivision (c).

(b) If, after January 1, 2007, payment of producer claims reduces the fund cash below thirty million dollars ($30,000,000), the secretary may resume collecting security charges in order that the fund cash is thereafter maintained at thirty million dollars ($30,000,000). Security charges necessary to return the fund cash to thirty million dollars ($30,000,000) shall, subject to subdivision (c), be collected from all handlers making purchases of milk, including handlers who have posted acceptable securities pursuant to subdivision (c).

(c) If, in any month, 110 percent of any handler's average monthly milk purchases, computed over the preceding 12 months, unless the increase in value of milk purchases is the result of substantial business expansion or the result of a merger or acquisition, in which case the 12-month computation requirement does not apply, exceeds the fund cash as of the end of that month, or thirty million dollars ($30,000,000) whichever is higher, the secretary shall require that handler to provide acceptable securities within 10 working days in an amount equal to the difference between the fund cash or thirty million dollars ($30,000,000) whichever is higher, and 110 percent of that handler's average monthly milk purchases. When handlers have provided acceptable securities covering the difference, the secretary shall not collect security charges from those handlers for the portion of their average monthly milk purchases covered by acceptable securities. Shipments to handlers failing to provide acceptable securities within 10 working days of notice by the secretary of the obligation to post acceptable securities, as required by this subdivision, shall be listed by the secretary as ineligible for coverage under the fund pursuant to Section 62586.

(d) The secretary shall calculate the value of milk handlers' average monthly milk purchases at least once each year for those handlers whose

previous average monthly milk purchases exceed twenty million dollars ($20,000,000). If, as a result of any such calculation, the secretary determines that a handler must provide additional acceptable securities to satisfy the requirements of subdivision (c), that handler shall provide additional acceptable securities within 10 working days of notice by the secretary.

(e) In the event a handler fails to comply with subdivision (d):

(1) In addition to paying all other amounts required by this chapter, including any security charges then in effect under subdivision (a) of Section 62561, that handler shall pay an enhanced security charge on all purchased milk to be computed as follows:

(A) (i) One and seven-tenths mills per pound ($0.0017) for class 1 fat.

(ii) Nine-tenths mills per pound ($0.0009) for class 1 solids-not-fat.

(iii) One-tenth mill per pound ($0.0001) for class 1 fluid.

(B) (i) Three and two-tenths mills per pound ($0.0032) for classes 2, 3, 4a, and 4b fat.

(ii) One and three-tenths mills per pound ($0.0013) for classes 2, 3, 4a, and 4b solids-not-fat.

(2) A handler shall be liable for the enhanced security charges required by this section until the handler provides the required additional acceptable securities to the secretary. Notwithstanding Section 62521 and subdivision (b) of this section, enhanced security charges paid pursuant to this paragraph shall be deposited into the trust fund and become part of the fund cash.

(f) If a handler fails to timely provide acceptable securities, or additional acceptable securities, as required by this section, the secretary shall promptly give notice of that fact to all producers who have a contract on file with the secretary, all cooperative associations, and other interested parties. A handler failing to post acceptable securities may also be subject to revocation, suspension, or nonrenewal or placement of conditions upon the milk handler's license pursuant to Sections 62146, 62149, and 62151.

(g) In consultation with the Milk Producers Security Trust Fund Advisory Board, the secretary may consider and use alternative financial instruments, in addition to, or in lieu of, using security charges to meet the financial security requirements of this section.

SEC. 5. Section 62561 of the Food and Agricultural Code is amended to read:

62561. (a) The following security charges shall be in effect for any period for which the secretary has implemented collections under this chapter:

(1) (A) One and seven-tenths mills per pound ($0.0017) for class 1 fat.

(B) Nine-tenths mills per pound ($0.0009) for class 1 solids-not-fat.

(C) One-tenth mill per pound ($0.0001) for class 1 fluid.

(2) (A) Three and two-tenths mills per pound ($0.0032) for classes 2, 3, 4a, and 4b fat.

(B) One and three-tenths mills per pound ($0.0013) for classes 2, 3, 4a, and 4b solids-not-fat.

(b) The secretary shall add the security charges to the prices established for all classes of milk in accordance with Chapter 2 (commencing with Section 61801). The secretary is only authorized by this article to collect security charges on covered milk.

SEC. 6. Section 62563 of the Food and Agricultural Code is amended to read:

62563. Any handler subject to any pooling plan in effect under Chapter 3 (commencing with Section 62700) shall continue to be obligated for the minimum prices provided for in the stabilization and marketing plans on the pooled usage of the handler. However, any part of the minimum prices that is attributable to the security charges established pursuant to Section 62561 shall be deducted before producer prices are determined under the pooling plan.

Any handler subject to the pooling plan that receives milk that is not included in the calculation of producer prices determined under the pooling plan shall be obligated to pay the security charges established pursuant to Section 62561 for any portion of that milk that is assigned to class 1, class 2, class 3, class 4a, and class 4b usage.

The amount of any handler's obligation attributable to the security charges established pursuant to Section 62561 shall be remitted by the secretary to the fund by the end of the month following the month the pool calculations were completed.

SEC. 7. Section 62564 of the Food and Agricultural Code is amended to read:

62564. Any handler receiving milk not subject to any pooling plan in effect pursuant to Chapter 3 (commencing with Section 62700) shall be obligated to remit to the secretary any security charges in effect pursuant to Section 62561 for class 1, class 2, class 3, class 4a, and class 4b products produced from the milk and may deduct the security charges from the minimum prices required to be paid to producers.

SEC. 8. Section 62574 of the Food and Agricultural Code is amended to read:

62574. Immediately following the payment to the fund of the increment provided in Section 62573, if the secretary determines that there is a fund surplus, the secretary may, after consultation with the

Trust Fund Board, transfer an amount equal to the increment referenced in the section to an account administered by the Dairy Marketing Branch of the department to be used to reduce the producer and handler assessments that would otherwise be imposed pursuant to Article 14 (commencing with Section 62211) of Chapter 2. One-half of the increment so transferred shall be used to reduce the obligation of producers and one-half shall be used to reduce the obligation of handlers pursuant to that article.

SEC. 9. Section 62580.5 is added to the Food and Agricultural Code, to read:

62580.5. Any producer entity, including a nonprofit cooperative that severs a disqualifying beneficial-ownership interest in a handler to which it supplies bulk milk, shall not have trust fund coverage for future milk shipments to that handler for a period of 12 months after notice is given to the secretary of termination of the beneficial ownership interest unless a waiver is granted subject to Section 62587.

SEC. 10. Section 62707 of the Food and Agricultural Code is amended to read:

62707. The formulation committee shall make recommendations to the secretary for inclusion in the pooling plan, and the secretary shall include in the pooling plan, all of the following:

(a) The establishment of one or more pools throughout the state.

(b) (1) The base period to be used in determining the production and class 1 usage bases of each producer directly affected by the pooling plan. The base period shall, at the producer's option, be his or her fluid milk production and usage in the pool area during the calendar year 1967 on an average daily basis or his or her production and usage in the pool area during the last six months of 1966 on an average daily basis.

(2) As to a producer south and east of San Gorgonio Pass, his or her production base may, at his or her option, be four times his or her production in the months of December 1966, and January and February 1967.

(3) If a producer, during any base period, had a valid contract with a distributor, or as a member of a cooperative association had an allocation, that provided that the distributor or cooperative association was required to accept a larger amount of fluid milk from the producer than the producer actually produced during the period, on proof satisfactory to the secretary of the contract or allocation, the producer may, at his or her option, have the amount specified in the contract or allocation established as his or her production base.

(c) The establishment of a class 1 usage for each producer, which shall be the amount of his or her production of fluid milk accounted for

as class 1, and any fluid milk sold for use as class 1 to a United States military installation but that was not accounted for as class 1.

(d) The allocation to each producer within any pool of a pool quota, which, initially, shall be 110 percent of that producer's class 1 usage, as determined in subdivision (c).

(e) (1) The determination of new class 1 usage and the allocation of pool quota based thereon in a manner consistent with effectuating the purposes of this chapter.

(2) All producers who have not reached the equalization point shall share in the allocation of pool quota on the basis of a formula that gives substantial weight to each producer's production base, but that, at the same time, allocates a larger percentage to hardship cases and low class 1 usage producers.

(3) The allocations shall be made on the basis of each individual producer, with each cooperative association considered as a single producer. The cooperative associations of producers shall reassign any new quota to their own members subject to Section 62710.

(4) Annually, within no more than four months after August 31 of each year, the pool quota shall be adjusted by each component to reflect any additional pool quota. Any increase in pool quota shall be determined from the amount of new class 1 and class 2 solids not fat usage that developed during the preceding annual period which exceeded the previous highest identical annual period since the 1988–89 fiscal year.

There shall be no downward adjustment of pool quota below the quota initially established pursuant to this chapter.

(f) The establishment of production bases and pool quotas for new fluid milk producers who wish to enter the pooling plan after the effective date of the plan. The recommendations of the committee shall be reasonably equitable to both the new producers and to participating producers and consistent with effectuating the purposes of this chapter.

(g) The transfer of production bases and pool quotas from one fluid milk producer to another under conditions so designed as to prevent abuses in the transfers and to avoid the development of excessive values for the bases and quotas.

(h) Notwithstanding Section 62711, any provision which may be necessary to encourage the availability of market milk for those usages for that class 1 and class 2 milk is mandatory.

(i) Any governmental agency that produces, processes, and consumes in its own facilities only its own production shall not be a pool plant. The plant shall operate outside the pool for accounting and settlement purposes unless the plant notifies the secretary of its election to participate in the pool. Any production of such a governmental agency

that is transferred or diverted to a pool plant shall be classified for the purpose of settlement at the class 4a or class 4b price, whichever is lower.

(j) Any and all other matters necessary and desirable to effectuate the provisions of this chapter.

The recommendations of the formulation committee and the pooling plan may provide exceptions from the plan's general application for individual cases of hardship.

CHAPTER 506

An act to add and repeal Section 13292.5 of the Government Code, relating to state agencies.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 13292.5 is added to the Government Code, to read:

13292.5. (a) No later than October 31 of each year, each state agency listed in subdivision (d) shall submit a report to the director that identifies and describes the status of that agency's liquidated and delinquent accounts as of the end of the previous fiscal year and efforts made by that agency to collect these accounts during that previous fiscal year. The report shall identify receivables that are valid and collectible. For this purpose, "valid" means due and payable and for which there is no known disagreement about the amount of the claim at the time it was established, and "collectible" means due and payable and for which collection has not been deferred by any other provision of law. The report shall be in a form prescribed by the director and shall include, by state agency, but not be limited to, a summary of the total of all of the following:

(1) The total number and aggregate dollar amount of liquidated and delinquent accounts.

(2) Liquidated and delinquent accounts, by total number and aggregate dollar amount, that were not included in the annual report for the immediately preceding fiscal year.

(3) Aggregate beginning balance and aggregate ending balance of all liquidated accounts and of all delinquent accounts.

(4) Aggregate dollar amount of moneys paid on liquidated and delinquent accounts.

(5) Total amount and total number of liquidated and delinquent accounts that have been discharged from accountability.

(6) Total dollar amount of liquidated and delinquent accounts turned over to private collection agencies and total amount collected by those agencies for the fiscal year that is the subject of the report.

(7) An aging of the liquidated and delinquent accounts included in the report, which, at a minimum, shall identify the total number and aggregate dollar amount of liquidated and delinquent accounts that are within the following time periods after the obligation was first due to a state agency:

(A) From 180 to 365 days.

(B) From 366 to 545 days.

(C) More than 545 days.

(b) No later than February 28 of each fiscal year, the director shall submit to the Legislature a report on the status of liquidated and delinquent accounts of state agencies, which shall be based on the reports submitted by state agencies pursuant to subdivision (a).

(c) As used in this section, "liquidated and delinquent accounts" means any loans, accounts receivable, fines, assessments, penalties, or other monetary obligation owed to a state agency that is unpaid for 180 or more days after the obligation was first due to that state agency.

(d) Subdivision (a) shall apply to all of the following state agencies:

(1) State Board of Equalization.

(2) Franchise Tax Board.

(3) State Lands Commission.

(4) Department of General Services.

(5) Department of Motor Vehicles.

(6) Department of Real Estate.

(7) Department of Corporations.

(e) A state agency shall not enter into a contract with a private nongovernmental collection agency to perform the functions required of a state agency under this section.

(f) The agencies listed in subdivision (d) and the department shall use existing resources to comply with the requirements of this section, which shall apply only if sufficient resources are available for this purpose.

(g) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 507

An act to amend Sections 366 and 383 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 366 of the Streets and Highways Code is amended to read:

366. (a) Route 66 is from Route 210 near San Dimas to Route 215 in San Bernardino.

(b) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Fontana, the City of Rancho Cucamonga, and the City of Upland the respective portion of Route 66 that is located within the city limits or the sphere of influence of each city, upon terms and conditions the commission finds to be in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the recordation by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 66 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 66 relinquished under this subdivision may not be considered for future adoption under Section 81.

(c) The city shall ensure the continuity of traffic flow on the relinquished portion of Route 66, including any traffic signal progression.

(d) For relinquished portions of Route 66, the city shall maintain signs directing motorists to the continuation of Route 66.

SEC. 2. Section 383 of the Streets and Highways Code is amended to read:

383. (a) Route 83 is from Route 71 to Route 210 near Upland.

(b) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Upland the portion of Route 83 that is located within the city limits or the sphere of influence of the city, upon terms and conditions that the commission finds to be in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the recordation by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 83 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 83 relinquished under this subdivision may not be considered for future adoption under Section 81.

(c) The city shall ensure the continuity of traffic flow on the relinquished portion of Route 83, including any traffic signal progression.

(d) For relinquished portions of Route 83, the city shall maintain signs directing motorists to the continuation of Route 83.

CHAPTER 508

An act to amend Sections 2146, 9282, 9285, 13112, and 13113 of, to add Section 10220.5 to, and to repeal Sections 9219 and 9220 of, the Elections Code, relating to elections.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 2146 of the Elections Code is amended to read:

2146. (a) The Secretary of State shall annually provide every high school, community college, and California State University and University of California campus with voter registration forms. The number of forms shall be consistent with the number of students enrolled at each school who are of voting age or will be of voting age by the end of the year. The Secretary of State shall provide additional forms to any school, free of charge, if so requested by a school.

(b) The Secretary of State shall provide a written notice with each registration form describing eligibility requirements and informing each student that he or she may return the completed form in person or by mail to the elections official of the county in which the student resides.

(c) It is the intent of the Legislature that every high school and college student receive a voter registration card with his or her diploma. It is also the intent of the Legislature that every school do all in its power to ensure that students are provided the opportunity and means to register

to vote. This may include providing voter registration forms at the start of the school year, including voter registration forms with orientation materials, placing voter registration forms at central locations, and including voter registration forms with graduation materials.

SEC. 2. Section 9219 of the Elections Code is repealed.

SEC. 3. Section 9220 of the Elections Code is repealed.

SEC. 4. Section 9282 of the Elections Code is amended to read:

9282. (a) For measures placed on the ballot by petition, the persons filing an initiative petition pursuant to this article may file a written argument in favor of the ordinance, and the legislative body may submit an argument against the ordinance.

(b) For measures placed on the ballot by the legislative body, the legislative body, or any member or members of the legislative body authorized by that body, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, may file a written argument for or against any city measure.

(c) No argument shall exceed 300 words in length.

(d) The city elections official shall include the following statement on the front cover, or if none, on the heading of the first page, of the printed arguments:

"Arguments in support or opposition of the proposed laws are the opinions of the authors."

(e) The city elections official shall enclose a printed copy of both arguments with each sample ballot; provided, that only those arguments filed pursuant to this section shall be printed and enclosed with the sample ballot. The printed arguments are "official matter" within the meaning of Section 13303.

(f) Printed arguments submitted to voters in accordance with this section shall be titled either "Argument In Favor Of Measure ____" or "Argument Against Measure ____," accordingly, the blank spaces being filled in only with the letter or number, if any, designating the measure. At the discretion of the elections official, the word "Proposition" may be substituted for the word "Measure" in these titles.

SEC. 5. Section 9285 of the Elections Code is amended to read:

9285. (a) (1) When an elections official receives an argument relating to a city measure that will be printed in the ballot pamphlet, the elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

(2) The author or a majority of the authors of an argument relating to a city measure may prepare and submit a rebuttal argument or may

authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

(3) No rebuttal argument may exceed 250 words.

(4) A rebuttal argument relating to a city measure shall be filed with the elections official no later than 10 days after the final filing date for primary arguments.

(5) A rebuttal argument relating to a city measure may not be signed by more than five persons and shall be printed in the same manner as a direct argument and shall immediately follow the direct argument which it seeks to rebut.

(b) Subdivision (a) applies only if, not later than the day on which the legislative body calls an election, the legislative body adopts its provisions by majority vote, in which case subdivision (a) applies at the next ensuing municipal election and at each municipal election thereafter, unless later repealed by the legislative body in accordance with the procedures of this subdivision.

SEC. 6. Section 10220.5 is added to the Elections Code, to read:

10220.5. Notwithstanding any other provision of law, a candidate shall not file nomination papers for more than one municipal office or term of office for the same municipality in the same election.

SEC. 7. Section 13112 of the Elections Code is amended to read:

13112. The Secretary of State shall conduct a drawing of the letters of the alphabet, the result of which shall be known as a randomized alphabet. The procedure shall be as follows:

(a) Each letter of the alphabet shall be written on a separate slip of paper, each of which shall be folded and inserted into a capsule. Each capsule shall be opaque and of uniform weight, color, size, shape, and texture. The capsules shall be placed in a container, which shall be shaken vigorously in order to mix the capsules thoroughly. The container then shall be opened and the capsules removed at random one at a time. As each is removed, it shall be opened and the letter on the slip of paper read aloud and written down. The resulting random order of letters constitutes the randomized alphabet, which is to be used in the same manner as the conventional alphabet in determining the order of all candidates in all elections. For example, if two candidates with the surnames Campbell and Carlson are running for the same office, their order on the ballot will depend on the order in which the letters M and R were drawn in the randomized alphabet drawing.

(b) (1) There shall be six drawings, three in each even-numbered year and three in each odd-numbered year. Each drawing shall be held at 11 a.m. on the date specified in this subdivision. The results of each drawing shall be mailed immediately to each county elections official responsible for conducting an election to which the drawing is applicable,

who shall use it in determining the order on the ballot of the names of the candidates for office.

(A) The first drawing under this subdivision shall take place on the 82nd day before the April general law city elections of an even-numbered year, and shall apply to those elections and any other elections held at the same time.

(B) The second drawing under this subdivision shall take place on the 82nd day before the direct primary of an even-numbered year, and shall apply to all candidates on the ballot in that election.

(C) (i) The third drawing under this subdivision shall take place on the 82nd day before the November general election of an even-numbered year, and shall apply to all candidates on the ballot in the November general election.

(ii) In the case of the primary election and the November general election, the Secretary of State shall certify and transmit to each county elections official the order in which the names of federal and state candidates, with the exception of candidates for State Senate and Assembly, shall appear on the ballot. The elections official shall determine the order on the ballot of all other candidates using the appropriate randomized alphabet for that purpose.

(D) The fourth drawing under this subdivision shall take place on the 82nd day before the March general law city elections of each odd-numbered year, and shall apply to those elections and any other elections held at the same time.

(E) The fifth drawing under this subdivision shall take place on the 82nd day before the first Tuesday after the first Monday in June of each odd-numbered year, and shall apply to all candidates on the ballot in the elections held on that date.

(F) The sixth drawing under this subdivision shall take place on the 82nd day before the first Tuesday after the first Monday in November of the odd-numbered year, and shall apply to all candidates on the ballot in the elections held on that date.

(2) In the event there is to be an election of candidates to a special district, school district, charter city, or other local government body at the same time as one of the five major election dates specified in subparagraphs (A) to (F), inclusive, and the last possible day to file nomination papers for the local election would occur after the date of the drawing for the major election date, the procedure set forth in Section 13113 shall apply.

(c) Each randomized alphabet drawing shall be open to the public. At least 10 days prior to a drawing, the Secretary of State shall notify the news media and other interested parties of the date, time, and place of the drawing. The president of each statewide association of local

officials with responsibilities for conducting elections shall be invited by the Secretary of State to attend each drawing or send a representative. The state chairman of each qualified political party shall be invited to attend or send a representative in the case of drawings held to determine the order of candidates on the primary election ballot, the November general election ballot, or a special election ballot as provided for in subdivision (d).

(d) In the case of any special election for State Assembly, State Senate, or Representative in Congress, on the first weekday after the close of filing of nomination papers for the office, the Secretary of State shall conduct a public drawing to produce a randomized alphabet in the same manner as provided for in subdivisions (a) and (c). The resulting randomized alphabet shall be used for determining the order on the ballot of the candidates in both the primary election for the special election and in the special election.

SEC. 8. Section 13113 of the Elections Code is amended to read:

13113. (a) In the case of an election of candidates in a special district, school district, charter city (whose charter does not provide to the contrary), or other local government body, occurring on other than one of the election dates specified in subdivision (b) of Section 13112, the official responsible for conducting the election shall, at the same time that the election is called, notify the Secretary of State by registered mail of the date of the election, the date of the close of filing, and the last possible date for filing in the event there is an extension of filing due to an incumbent failing to file. The Secretary of State shall conduct a randomized alphabet drawing pursuant to subdivision (a) of Section 13112 on the first weekday following the last possible day of filing in the event there is an extension for the election.

(b) Except as provided for runoff elections in subdivision (d), if two or more drawings for local government elections would occur on the same date, the Secretary of State may use a single randomized alphabet drawing for all of these elections. The Secretary of State shall communicate the results of the drawing by registered mail to each respective official responsible for conducting the election who shall use it to determine the order on the ballot of all candidates' names.

(c) All drawings held pursuant to this section shall be open to the public.

(d) If a charter city conducts a runoff election, it shall use the results of a randomized alphabet drawing separate from the results of the randomized alphabet drawing used for the initial election for that runoff election. The city shall, within three days following the initial election, notify the Secretary of State by registered mail of the date of the election and request that he or she conduct a randomized alphabet drawing for

the runoff election. The Secretary of State shall immediately conduct a randomized alphabet drawing for the runoff election and communicate the results of the drawing to the elections official responsible for conducting the runoff election who shall use the results to determine the order of all the candidates' names on the ballot. The results of the randomized alphabet drawing shall be clearly labeled "FOR USE IN A RUNOFF ELECTION ONLY."

CHAPTER 509

An act to amend Section 34 of Chapter 33 of the Statutes of 2002, relating to postsecondary education facilities, and making an appropriation therefor.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 34 of Chapter 33 of the Statutes of 2002 is amended to read:

Sec. 34. (a) There is hereby appropriated the sum of six hundred seventy-two million three hundred twenty thousand dollars ($672,320,000) from the Public Buildings Construction Fund, as established in Section 15845 of the Government Code, in accordance with the following schedule:

(1) Twelve million four hundred twenty-one thousand dollars ($12,421,000) to the California State Library for project 10.04.004-Joint Library: J. Paul Leonard Library and Sutro Library - Preliminary plans, working drawings, construction, and equipment.

(2) The sum of two hundred seventy-nine million twenty-five thousand dollars ($279,025,000) to the University of California for the following projects:

(A) Sixty-six million one hundred twenty-six thousand dollars ($66,126,000) for Davis Campus: project 99.03.205-Veterinary Medicine 3A - Construction.

(B) Fifty-five million three hundred nineteen thousand dollars ($55,319,000) for Irvine Campus: project 99.09.325-Natural Sciences Unit 2 - Construction and equipment.

(C) Sixteen million four hundred forty-nine thousand dollars ($16,449,000) for Merced Campus: project 99.11.010-Site Development and Infrastructure, Phase 2 - Working drawings and construction.

(D) Thirty-five million six hundred seventy-five thousand dollars ($35,675,000) for Riverside Campus: project 99.05.160-Engineering Building Unit 2 - Construction.

(E) Thirty-seven million three hundred sixty-nine thousand dollars ($37,369,000) for San Diego Campus: project 99.06.315-Engineering Building Unit 3B - Construction and equipment.

(F) Twenty-six million nine hundred four thousand dollars ($26,904,000) for Santa Barbara Campus: project 99.08.110-Life Sciences Building - Construction and equipment.

(G) Forty-one million one hundred eighty-three thousand dollars ($41,183,000) for Santa Cruz Campus: project 99.07.125-Engineering Building - Construction and equipment.

(3) The sum of two hundred ten million four hundred six thousand dollars ($210,406,000) to the California State University for the following projects:

(A) One hundred four million one hundred thirty-two thousand dollars ($104,132,000) for San Francisco Campus: project 06.84.104-Joint Library: J. Paul Leonard Library and Sutro Library - Preliminary plans, working drawings, and construction.

(B) Thirty-eight million one hundred eight thousand dollars ($38,108,000) for Los Angeles Campus: project 06.73.094-Physical Science Replacement Building - Preliminary plans, working drawings, construction, and equipment.

(C) Twenty-four million two hundred fifteen thousand dollars ($24,215,000) for San Marcos Campus: project 06.68.121-Academic Hall II, Building 13 - Preliminary plans, working drawings, and construction, and equipment.

(D) Forty-three million nine hundred fifty-one thousand dollars ($43,951,000) for Monterey Bay Campus: project 06.74.006-Library - Construction.

(4) The sum of one hundred seventy million four hundred sixty-eight thousand dollars ($170,468,000) to the Board of Governors of the California Community Colleges for the following projects:

(A) Eight million nine hundred seventy-five thousand dollars ($8,975,000) for Rancho Santiago Community College District, Santiago Canyon College project 40.48.118-Learning Resource Center - Construction and equipment.

(B) Seventeen million three hundred forty-three thousand dollars ($17,343,000) for State Center Community College District, Madera County Educational Center project 40.64.302-Academic Facilities, Phase 1B - Construction and equipment.

(C) Thirteen million nine hundred ten thousand dollars ($13,910,000) for Sequoias Community College District, College of the Sequoias project

40.56.110-Multimedia Learning Resource Center - Construction and equipment.

(D) Seventeen million five hundred twenty thousand dollars ($17,520,000) for Victor Valley Community College District, Victor Valley Community College project 40.66.115-Advanced Technology Complex - Construction and equipment.

(E) Twelve million five hundred fifty-five thousand dollars ($12,555,000) for San Luis Obispo County Community College District, Cuesta College project 40.51.111-Library Addition Reconstruction - Construction and equipment.

(F) Ten million five hundred forty-eight thousand dollars ($10,548,000) for Mount San Jacinto Community College District, Menifee Valley Center project 40.34.211-Learning Resource Center - Construction and equipment.

(G) Thirty-five million seven hundred seventy thousand dollars ($35,770,000) for Los Rios Community College District, Folsom Lake Center project 40.27.502-Instructional Facilities, Phase 1B - Construction and equipment.

(H) Eight million four hundred thirty-eight thousand dollars ($8,438,000) for Citrus Community College District, Citrus College project 40.09.120-Math/Science Building Replacement - Construction and equipment.

(I) Twenty-nine million three hundred fifty-eight thousand dollars ($29,358,000) for Palomar Community College District, Palomar College project 40.38.113-High Technology Laboratory-Classroom Building - Construction and equipment.

(J) Seven million twenty-three thousand dollars ($7,023,000) for Mendocino-Lake Community College District, Mendocino College project 40.29.117-Science Building - Construction and equipment.

(K) Nine million twenty-eight thousand dollars ($9,028,000) for Merced Community College District, Merced College project 40.30.114-Interdisciplinary Academic Center - Construction and equipment.

(b) The State Public Works Board may issue lease-revenue bonds, notes, or bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) of Part 10b of Division 3 of Title 2 of the Government Code to finance the design or construction, or both, of the projects authorized by subdivision (a).

(c) The State Public Works Board and the participating agency or department may obtain interim financing for the project costs authorized in subdivision (a) from any appropriate source, including, but not limited to, the Pooled Money Investment Account pursuant to Sections 16312 and 16313 of the Government Code.

(d) Each participating agency or department having a project authorized in subdivision (a) is authorized and directed to execute and deliver any and all leases, contracts, agreements, or other documents necessary or advisable to consummate the sale of bonds or otherwise effectuate the financing of the projects scheduled in subdivision (a).

(e) The State Public Works Board may authorize the augmentation of the cost of construction of the projects scheduled in subdivision (a) pursuant to that board's authority under Section 13332.11 of the Government Code. In addition, the board may authorize any additional amount necessary to establish a reasonable construction reserve and to pay the cost of financing including the payment of interest during the design and construction of the projects, the costs of financing a debt service fund, and the cost of issuance of permanent financing for the projects. This additional amount may include interest payable on any interim financing obtained.

(f) In the event that the bonds authorized for projects in subdivision (a) are not sold, the participating agency or department that has initiated loans shall commit a sufficient portion of its current support appropriation, as determined by the Department of Finance, to repay any interim financing. It is the intent of the Legislature that this commitment be made until all interim financing is repaid either through the proceeds of the sale of bonds or from an appropriation.

(g) Notwithstanding any other provision of law, the funds appropriated in subdivision (a) shall be available for encumbrance until June 30, 2010.

(h) The project identified under subparagraph (B) of paragraph (2) of subdivision (a) for the University of California-Irvine Natural Sciences Unit 2 may utilize design-build construction consistent with the University of California's practices, policies, and procedures.

(i) The State Public Works Board shall not itself be deemed a lead or responsible agency for purposes of the California Environmental Quality Act as set forth in Division 13 (commencing with Section 21000) of the Public Resources Code for any activities under the State Building Construction Act of 1955 as set forth in Part 10b (commencing with Section 15800) of Division 3 of Title 2 of the Government Code). This subdivision does not exempt any participating agency or department from the requirements of the California Environmental Quality Act. This subdivision is declarative of existing law.

CHAPTER 510

An act to amend Sections 25395.84 and 25395.85 of, to add Article 7 (commencing with Section 25395.102) and Article 8 (commencing

with Section 25395.109) to Chapter 6.82 of Division 20 of, and to repeal Article 7 (commencing with Section 25395.105) of Chapter 6.82 of Division 20 of, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 25395.84 of the Health and Safety Code is amended to read:

25395.84. (a) A court of competent jurisdiction may award reasonable attorneys' fees and experts' fees to a person who initiates a claim under an applicable law for contribution for, or recovery of, response costs incurred for a response action, or for any other response costs incurred at a site, if the person meets all of the following criteria:

(1) The person is a bona fide purchaser, an innocent landowner, a contiguous property owner, or a bona fide ground tenant, as defined in subdivision (b) of Section 25395.102, and qualifies for immunity pursuant to this chapter.

(2) The person is a prevailing party.

(3) On or before 20 calendar days prior to the date of the trial on issues relating to the response costs at issue, the person serves on the defendant both of the following:

(A) If a response plan has been approved for that site pursuant to Article 6 (commencing with Section 25395.90) or Article 7 (commencing with Section 25395.102), as applicable, a copy of the approved response plan.

(B) A written demand for compensation setting forth the specific sum demanded from the defendant, including a statement of the reasoning supporting the demand. The amount of written demand shall include all response costs sought from the defendant at issue, including all interest, but shall not include litigation expenses, attorneys' fees, and experts' fees. The amount of the demand may include any alleged consequential damages.

(b) ln determining whether to award reasonable attorneys' fees and experts' fees pursuant to this section, a court shall consider the relationship of the amount of the written demand described in subparagraph (B) of paragraph (3) of subdivision (a) to the total sum of the response costs and, if appropriate and included in the demand, the consequential damages in the written demand, to the final determination of the costs and damages by the trier of fact.

(c) A court may award reasonable attorneys' fees and experts' fees to an agency that is the prevailing party in an action arising out of this chapter.

SEC. 2. Section 25395.85 of the Health and Safety Code is amended to read:

25395.85. An innocent landowner, bona fide purchaser, contiguous landowner, or bona fide ground tenant, as defined in subdivision (b) of Section 25395.102, may seek contribution from any person who is responsible for a discharge or release of hazardous materials for which the innocent landowner, bona fide purchaser, contiguous landowner, or bona fide ground tenant incurs agency oversight costs for the review of a response plan or oversight of the implementation of a response plan subject to this chapter.

SEC. 3. Article 7 (commencing with Section 25395.105) of Chapter 6.82 of Division 20 of the Health and Safety Code is repealed.

SEC. 4. Article 7 (commencing with Section 25395.102) is added to Chapter 6.82 of Division 20 of the Health and Safety Code, to read:

Article 7. Bona Fide Ground Tenant Immunity

25395.102. (a) Except as otherwise provided in this article, the definitions in Article 2 (commencing with Section 25395.63) and Article 6 (commencing with Section 25395.90) shall govern the interpretation of this article.

(b) "Bona fide ground tenant" means a person who establishes by a preponderance of evidence and maintains all of the following:

(1) The person acquires a nonfee interest in, and control of, the real property at a site on or after January 1, 2007, pursuant to one of the following:

(A) A ground lease with a term of 25 years or more.

(B) An easement with a term of 25 years or more.

(C) Any other legal means for site access and use that provides for a term of 25 years or more, and is acceptable to the agency entering into an agreement pursuant to this article.

(2) The person is in compliance with subdivisions (c), (d), (e), and (f) of Section 25395.80.

(3) All releases of hazardous materials at the site occurred before the person obtained legal access to and control over the site, except for a release that is of a type, nature or amount that does not require reporting to a regulatory authority pursuant to applicable law or other applicable statutory or regulatory reporting requirements and for which the agency determines all appropriate actions have been taken.

(4) The person did not cause or contribute to a release of hazardous materials at the site, other than a release that is of a type, nature or amount that does not require reporting to a regulatory authority pursuant to applicable law or other applicable statutory or regulatory reporting requirements.

(5) (A) The person has contractually agreed with one or more persons or entities set forth in subdivision (a) of Section 25395.103 that either of the following revenue sources be dedicated to, or pledged to secure a loan the proceeds of which are dedicated to, implementation of the response plan approved pursuant to this article:

(i) All payments by that person to the site owner, at least until such time as a response plan has been approved by the agency and the agency has determined that something less than all of the payments are sufficient to implement the response plan.

(ii) Any alternate assets or revenue streams that are acceptable to the agency.

(B) To ensure that the revenue stream required by subparagraph (A) remains available to implement the response plan approved pursuant to this article, the person may utilize an Internal Revenue Code Section 468B settlement trust or other acceptable security mechanism that allows the agency to utilize the earmarked funds to complete the cleanup if there is a default by a party that is contractually obligated to implement the response plan pursuant to an agreement under this article. Agreements pursuant to this article shall permit subordination of the security mechanism to permit financing for site cleanup.

(6) The person is not potentially liable, or affiliated with a person who is potentially liable, for the release at issue through any of the following circumstances:

(A) A direct or indirect familial relationship.

(B) A contractual, corporate, or financial relationship, unless the contractual, corporate, or financial relationship is created by the instruments by which the person obtains control and implements the development of the site, or is created by a contract for the sale of goods or services.

(C) The result of a reorganization of a business entity that was potentially liable for the hazardous substances at issue.

(c) For the purpose of this article, "release" does not include passive migration.

(d) "Site" shall have the definition set forth in Section 25395.79.2, except that the exclusion for petroleum sites set forth in paragraph (3) of subdivision (b) of that section shall not apply.

25395.103. (a) A bona fide ground tenant who seeks to qualify for the immunity pursuant to Section 25395.104 shall make all appropriate

inquiries, and shall enter into an agreement pursuant to this article with an agency, and one or more entities that agree to take responsibility for implementing a site assessment and response plan pursuant to subdivision (b). The entity shall be one of the following:

(1) The site owner.

(2) A redevelopment agency.

(3) A city or county.

(b) Except as otherwise provided in subdivision (c), an agreement entered into pursuant to this article shall provide that the entity that accepts responsibility for the site assessment and response plan shall conduct a site assessment that substantially complies with the requirements of Section 25395.94 and implement a response plan that substantially complies with the requirements of Section 25395.96. For purposes of any health risk assessment, as specified in paragraph (2) of subdivision (a) of Section 25395.94, that is conducted for a site subject to this article, the intended site occupants shall include any person who is expected to reside at, work at, or otherwise physically cross onto, the boundaries of the site. Both the site assessment and the response plan shall be approved by the agency. Except as necessary to comply with provisions of this article that differ from Article 6 (commencing with Section 25395.90), agreements pursuant to this article shall substantially conform to agreements developed to implement Article 6 (commencing with Section 25395.90), and shall specifically include the agency cost reimbursement provisions required by subdivision (b) of Section 25395.93.

(c) An agreement entered into pursuant to this article shall provide that the bona fide ground tenant is responsible to the agency for only the portions of the site assessment and the portions of the response plan that the agency determines to be necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants. The bona fide ground tenant shall not be responsible to the agency for any other assessment or remediation of soil, soil gas, groundwater, or other media at the site; nor for any assessment or remediation adjacent to, or in the vicinity of, the site. The agreement shall also specify the portion of the site assessment and the response plan to be implemented by the party other than the bona fide ground tenant.

(d) Before finalizing the agreement, the agency shall notify other appropriate agencies, including the host jurisdiction. The agency shall keep, in a permanent archive, copies of all finalized agreements entered into pursuant to this article.

(e) Agreements entered under this article shall not be subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(f) A person who enters into an agreement under this article shall submit sufficient information to the agency for the agency to determine whether the site is eligible, whether the person meets the conditions to qualify as a bona fide ground tenant, and to prepare an agreement pursuant to this section.

25395.104. (a) Except as otherwise provided in this section, a bona fide ground tenant shall qualify for the following immunities:

(1) The bona fide ground tenant shall not be liable under any applicable statute for a claim made by a person, other than an agency, for response costs or other relief associated with a release or threatened release of a hazardous material at the site once the bona fide ground tenant obtains a certification pursuant to subdivision (b) or (c) that the immunity provided by this section has attached.

(2) (A) Except as provided in subparagraph (B), an agency shall not, subsequent to the date of the agreement, take any action under any applicable statute to require a bona fide ground tenant to take a response action on account of a release or threatened release of a hazardous material at a site.

(B) The agency that entered into the agreement pursuant to this article may take action under any applicable statute to enforce the conditions imposed on the bona fide ground tenant pursuant to the agreement.

(b) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a), the immunity provided in this section shall attach to a bona fide ground tenant once the agency certifies in writing that all of the following have occurred:

(1) A site assessment has been completed sufficient for the agency to determine the remedial measures necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants.

(2) Except for site monitoring, reporting, institutional controls, operation and maintenance activities, and other ongoing obligations of the bona fide ground tenant, if any, the portion of the site investigation and the response plan necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants, including any confirmation sampling required by the agency to confirm that this standard has been met, has been implemented to the agency's satisfaction.

(3) To the extent required in the agreement entered into pursuant to this article, all wells, piping, extraction systems, or similar materials or equipment required for the conduct of remediation efforts to be performed

by a person other than the bona fide ground tenant have either been installed to the agency's satisfaction or have been accounted for to the agency's satisfaction in site development plans and specifications.

(4) If applicable, an instrument that restricts or imposes obligations on the present of future uses or activities on the site has been executed and recorded pursuant to Section 1471 of the Civil Code.

(c) A party to an agreement pursuant to this article may request the agency to issue a written certification confirming that the conditions stated in subdivision (b) have been met and that the immunity provided for in this section is in effect. The agency shall provide this certification within 60 days of the date it finds that the conditions stated in subdivision (b) have been met.

(d) The agency that issued a certification pursuant to subdivision (c) may withdraw that certification if it first provides reasonable notice and opportunity for the bona fide ground tenant to take action to prevent the withdrawal, and subsequent to the notice and cure opportunity makes any of the following findings:

(1) A material deviation from those requirements applicable to the bona fide ground tenant under the agreement entered into pursuant to this article that has not been approved by the agency exists and continues to exist subsequent to the notice and cure period.

(2) The bona fide ground tenant induced the agency to issue the certification by fraud, or intentional nondisclosure or misrepresentation.

(e) Upon the agency's certification pursuant to subdivision (c), the immunity provided in this section extends to all of the following:

(1) The bona fide ground tenant and any successor who demonstrates to the agency that the person meets the qualifying conditions of subdivision (b) of Section 25395.102 and subdivisions (c), (d), (e), and (f) of Section 25395.80 and who assumes the bona fide ground tenant's obligations of any agreement entered into pursuant to this article.

(2) A person who provides financing to a person specified in paragraph (1).

(f) The immunity provided in this section does not extend to, and may not be transferred to, a person who was a responsible party, as that term is defined in Section 25323.5 for the release at the site prior to acquiring an interest in the site from the bona fide ground tenant or providing financing as specified in paragraph (3) of subdivision (e).

(g) The immunity provided in this section shall be in addition to any other immunity provided by law.

(h) This section shall not modify or limit the existing authority of a state or local agency to impose a condition on the issuance of a discretionary permit relating to the development, use, or occupancy of a site.

(i) This section shall not relieve a bona fide ground tenant from reporting, disclosure, and notification requirements under any applicable statute.

(j) The entry into an agreement pursuant to this article shall not constitute an admission of any fact or liability or conclusion of law for any purpose or proceeding and a person who enters into an agreement under this article shall not be deemed liable under any other provision of law solely by reason of entering into the agreement.

(k) If the use of the property changes, after a response plan is approved, to a use that requires a higher level of protection, the agency may require the preparation and implementation of a new response plan pursuant to this article.

(*l*) A bona fide ground tenant that purchases a site subsequent to leasing, or taking an easement in the site, may convert its status to that of a bona fide purchaser pursuant to Article 6 (commencing with Section 25395.90) if the bona fide ground tenant otherwise meets the requirements of Section 25395.69 and Article 6 (commencing with Section 25395.90). Upon the conversion, the bona fide ground tenant shall qualify for any and all immunities available to a bona fide purchaser under this chapter.

(m) If the response plan relies on the use of institutional or engineering controls to make the site suitable for its intended purposes without unreasonable risk to the human health and safety of the intended occupants of the site, the bona fide ground tenant seeking immunity shall provide any applicable financial assurances, using financial assurance guidelines and mechanisms approved by a board, department, or organization of the California Environmental Protection Agency; periodic reports as required by the agency to demonstrate that there remains no unreasonable risk to the human health and safety of the intended occupants. The bona fide ground tenant shall not make any change in use of the site that is inconsistent with any land use control recorded for the site unless the change is approved by the agency pursuant to Sections 25233 and 25234 or, in the case of the board or a regional board, substantially similar procedures.

25395.105. (a) Notwithstanding subdivision (b) of Section 25395.102, on and after the date when the immunity specified in Section 25395.104 attaches, a person shall remain eligible for immunity if a release of hazardous materials at the site during a response action is de minimis and the agency determines that all necessary response actions to address the release have been taken.

(b) Notwithstanding subdivision (b) of Section 25395.102 with respect to a release of hazardous materials at the site that is not characterized in or through the site investigation or the response plan, a person shall

remain eligible for the immunity provided in Section 25395.104, if the person takes response actions with respect to the release of hazardous materials that the agency determines to be necessary to prevent unreasonable risk to the human health and safety of the intended site occupants specified in the agreement entered into pursuant to this article.

(c) Notwithstanding subdivision (b) of Section 25395.102, on and after the date when the immunity specified in Section 25395.104 attaches, a person shall remain eligible for immunity obtained pursuant to this article with regard to a release that is the subject of a certificate of completion and immunities issued pursuant to Section 25395.104. If the person causes or contributes to a release of a hazardous material, other than a de minimis release, the person shall be responsible for responding to that release in accordance with all applicable law.

25395.106. (a) This article does not provide immunity from any of the following:

(1) Liability for bodily injury or wrongful death.

(2) A requirement imposed under Chapter 6.5 (commencing with Section 25100), including, but not limited to, corrective action and closure and postclosure requirements.

(3) A criminal act.

(4) A permit violation.

(5) A contractual indemnity agreement between a purchaser and seller of real property.

(6) New releases, other than de minimis releases, of hazardous materials that are caused or contributed to by a bona fide ground tenant.

(b) This article does not limit the authority of an agency to conduct a response action that is necessary to protect public health and safety or the environment pursuant to an applicable statute.

(c) This article does not do either of the following:

(1) Limit a defense to liability that may be available to a person under any other provision of law.

(2) Impose a new obligation on a bona fide ground tenant other than those specifically assumed by the bona fide ground tenant under an agreement entered into pursuant to this article.

SEC. 5. Article 8 (commencing with Section 25395.109) is added to Chapter 6.82 of Division 20 of the Health and Safety Code, to read:

Article 8. Repeal

25395.109. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

CHAPTER 511

An act relating to corrections, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. There is hereby appropriated from the General Fund the sum of thirty-five million four hundred forty-six thousand dollars ($35,446,000) to the Department of Corrections and Rehabilitation for increased staffing to implement the Revised Program Guide for the Mental Health Services Delivery System as required by the July 28, 2006, court order in Coleman v. Schwarzenegger. Any funds from this appropriation that remain unencumbered or unexpended as of June 30, 2007 shall revert to the General Fund.

SEC. 2. The amount appropriated pursuant to this chapter shall be used only for the following purposes:

(1) To establish 551.8 positions, effective September 1, 2006, to implement the revised Program Guide in the Coleman v. Schwarzenegger lawsuit.

(2) Of the amount appropriated seven hundred fifty thousand dollars, ($750,000) shall be one-time funding to conduct an extensive workload study of this program so that the results of this study can be incorporated into the budget process for the 2007–08 fiscal year.

SEC. 3. On or before January 10, 2007, and on or before April 1, 2007, the Department of Corrections and Rehabilitation shall submit to the chairpersons and vice chairpersons of the committees in both houses of the Legislature that consider the State Budget and appropriations and to the Legislative Analyst's Office, a report stating how the funds appropriated by this chapter were spent, the number of positions filled, and the status of the workload study.

SEC. 4. The Department of Corrections and Rehabilitation will complete the workload study of this program and present it to the

Legislature by no later than April 1, 2007. The results of the workload study will be used to assess the total level of resources needed for the implementation of the revised Program Guide for the Mental Health Services Delivery System.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act makes an appropriation necessary to ensure the adequate delivery of mental health services to inmates in the Department of Corrections and Rehabilitation and to comply with a federal court order.

CHAPTER 512

An act to amend Sections 25620, 25620.1, 25620.2, 25620.5, 25620.8, 25620.11, 25742, 25744, 25746, 25747, 25748, and 25751 of, to add Sections 25620.15 and 25740.5 to, and to repeal Sections 25620.9, 25745, 25749, and 25750 of, the Public Resources Code, and to amend Sections 381, 399.8, and 895 of, to amend and repeal Sections 399 and 399.4 of, and to repeal Sections 383, 383.6, 384.1, 399.1, 399.2, 399.3, 399.6, 399.7, and 399.9 of, the Public Utilities Code, relating to energy, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. 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.

SEC. 2. Section 25620.1 of the Public Resources Code is amended to read:

25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program that is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets. The commission shall administer the program consistent with the policies of this chapter.

(b) The general goal of the program is to develop, and help bring to market, energy technologies that provide increased environmental benefits, greater system reliability, and lower system costs, and that provide tangible benefits to electric utility customers through the following investments:

(1) Advanced transportation technologies that reduce air pollution and greenhouse gas emissions beyond applicable standards, and that benefit electricity and natural gas ratepayers.

(2) Increased energy efficiency in buildings, appliances, lighting, and other applications beyond applicable standards, and that benefit electric utility customers.

(3) Advanced electricity generation technologies that exceed applicable standards to increase reductions in greenhouse gas emissions from electricity generation, and that benefit electric utility customers.

(4) Advanced electricity technologies that reduce or eliminate consumption of water or other finite resources, increase use of renewable energy resources, or improve transmission or distribution of electricity generated from renewable energy resources.

(c) To achieve the goals established in subdivision (b), the commission shall adopt a portfolio approach for the program that does all of the following:

(1) Effectively balances the risks, benefits, and time horizons for various activities and investments that will provide tangible energy or environmental benefits for California electricity customers.

(2) Emphasizes innovative energy supply and end use technologies, focusing on their reliability, affordability, and environmental attributes.

(3) Includes projects that have the potential to enhance transmission and distribution capabilities.

(4) Includes projects that have the potential to enhance the reliability, peaking power, and storage capabilities of renewable energy.

(5) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 399.8 of the Public Utilities Code.

(6) Addresses key technical and scientific barriers.

(7) Demonstrates a balance between short-term, mid-term, and long-term potential.

(8) Ensures that prior, current, and future research not be unnecessarily duplicated.

(9) Provides for the future market utilization of projects funded through the program.

(10) Ensures an open project selection process and encourages the awarding of research funding for a diverse type of research as well as a diverse award recipient base and equally considers research proposals from the public and private sectors.

(11) Coordinates with other related research programs.

(d) The term "award," as used in this chapter, may include, but is not limited to, contracts, grants, interagency agreements, loans, and other financial agreements designed to fund public interest research, demonstration, and development projects or programs.

SEC. 3. Section 25620.2 of the Public Resources Code is amended to read:

25620.2. (a) To ensure the efficient implementation and administration of the Public Interest Research, Development, and Demonstration Program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(b) The commission shall adopt regulations to implement the program, in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with commission procedures.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written reports and copies of any transcripts or minutes in connection with any public hearings on the adoption of the regulation. The record shall be open to public inspection and available to the courts.

(6) Provide public notice of any substantial revision of the proposed regulation at least 15 days prior to the expiration of the deadline for public comments and comment period using the procedures provided in paragraph (2).

(7) Conduct public hearings, if a hearing is requested by an interested party, that shall be conducted in accordance with commission procedures.

(8) Adopt any proposed regulation at a regularly scheduled and noticed meeting of the commission. The regulation shall become effective immediately unless otherwise provided by the commission.

(9) Publish any adopted regulation in a manner that makes copies of the regulation easily available to the public. Any adopted regulation shall also be made available on the Internet. The commission shall transmit a copy of an adopted regulation to the Office of Administrative Law for publication, or, if the commission determines that printing the regulation is impractical, an appropriate reference as to where a copy of the regulation may be obtained.

(10) Notwithstanding any other provision of law, this subdivision provides an interim exception from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for regulations required to implement Sections 25620.1 and 25620.2 that are adopted under the procedures specified in this subdivision.

(11) This subdivision shall become inoperative on January 1, 2012, unless a later enacted statute deletes or extends that date. However, after January 1, 2012, the commission is not required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2012, using the procedures specified in this subdivision.

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 provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. Section 25620.8 of the Public Resources Code is amended to read:

25620.8. The commission shall prepare and submit to the Legislature an annual report, not later than March 31 of each year, on awards made pursuant to this chapter and progress toward achieving the goals set forth in Section 25620.1. The report shall include information on the names of award recipients, the amount of awards, and the types of projects funded, an evaluation of the success of funded projects, and recommendations for improvements in the program. The report shall set forth the actual costs of programs or projects funded by the commission, the results achieved, and how the actual costs and results compare to the expected costs and benefits. The commission shall establish procedures for protecting confidential or proprietary information and shall consult with all interested parties in the preparation of the annual report.

SEC. 6. Section 25620.9 of the Public Resources Code is repealed.

SEC. 7. Section 25620.11 of the Public Resources Code is amended to read:

25620.11. (a) The commission shall regularly convene an advisory board that shall make recommendations to guide the commission's selection of programs and projects to be funded under this chapter. The advisory board shall include as appropriate, but not be limited to, representatives from the Public Utilities Commission, consumer organizations, environmental organizations, and electrical corporations subject to the funding requirements of Section 381 of the Public Utilities Code.

(b) Three members of the Senate, appointed by the Senate President Pro Tempore, and three members of the Assembly, appointed by the Speaker of the Assembly, may meet with the advisory board and participate in its activities to the extent that such participation is not incompatible with their respective positions as Members of the Legislature.

SEC. 8. Section 25620.15 is added to the Public Resources Code, to read:

25620.15. (a) In order to ensure that prudent investments in research, development, and demonstration of energy efficient technologies continue to produce substantial economic, environmental, public health, and reliability benefits, it is the policy of the state and the intent of the Legislature that funds made available, upon appropriation, for energy related public interest research, development, and demonstration programs shall be used to advance science or technology that is not adequately provided by competitive and regulated markets.

(b) Notwithstanding any other provision of law, money collected for public interest research, development, and demonstration pursuant to Section 399.8 of the Public Utilities Code shall be transferred to the Public Interest Research, Development, and Demonstration Fund. Money collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

(c) In lieu of the Public Utilities Commission retaining funds authorized pursuant to Section 381 of the Public Utilities Code for investments made by electrical corporations in public interest research, development, and demonstration projects for transmission and distribution functions, up to 10 percent of the funds transferred to the commission pursuant to subdivision (b) shall be awarded to electrical corporations for public interest research, development, and demonstration projects for transmission and distribution functions consistent with the policies and subject to the requirements of this chapter.

SEC. 9. Section 25740.5 is added to the Public Resources Code, to read:

25740.5. (a) The commission shall optimize public investment and ensure that the most cost-effective and efficient investments in renewable resources are vigorously pursued.

(b) The commission's long-term goal shall be a fully competitive and self-sustaining California renewable energy supply.

(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(d) An additional objective of the program shall be to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance.

(e) The Legislature recommends allocations among all of the following:

(1) (A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.

(B) Allocations shall not be made for renewable energy that is generated by a project that remains under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives for incremental new, repowered, or refurbished renewable energy from existing projects under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, may be allowed in any month, if all of the following occur:

(i) The project's power purchase contract provides that all energy delivered and sold under the contract is paid at a price that does not exceed the Public Utilities Commission approved short-run avoided cost of energy.

(ii) Either of the following:

(I) The power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) If a project's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the power purchase contract, the power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

(2) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(3) Customer education.

(4) Incentives for reducing fuel costs that are confirmed to the satisfaction of the commission at solid fuel biomass energy facilities in

order to provide demonstrable environmental and public benefits, including, but not limited to, air quality.

(5) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the commission. The commission may require financial disclosure from applicants for purposes of this paragraph.

(6) Specified fuel cell technologies, if the commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the report made pursuant to Section 25748.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of renewable energy.

(7) Existing wind-generating resources, if the commission finds that the existing wind-generating resources are a cost-effective source of reliable energy and environmental benefits compared with other eligible sources, and that the existing wind-generating resources require financial assistance to remain economically viable. The commission may require financial disclosure from applicants for the purposes of this paragraph.

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

SEC. 10. Section 25742 of the Public Resources Code is amended to read:

25742. (a) Ten 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 incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (4), (5), and (7) 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) 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 and certify to the satisfaction of the commission that fuel utilization is limited to the fuels specified in subdivision (f) of Section 25743. 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. 11. Section 25744 of the Public Resources Code is amended to read:

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

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

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that is in place for a period of not less than five years, and is structured to allow eligible emerging

technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to paragraph (3), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission. The commission may establish different incentive levels for systems based on technology type and system size, and may provide different incentive levels for systems used in conjunction with energy-efficiency measures.

(3) Eligible distributed emerging technologies are fuel cell technologies that utilize renewable fuels, including fuel cell technologies with an emission profile equivalent or better than the State Air Resources Board 2007 standard, and that serve as backup generation for emergency, safety, or telecommunications systems. Eligible renewable fuels may include wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission and are not eligible for rebates, buydowns, or similar incentives from any other commission or Public Utilities Commission program. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, including systems that are used as backup power for emergency, safety, or telecommunications, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid, unless the system purpose is for backup generation used in emergency, safety, or

telecommunications, in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

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

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

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including shading, insulation levels, and installation orientation.

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

(c) Notwithstanding Section 27540.5, the commission may expend, until December 31, 2008, up to sixty million dollars ($60,000,000) of the funding allocated to the Renewable Resources Trust Fund for the program established in this section, subject to the repayment requirements of subdivision (f) of Section 25751.

(d) Any funds for photovoltaic or solar thermal electric technologies shall be awarded in compliance with Chapter 8.8 (commencing with Section 25780), as proposed to be added by Senate Bill 1 of the 2005–06 Regular Session of the Legislature, and not with this section.

SEC. 12. Section 25745 of the Public Resources Code, as added by Section 2 of Chapter 666 of the Statutes of 2003, is repealed.

SEC. 13. Section 25746 of the Public Resources Code is amended to read:

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

(b) If the commission provides funding for a regional accounting system to verify compliance with the renewable portfolio standard by retail sellers, pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, the commission shall recover all costs from user fees.

SEC. 14. Section 25747 of the Public Resources Code is amended to read:

25747. (a) The commission shall adopt guidelines governing the funding programs authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this subdivision may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter or Section 399.13 of the Public Utilities Code, shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this subdivision by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in existing law.

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

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

(d) An award made pursuant to this chapter, the amount of the award, and the terms and conditions of the grant are public information.

SEC. 15. Section 25748 of the Public Resources Code is amended to read:

25748. (a) The commission shall report to the Legislature on or before November 1, 2007, and annually thereafter, regarding the results of the mechanisms funded pursuant to this chapter. The report shall contain all of the following:

(1) A description of the allocation of funds among existing, new, and emerging technologies, the allocation of funds among programs, including consumer-side incentives, and the need for the reallocation of money among those technologies.

(2) The status of account transfers and repayments.

(3) A description of the cumulative commitment of claims by account, the relative demand for funds by account, and a forecast of future awards.

(4) A list identifying the types and quantities of biomass fuels used by facilities receiving funds pursuant to Section 25742 or 25743 and their impacts on improving air quality.

(5) A discussion of the progress being made toward achieving the targets established under Section 25740 by each funding category authorized pursuant to this chapter.

(6) A description of the allocation of funds from interest on the accounts described in this chapter, and money in the accounts described in subdivision (b) of Section 25751.

(7) An itemized list, including project descriptions, award amounts, and outcomes for projects awarded funding in the prior year.

(8) Other matters the commission determines may be of importance to the Legislature.

(b) Money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this section, except that reallocations shall not reduce the allocation established in Section 25743 nor increase the allocation established in Section 25742.

SEC. 16. Section 25749 of the Public Resources Code is repealed.

SEC. 17. Section 25750 of the Public Resources Code is repealed.

SEC. 18. Section 25751 of the Public Resources Code is amended to read:

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

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

(1) The Existing Renewable Resources Account.

(2) New Renewable Resources Account.

(3) Emerging Renewable Resources Account.

(4) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended, only upon appropriation by the Legislature in the annual Budget Act, for the following purposes:

(1) The administration of this article by the state.

(2) The state's expenditures associated with the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(d) That portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to Section 399.8 of the Public Utilities Code, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 25740.5. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant

to subdivision (b) in proportions designated by the commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts.

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

SEC. 19. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging eligible renewable energy resources, as defined in Section 399.12.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds at the levels and for the purposes required in Section 399.8.

(d) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

SEC. 20. Section 383 of the Public Utilities Code is repealed.

SEC. 21. Section 383.6 of the Public Utilities Code is repealed.

SEC. 22. Section 384.1 of the Public Utilities Code is repealed.

SEC. 23. Section 399 of the Public Utilities Code, as added by Section 4 of Chapter 1050 of the Statutes of 2000, is amended to read:

399. (a) This article shall be known, and may be cited, as the Reliable Electric Service Investments Act.

(b) The Legislature finds and declares that safe, reliable electric service is of utmost importance to the citizens of this state, and its economy.

(c) The Legislature further finds and declares that in order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is essential that prudent investments continue to be made in all of the following areas:

(1) To protect the integrity of the electric distribution grid.

(2) To ensure an adequately sized and trained utility workforce.

(3) To ensure cost-effective energy efficiency improvements.

(4) To achieve a sustainable supply of renewable energy.

(5) To advance public interest research, development and demonstration programs not adequately provided by competitive and regulated markets.

(d) It is the intent of the Legislature to reaffirm, without requiring revision, California's doctrine, as reflected in regulatory and judicial decisions, regarding electrical corporations' reasonable opportunity to recover costs and investments associated with their electric distribution grid and the reasonable opportunity to attract capital for investment on reasonable terms.

(e) The Legislature further finds and declares all of the following:

(1) Acting under applicable constitutional and statutory authorities, the Public Utilities Commission and the boards of local publicly owned electric utilities have included in regulated electricity prices, investments that are essential to maintaining system reliability, reducing California

electricity users' bills, and mitigating environmental costs of California users' electricity consumption.

(2) Among the most important of these "system benefits" investments categories are energy efficiency, renewable energy, and public interest research, development and demonstration (RD&D).

(3) Energy efficiency investments funded from California's usage-based charges on electricity distribution help improve systemwide reliability by reducing demand in times and areas of system congestion, and at the same time reduce all California electricity users' costs. These investments also significantly reduce environmental costs associated with California's electricity consumption, including, but not limited to, degradation of the state's air, water, and land resources.

(4) California's in-state renewable energy resources help alleviate supply deficits that could threaten electric system reliability, reduce environmental costs associated with California's electricity consumption, and increase the diversity of the electricity system's fuel mix, reducing electricity users' exposure to fossil-fuel price volatility.

(5) California's public interest RD&D investments enhance private and regulated sector investment in electricity system technologies, and are designed specifically to help ensure sustained improvement in the economic and environmental performance of the distribution, transmission, and generation and end-use systems that serve California electricity users.

(6) California has established a long tradition of recovering system benefits investments through usage-based electricity charges, which is reflected in at least two decades of electricity price regulation by the commission, the boards of local publicly owned electric utilities, and the mandate of the Legislature in Chapter 854 of the Statutes of 1996 (Assembly Bill 1890 of the 1995–96 Regular Session of the Legislature) and Chapter 905 of the Statutes of 1997 (Senate Bill 90 of the 1997–98 Regular Session of the Legislature).

(7) Unless the Legislature acts to extend the mandate of this article for minimum levels of usage based system benefits charges, California electricity users are at substantial risk of higher economic and environmental costs and degraded reliability.

SEC. 24. Section 399 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is repealed.

SEC. 25. Section 399.1 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is repealed.

SEC. 26. Section 399.2 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is repealed.

SEC. 27. Section 399.3 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is repealed.

SEC. 28. Section 399.4 of the Public Utilities Code, as added by Section 4 of Chapter 1050 of the Statutes of 2000, is amended to read:

399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and the intent of the Legislature that the commission shall continue to administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority.

(2) As used in this section, the term "energy efficiency" includes, but is not limited to, cost-effective activities to achieve peak load reduction that improve end-use efficiency, lower customers' bills, and reduce system needs.

(b) The commission, in evaluating energy efficiency investments under its existing statutory authority, shall also ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.

SEC. 29. Section 399.4 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is repealed.

SEC. 30. Section 399.6 of the Public Utilities Code is repealed.

SEC. 31. Section 399.7 of the Public Utilities Code is repealed.

SEC. 32. Section 399.8 of the Public Utilities Code is amended to read:

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

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

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

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, through January 1, 2012. The rate component shall be

a nonbypassable element of the local distribution service and collected on the basis of usage.

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

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

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

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

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

(f) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the date of the meeting, the electrical corporation shall notify the

applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

SEC. 33. Section 399.9 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is repealed.

SEC. 34. Section 895 of the Public Utilities Code is amended to read:

895. Notwithstanding Section 13340 of the Government Code, moneys in the Gas Consumption Surcharge Fund are continuously appropriated, without regard to fiscal years, as follows:

(a) To the commission or an entity designated by the commission to fund programs described in subdivision (a) of Section 890. If the commission designates the State Energy Resources Conservation and Development Commission to receive funds for public interest research and development, both of the following shall apply:

(1) The Controller shall transfer funds to a separate subaccount within the Public Interest Research, Development, and Demonstration Fund to pay the State Energy Resources Conservation and Development Commission for its costs in carrying out its duties and responsibilities under this article.

(2) The State Energy Resources Conservation and Development Commission may administer the program pursuant to Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code.

(b) To pay the commission for its costs in carrying out its duties and responsibilities under this article.

(c) To pay the State Board of Equalization for its costs in administering this article.

SEC. 35. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid disruption in renewable energy and public interest research, development and demonstration programs, and to maximize the effectiveness of energy efficiency programs, thereby promoting the

public health and welfare, it is necessary that this act take effect immediately.

CHAPTER 513

An act to amend Section 19551.1 of the Revenue and Taxation Code, relating to tax administration.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Section 19551.1 of the Revenue and Taxation Code is amended to read:

19551.1. (a) The Franchise Tax Board may permit the tax officials of any city to obtain tax information pursuant to subdivision (a) of Section 19551.

(b) The information furnished to tax officials of a city under this section shall be limited as follows:

(1) When requested pursuant to a written agreement, the taxing authority of a city may be granted tax information only with respect to taxpayers with an address as reflected on the Franchise Tax Board's records within the jurisdictional boundaries of the city who report income from a trade or business to the Franchise Tax Board.

(2) The tax information that may be provided by the Franchise Tax Board to a city is limited to a taxpayer's name, address, social security or taxpayer identification number, and business activity code.

(3) Tax information provided to the taxing authority of a city may not be furnished to, or used by, any person other than an employee of that taxing authority.

(4) Section 19542 applies to this section.

(5) Section 19542.1 applies to this section.

(c) The Franchise Tax Board may not provide any information pursuant to this section until all of the following have occurred:

(1) An agreement has been executed between a city and the Franchise Tax Board, that provides that an amount equal to all first year costs necessary to furnish the city information pursuant to this section shall be received by the Franchise Tax Board before the Franchise Tax Board incurs any costs associated with the activity permitted by this section. For purposes of this section, first year costs include costs associated

with, but not limited to, the purchasing of equipment, the development of processes, and labor.

(2) An agreement has been executed between a city and the Franchise Tax Board, that provides that the annual costs incurred by the Franchise Tax Board, as a result of the activity permitted by this section, shall be reimbursed by the city to the board.

(3) Pursuant to the agreement described in paragraph (1), the Franchise Tax Board has received an amount equal to the first year costs.

(d) This section does not invalidate any other law. This section does not preclude any city or city and county from obtaining information about individual taxpayers, including those taxpayers exempt from this section, by any other means permitted by state or federal law.

(e) This section shall remain in effect only until December 31, 2011, and as of that date is repealed.

(f) Nothing in this section shall be construed to affect any obligations, rights, or remedies regarding personal information provided under state or federal law.

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

CHAPTER 514

An act to add Part 5.5 (commencing with Section 101960) to Division 102 of the Health and Safety Code, relating to health care.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

SECTION 1. Part 5.5 (commencing with Section 101960) is added to Division 102 of the Health and Safety Code, to read:

PART 5.5. LOS ANGELES COUNTY HEALTH CARE MASTER PLAN

Chapter 1. Findings

101960. The Legislature finds and declares all of the following:

(a) The County of Los Angeles faces very grave challenges in providing health care for its residents.

(b) Almost one-half of the residents of Los Angeles County have no health insurance or rely on public programs, such as Medi-Cal for health coverage.

(c) More than 1.6 million of the 10 million residents of Los Angeles County have no health insurance. More than two million residents of Los Angeles County depend on Medi-Cal or other public programs for their health insurance and many of these Los Angeles County residents rely on the county medical system to obtain needed health care.

(d) Because of these severe demands, the county medical system faces recurrent crises and is unable to meet the needs of the residents of Los Angeles County.

Chapter 2. Definitions

101961. For purposes of this part, the following definitions shall apply:

(a) "Board" means the Board of Supervisors of Los Angeles County.

(b) "County" means the County of Los Angeles.

Chapter 3. Master Plan Authorization

101962. The board may, by ordinance, develop a master plan for health care in the county.

101963. The board may assemble a task force to develop a master plan for health care that is based on a long-range planning and policy analysis for the county department of health services, and report the plan to the board according to a schedule adopted by the board.

101964. The task force may do all of the following:

(a) Evaluate the strategic priorities for Los Angeles County as they relate to the financing, operation, clinical focus, and administration of the health care delivery system for low-income people in Los Angeles County.

(b) Take into account the possible impact of this planning and policy analysis for the Los Angeles community.

(c) Integrate into the analysis the unique history, relationships, and other cultural and environmental issues that would make a difference between a plan that is technically correct but not likely to be implemented and one that is essentially a workplan to take a highly regarded, vitally important health system successfully through the next decade when there will be mounting pressures and challenges.

101965. In developing the plan under Section 101963, the task force shall address all of the following issues:

(a) The following factors regarding the current health of the population of the county:

(1) The population served.

(2) The health status of each population.

(3) Key health conditions that need to be addressed.

(b) The following factors regarding the economic climate and its impact on health care:

(1) The characteristics of the regional economy.

(2) Health care and the regional economy.

(c) Expenditures on health care provided to low-income persons, including all of the following aspects, as related to Los Angeles County:

(1) The Medi-Cal program and the federal State Children's Health Insurance Program.

(2) The federal Medicare Program.

(3) Other tax-supported programs.

(4) Other public support of health care programs.

(5) Charity care.

(d) Health care providers serving low-income patients, including both of the following:

(1) The public system.

(2) The private system.

(e) Effectiveness of all of the following aspects of the public health care system:

(1) Systemwide priorities.

(2) The public health and communicable disease.

(3) Preventive care.

(4) Primary care.

(5) Specialty care.

(6) Emergency and trauma care.

(7) Inpatient care.

(8) Pharmacies.

(9) Gaps in the current system of care.

(10) Disease management.

(f) The following aspects of partnerships with academic medical institutions:

(1) History.
(2) Faculty contract.
(3) Medical staff leadership.
(4) Long-term planning issues.
(g) The following issues in system financing:
(1) Adequate leveraging of local resources.
(2) Maintenance of adequate revenue, local taxes, and taxpayer equity.
(3) Out-of-county care.
(4) Operational effectiveness.
(5) Financial management and information technology.
(6) Contracts for medical staff.
(7) Additional service opportunities.
(h) The health care workforce, as follows:
(1) Demographics.
(2) Trends.
(3) Critical shortage areas.
(4) Training and development.
(i) Physical plant and facility challenges for the system, specifically a master plan for capital investment.
(j) Potential provider partnerships with all of the following:
(1) Private hospitals.
(2) Childrens' hospitals.
(3) Federal Department of Veterans Affairs hospitals.
(4) Academic medical centers.
(5) Community primary care.
(6) Other health care agencies.
(k) System governance, including, but not limited to:
(1) The background of system governance.
(2) The role of local government.
(3) The role of the Los Angeles County Department of Health Services.
(4) The role of county health-related commissions.
(5) The role of the state government.
(6) The role of the federal government.

101966. The task force may make recommendations on the following to the board pursuant to the planning and policy analysis conducted under this part:
(a) Priorities for clinical operations.
(b) Systemwide issues.
(c) The spectrum of care delivery.
(d) Gaps in the current system.
(e) Disease management.
(f) Medical staff relationships.

(g) Physical plant issues.
(h) Priorities for health care financing.
(i) System financial strategies.
(j) Financial management.
(k) Priorities for partnership development and expansion.
(*l*) Priorities for an effective health system administration.

CHAPTER 515

An act to add Section 12089 to the Government Code, relating to naturalization services.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

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

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

(a) Citizenship and participation in the civic process play a critical role in the well-being of our neighborhoods, communities, schools, and state.

(b) Immigrants who are citizens are able to integrate more fully into the civic life of our communities and state. There are currently 2.7 million immigrants in this state who are eligible for naturalization.

(c) This state has one of the lowest naturalization rates in the country.

(d) A comprehensive and well-coordinated naturalization services and civic education system will assist more legal permanent residents to become citizens.

(e) The state established the Naturalization Services Program (NSP) in 1996 to assist legal permanent residents in the process of obtaining citizenship. In alliance with nonprofit and community organizations, NSP has assisted approximately 90,000 individuals as of December 2003. NSP is funded annually through budget appropriations and is a critical resource for California's legal permanent residents seeking citizenship.

SEC. 2. Section 12089 is added to the Government Code, to read:

12089. (a) The Naturalization Services Program is hereby established, to be administered within the Department of Community Services and Development. The department shall administer the Naturalization Services Program to provide funding to community-based organizations to assist legal permanent residents in obtaining citizenship. The department shall seek input from stakeholders in designing the

methodology for the distribution of funds appropriated for purposes of this section. The Naturalization Services Program shall be implemented to the extent that funds are appropriated for this purpose in the annual Budget Act.

(b) In order to ensure accountability, effectiveness, and accessibility, the Naturalization Services Program shall emphasize both of the following:

(1) Collaboration among grantees and other providers in their region, including the State Department of Education English as a Second Language and civic grantees.

(2) Development of a referral system in each service area to ensure immigrants are informed about adult education, English literacy, and citizenship services in their region.

CHAPTER 516

An act to add and repeal Section 99320 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 99320 is added to the Public Utilities Code, to read:

99320. (a) From funds made available pursuant to Item 2660-101-0046 of the Budget Act of 2006, the department shall make competitive grants to public agencies for the Agricultural Worker Transportation Program, which is hereby established. These funds may be used for transportation services directly provided by or contracted for by those agencies and to match federal or local funds for the purchase, lease, or operation of vans and buses. Funds shall be allocated consistent with the guidelines adopted by the department pursuant to subdivision (b).

(b) The department shall establish a committee of not more than 12 members comprised of representatives of farmworkers, growers, farm labor contractors, social service agencies, transit operators, the Department of the California Highway Patrol, and other state or federal agencies, as appropriate, to consult with the department relative to the program and the needs the program is intended to serve. The department,

in consultation with the committee, shall adopt guidelines for the program.

(c) The department shall report to the Legislature within 120 days of the effective date of the statute adding this section in the 2005–06 Regular Session on the establishment of the program and committee, on a schedule for awarding grants to agencies for projects and services to be funded during the 2006–07 fiscal year from funds made available in Item 2660-101-0046 of the Budget Act of 2006, and on the process for distributing remaining grant funds in subsequent years. The department shall submit a final report to the Legislature on or before January 1, 2010, which shall, at a minimum, detail program expenditures from state, federal, and local funds, and include measures of program effectiveness.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 517

An act to amend Sections 41520, 41522, 44251, 44252, 44252.5, 44253.3, 44259, 44259.2, 44270.1, 44275.4, 44277, 44279.1, 44320.2, 45028, and 47634.4 of, to add Sections 44252.6, 44265.1, 44279.25, and 44387 to, to add Chapter 3.8 (commencing with Section 44740) to Part 25 of, to repeal Sections 44274, 44274.1, 44275.3, 44275.5, 44278, and 44279 of, to repeal and add Section 44274.2 of, and to repeal and add Article 6 (commencing with Section 44560) of Chapter 3 of Part 25 of, the Education Code, relating to teachers.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 41520 of the Education Code is amended to read:

41520. (a) There is hereby established the teacher credentialing block grant. Commencing with the 2005–06 fiscal year, the Superintendent of Public Instruction shall apportion block grant funds to a school district or charter school offering approved programs pursuant to Section 41521 based on the number of eligible participants in each of those programs.

(b) (1) The Legislature finds that the Superintendent and the Commission on Teacher Credentialing established requirements for reviewing and approving teacher induction programs. The Legislature further finds that 135 of 150 programs are jointly approved as of July 1, 2004. It is the intent of the Legislature that these requirements remain in effect until the Superintendent and the Commission on Teacher Credentialing jointly agree to modify them. The Superintendent and the Commission on Teacher Credentialing shall jointly review new programs developed pursuant to paragraph (1) of subdivision (a) based on established approval requirements.

(2) As provided for in Section 44259, the Commission on Teacher Credentialing retains authority to issue credentials to candidates who complete an induction program that meets the Standards of Program Quality and Effectiveness adopted by the commission. A previously approved program that is deemed as no longer meeting the Standards of Program Quality and Effectiveness shall be considered a new program for purposes of becoming an approved program pursuant to this article.

(3) A school district or charter school may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41521, as the statutes governing those programs read on January 1, 2004, for the purpose of providing equivalent program services for beginning teachers. For the purpose of statewide program support and accountability, equivalent program services include regional support and technical assistance that existed under the Beginning Teacher Support and Assessment system on January 1, 2004.

(c) For purposes of this article, "school district" includes a consortia of school districts, a consortia of school districts and county offices of education, and a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41521.

SEC. 2. Section 41522 of the Education Code is amended to read:

41522. (a) The amount of funding a school district or charter school receives pursuant to this article shall be adjusted for changes in the number of participating credential candidates in each approved program, and the amount per candidate shall be adjusted annually for inflation pursuant to Section 42238.1.

(b) For purposes of calculating the amount of funding a school district or charter school receives pursuant to this article, the Superintendent shall include funding for up to 10 percent of credential candidates who complete the program early in accordance with paragraph (2) of subdivision (e) of Section 44468 for the time period that the candidate would regularly participate in the program, but not to exceed two fiscal

years. In administering this subdivision, the Superintendent shall comply with subdivision (b) of Section 44386.

SEC. 3. Section 44251 of the Education Code is amended to read:

44251. (a) The period for which a credential, as authorized under Section 44250 issued prior to September 1, 1985, is valid shall be as follows:

(1) For an internship credential: two years.

(2) For a preliminary credential, pending completion of the fifth year of study: five years.

(3) For a life credential: the life of the holder.

(b) The period for which a credential issued on or after September 1, 1985, as authorized under Section 44250 is valid, shall be as follows:

(1) For an internship credential: two years.

(2) For a preliminary credential, pending completion of a beginning teacher induction program approved by the commission or the fifth year of study: five years.

(3) For a clear or professional clear teaching credential: the life of the holder, if the holder submits an application and fee for renewal every five years and meets all professional fitness requirements under Sections 44339, 44340, and 44341.

(4) For a clear or professional clear services credential: the life of the holder, if the holder submits an application and fee for renewal every five years and meets all professional fitness requirements under Sections 44339, 44340, and 44341.

SEC. 4. 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 any credential, permit, certificate, or renewal of an emergency credential to any 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 from the basic skills proficiency test requirement any of the following persons:

(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.

(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 shall also include representatives of school boards, school administrators, parents, and postsecondary educational institutions.

The Superintendent shall adopt any 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) By July 31, 2007, the Superintendent shall establish passing scores for each of the tests specified in this subdivision, the attainment of any of which may be substituted for a passing score on the state basic skills proficiency test adopted pursuant to subdivision (c). The Superintendent shall set basic skills passing scores for each of the following tests:

(1) The Graduate Record Examinations (GRE) General Test.

(2) The Scholastic Aptitude Test (SAT) Reasoning Test.

(3) The ACT Plus Writing.

(e) This section does not require the holders of, or applicants for, a designated subjects special subjects credential or vocational designated subject 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 or vocational designated subject 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.

(f) 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.

(g) 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. 5. 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) Any 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) Any 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.

(e) Any individual who achieves a passing score, as determined by the Superintendent, on any of the tests specified in subdivision (d) of Section 44252 shall be considered proficient in the skills of reading, writing, and mathematics, and shall not be required to pass the state basic skills proficiency test or be retested for purposes of meeting the proficiency requirements of Sections 44227, 44252, and 44830.

SEC. 6. Section 44252.6 is added to the Education Code, to read:

44252.6. (a) The commission, no later than July 1, 2007, shall ensure that the California Subject Examinations for Teachers (CSET): Multiple Subjects be modified to add an assessment of basic writing skills at least as comprehensively and to the level of rigor that basic writing skills are assessed by the state basic skills proficiency test.

(b) Any individual who passes the CSET: Multiple Subjects, after it has been adjusted pursuant to subdivision (a), with the necessary score determined by the commission, shall be considered proficient in the skills of reading, writing, and mathematics, and shall not be required to pass the state basic skills proficiency requirements of Sections 44227, 44252, and 44830.

(c) The commission shall conduct a public study session to consider the implications of incorporating the assessment of ability, skills, and knowledge related to effective reading instruction that is assessed by the Reading Instruction Competence Assessment (RICA) within the teacher performance assessment set forth in Section 44320.2 and shall report on the outcome of that session to the Legislature and the Governor no later than July 1, 2007. At the study session, the commission shall provide an opportunity for teachers, teacher educators, reading specialists, testing specialists, representatives of teachers, administrators, governing board members, parents of pupils, and the public to comment on the implications, costs, and validity of consolidating these assessments.

(d) The commission shall convene a public study session to discuss the implications of modifying the single subject California Subject Examinations for Teachers (CSET) to assess basic skills in reading, writing, and mathematics. The commission, no later than October 1, 2007, shall report to the Legislature on the outcome of that session of modifying the CSET in single subjects to assess basic skills in the subjects of basic reading, writing, and mathematics, at least as comprehensively and to the level that these skills are assessed by the state basic skills proficiency test. At the study session, the commission shall provide an opportunity for teachers, teacher educators, reading specialists, testing specialists, representatives of teachers, administrators, governing board members, parents of pupils, and the public to comment on the implications, costs, and validity of modifying these assessments.

(e) The commission shall ensure that the consolidation and modification of assessments pursuant to this section does not result in an increase in the total fees paid by teacher credential candidates.

SEC. 7. Section 44253.3 of the Education Code is amended to read:

44253.3. (a) The commission shall issue a certificate that authorizes the holder to provide all of the following services to limited-English-proficient pupils:

(1) Instruction for English language development in preschool, kindergarten, grades 1 to 12, inclusive, and classes organized primarily for adults, except when the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a children's center instructional permit pursuant to Sections 8363 and 44252.7, a children's center supervision permit pursuant to Section 8363, or a designated subjects teaching credential in adult education pursuant to Section 44260.2. If the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a children's center instructional permit, or a children's center supervision permit, instruction for English language development is limited to the programs authorized by that permit. If the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a designated subjects teaching credential in adult education, instruction for English language development is limited to classes organized primarily for adults.

(2) Specially designed content instruction delivered in English in the subjects and at the levels authorized by the teacher's prerequisite credential or permit used to satisfy the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3.

(b) The minimum requirements for the certificate shall include all of the following:

(1) Possession of a valid California teaching credential, services credential, children's center instructional permit, or children's center supervision permit which credential or permit authorizes the holder to provide instruction to pupils in preschool, kindergarten, any of grades 1 to 12, inclusive, or classes primarily organized for adults, except for any of the following:

(A) Emergency credentials or permits.

(B) Exchange credentials as specified in Section 44333.

(C) District intern credentials as specified in Section 44325.

(D) Sojourn certificated employee credentials as specified in Section 44856.

(E) Teacher education internship credentials as specified in Article 3 (commencing with Section 44450) of Chapter 3.

(2) Passage of one or more examinations that the commission determines are necessary for demonstrating the knowledge and skills required for effective delivery of the services authorized by the certificate.

(3) Completion of at least six semester units, or nine quarter units, of coursework in a second language at a regionally accredited institution of postsecondary education. The commission shall establish minimum standards for scholarship in the required coursework. The commission shall also establish alternative ways in which the requirement can be satisfied by language-learning experience that creates an awareness of the challenges of second-language acquisition and development.

(c) Completion of coursework in human relations in accordance with the commission's standards of program quality and effectiveness that includes, at a minimum, instruction in the following:

(1) The nature and content of culture.

(2) Crosscultural contact and interactions.

(3) Cultural diversity in the United States and California.

(4) Providing instruction responsive to the diversity of the pupil population.

(5) Recognizing and responding to behavior related to bias based on race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation.

(6) Techniques for the peaceful resolution of conflict.

(d) The commission shall establish alternative requirements for a teacher to earn the certificate, which shall be awarded as a supplementary authorization pursuant to subdivision (e) of Section 44225.

(e) A teacher who possesses a credential or permit described in paragraph (1) of subdivision (b) and is able to present a valid out-of-state credential or certificate that authorizes the instruction of English language learners may qualify for the certificate issued under this section by submitting an application and fee to the commission.

(f) The certificate shall remain valid as long as the prerequisite credential or permit specified in paragraph (1) of subdivision (b) remains valid.

SEC. 8. Section 44259 of the Education Code is amended to read:

44259. (a) Except as provided in subparagraphs (A) and (C) of paragraph (3) of subdivision (b), each program of professional preparation for multiple or single subject teaching credentials shall not include more than one year of, or the equivalent of one-fifth of a five-year program in, professional preparation.

(b) The minimum requirements for the preliminary multiple or single subject teaching credential are all of the following:

(1) A baccalaureate degree or higher degree from a regionally accredited institution of postsecondary education. Except as provided in subdivision (c) of Section 44227, the baccalaureate degree shall not be in professional education. The commission shall encourage accredited institutions to offer undergraduate minors in education and special education to students who intend to become teachers.

(2) Passage of the state basic skills examination that is developed and administered by the commission pursuant to Section 44252.5.

(3) Satisfactory completion of a program of professional preparation that has been accredited by the committee on accreditation on the basis of standards of program quality and effectiveness that have been adopted by the commission. In accordance with the commission's assessment and performance standards, each program shall include a teaching performance assessment as set forth in Section 44320.2 which is aligned with the California Standards for the Teaching Profession. The commission shall ensure that each candidate recommended for a credential or certificate has demonstrated satisfactory ability to assist pupils to meet or exceed state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605. Programs that meet this requirement for professional preparation shall include any of the following:

(A) Integrated programs of subject matter preparation and professional preparation pursuant to subdivision (a) of Section 44259.1.

(B) Postbaccalaureate programs of professional preparation, pursuant to subdivision (b) of Section 44259.1.

(C) Internship programs of professional preparation, pursuant to Section 44321, Article 7.5 (commencing with Section 44325), Article 11 (commencing with Section 44380), and Article 3 (commencing with Section 44450) of Chapter 3.

(4) Study of alternative methods of developing English language skills, including the study of reading as described in subparagraphs (A) and (B), among all pupils, including those for whom English is a second

language, in accordance with the commission's standards of program quality and effectiveness. The study of reading shall meet the following requirements:

(A) Commencing January 1, 1997, satisfactory completion of comprehensive reading instruction that is research-based and includes all of the following:

(i) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic, explicit phonics, and decoding skills.

(ii) A strong literature, language, and comprehension component with a balance of oral and written language.

(iii) Ongoing diagnostic techniques that inform teaching and assessment.

(iv) Early intervention techniques.

(v) Guided practice in a clinical setting.

(B) For the purposes of this section, "direct, systematic, explicit phonics" means phonemic awareness, spelling patterns, the direct instruction of sound/symbol codes and practice in connected text and the relationship of direct, systematic, explicit phonics to the components set forth in clauses (i) to (v), inclusive.

A program for the multiple subjects credential also shall include the study of integrated methods of teaching language arts.

(5) Completion of a subject matter program that has been approved by the commission on the basis of standards of program quality and effectiveness pursuant to Article 6 (commencing with Section 44310) or passage of a subject matter examination pursuant to Article 5 (commencing with Section 44280). The commission shall ensure that subject matter standards and examinations are aligned with the state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605.

(6) Demonstration of a knowledge of the principles and provisions of the Constitution of the United States pursuant to Section 44335.

(7) Commencing January 1, 2000, demonstration, in accordance with the commission's standards of program quality and effectiveness, of basic competency in the use of computers in the classroom as determined by one of the following:

(A) Successful completion of a commission-approved program or course.

(B) Successful passage of an assessment that is developed, approved, and administered by the commission.

(c) The minimum requirements for the professional clear multiple or single subject teaching credential shall include all of the following requirements:

(1) Possession of a valid preliminary teaching credential, as prescribed in subdivision (b), possession of a valid equivalent credential or certificate, or completion of equivalent requirements as determined by the commission.

(2) Subject to the availability of funds in the annual Budget Act to provide statewide access to eligible beginning teachers, as defined in subdivision (d) of Section 44279.1 and except as provided in paragraph (3), completion of a program of beginning teacher induction, including one of the following:

(A) A program of beginning teacher support and assessment approved by the commission and the Superintendent pursuant to Section 44279.1, a provision of the Marian Bergeson Beginning Teacher Support and Assessment System.

(B) An alternative program of beginning teacher induction that is provided by one or more local educational agencies and has been approved by the commission and the Superintendent on the basis of initial review and periodic evaluations of the program in relation to appropriate standards of credential program quality and effectiveness that have been adopted by the commission, the Superintendent, and the state board pursuant to this subdivision. The standards for alternative programs shall encourage innovation and experimentation in the continuous preparation and induction of beginning teachers. Any alternative program of beginning teacher induction that has met state standards pursuant to this subdivision may apply for state funding pursuant to Sections 44279.1 and 44279.2.

(C) An alternative program of beginning teacher induction that is sponsored by a regionally accredited college or university, in cooperation with one or more local school districts, that addresses the individual professional needs of beginning teachers and meets the commission's standards of induction. The commission shall ensure that preparation and induction programs that qualify candidates for professional credentials extend and refine each beginning teacher's professional skills in relation to the California Standards for the Teaching Profession and the standards of pupil performance adopted pursuant to Section 60605.

(3) (A) If a candidate satisfies the requirements of subdivision (b), including completion of an accredited internship program of professional preparation, and if that internship program fulfills induction standards and is approved as set forth in this subdivision, the commission shall determine that the candidate has fulfilled the requirements of paragraph (2).

(B) If an approved induction program is verified as unavailable to a beginning teacher, or if the beginning teacher is required under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) to

complete subject matter coursework to be qualified for a teaching assignment, the commission shall accept completion of an approved fifth-year program after completion of a baccalaureate degree at a regionally accredited institution as fulfilling the requirements of paragraph (2). The commission shall adopt regulations to implement this subparagraph.

(4) Experience that includes the application of knowledge and skills previously acquired in a preliminary credential program, in accordance with commission standards, that addresses the following:

(A) Health education, including study of nutrition, cardiopulmonary resuscitation, and the physiological and sociological effects of abuse of alcohol, narcotics, and drugs and the use of tobacco. Training in cardiopulmonary resuscitation shall also meet the standards established by the American Heart Association or the American Red Cross.

(B) Field experience in methods of delivering appropriate educational services to pupils with exceptional needs in regular education programs.

(C) Advanced computer-based technology, including the uses of technology in educational settings.

(d) The commission shall develop and implement standards of program quality and effectiveness that provide for the areas of application listed in subparagraphs (A) to (C), inclusive, of paragraph (4) of subdivision (c), starting in professional preparation and continuing through induction.

(e) A credential that was issued prior to January 1, 1993, shall remain in force as long as it is valid under the laws and regulations that were in effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential, unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no more restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(f) A credential program that is approved by the commission may not deny an individual access to that program solely on the grounds that the individual obtained a teaching credential through completion of an internship program when that internship program has been accredited by the commission.

(g) Notwithstanding this section, persons who were performing teaching services as of January 1, 1999, pursuant to the language of this section that was in effect prior to that date, may continue to perform those services without complying with any requirements that may be added by the amendments adding this subdivision.

(h) Subparagraphs (A) and (B) of paragraph (4) of subdivision (b) do not apply to any person who, as of January 1, 1997, holds a multiple or

single subject teaching credential, or to any person enrolled in a program of professional preparation for a multiple or single subject teaching credential as of January 1, 1997, who subsequently completes that program. It is the intent of the Legislature that the requirements of subparagraphs (A) and (B) of paragraph (4) of subdivision (b) be applied only to persons who enter a program of professional preparation on or after January 1, 1997.

SEC. 9. Section 44259.2 of the Education Code is amended to read:

44259.2. (a) Notwithstanding any other provision of this chapter, including, but not limited to, paragraph (3) of subdivision (b) of Section 44259, the commission shall waive the requirements for completion of a program of professional preparation for any individual with a minimum of six years of full-time teaching experience in an accredited private school, as determined by the commission, in the subject and level of the credential sought, who complies with all of the following:

(1) The individual submits evidence of two years of rigorous performance evaluations while teaching in an accredited private school, based on criteria determined by the commission, on which the applicant received ratings of satisfactory or better.

(2) The individual meets the California requirements for teacher fitness pursuant to Sections 44339, 44340, and 44341.

(3) The individual satisfies the requirement for preparation in the instruction of pupils who are English language learners in accordance with paragraph (4) of subdivision (b) of Section 44259 and subdivisions (a) and (c) of Section 44259.5.

(b) Notwithstanding any other provision of this chapter, including, but not limited to, paragraph (3) of subdivision (b) of Section 44259, the commission shall waive the requirements for completion of the professional field experience component of a program of professional preparation for any individual with a minimum of three years of full-time teaching experience in an accredited private school, as determined by the commission, in the subject and level of the credential sought, who complies with all of the following:

(1) The individual submits evidence of two years of rigorous performance evaluations while teaching in an accredited private school, based on criteria determined by the commission, on which the applicant received ratings of satisfactory or better.

(2) The individual meets the California requirements for teacher fitness pursuant to Sections 44339, 44340, and 44341.

SEC. 10. Section 44265.1 is added to the Education Code, to read:

44265.1. By December 1, 2007, the commission shall report to the Legislature and the Governor on the current existing process and

requirements for obtaining a specialist credential in special education and recommend modifications to enhance and expedite these procedures.

SEC. 11. Section 44270.1 of the Education Code is amended to read:

44270.1. (a) The minimum requirements for the professional services credential with a specialization in administrative services are all of the following:

(1) Possession of a valid preliminary administrative services credential, as specified in Section 44270.

(2) A minimum of two years of successful experience in a full-time administrative position in a public school or private school of equivalent status, while holding the preliminary administrative services credential, as attested by the employing school district or agency, including, but not limited to, the department, in the case of state school administrators, and county offices of education, in the case of county school administrators.

(3) Completion of a commission-approved program of advanced preparation. Each candidate, in consultation with employing school district personnel and university personnel, shall develop an individualized program of professional development activities for this advanced preparation program based upon individual needs. Each individualized program will include university coursework and may include, nonuniversity activities or advanced administrative field experiences. The commission shall adopt standards and criteria for the university programs of advanced preparation and nonuniversity activities.

(b) The commission may, at the request of a credential candidate, grant a waiver, pursuant to subdivision (m) of Section 44225, of the requirement of university coursework upon its finding that the candidate, in consultation with personnel of the employing school district and personnel of the university, is not able to develop an individualized program of professional development for the advanced preparation program that meets the individual needs of the candidates.

SEC. 12. Section 44274 of the Education Code is repealed.

SEC. 13. Section 44274.1 of the Education Code is repealed.

SEC. 14. Section 44274.2 of the Education Code is repealed.

SEC. 15. Section 44274.2 is added to the Education Code, to read:

44274.2. (a) Notwithstanding any provision of this chapter, the commission shall issue a five-year preliminary multiple subject teaching credential authorizing instruction in a self-contained classroom, a five-year preliminary single subject teaching credential authorizing instruction in departmentalized classes, or a five-year preliminary education specialist credential authorizing instruction of special education pupils to any out-of-state prepared teacher who meets all of the following requirements:

(1) Possesses a baccalaureate degree from a regionally accredited institution of higher education.

(2) Has completed a teacher preparation program at a regionally accredited institution of higher education, or a state-approved teacher preparation program offered by a local educational agency.

(3) Meets the subject matter knowledge requirements for the credential. If the subject area listed on the out-of-state credential does not correspond to a California subject area, as specified in Sections 44257 and 44282, the commission may require the applicant to meet California subject matter requirements before issuing a professional clear credential.

(4) Has earned a valid corresponding elementary, secondary, or special education teaching credential based upon the out-of-state teacher preparation program. For the education specialist credential, the commission shall determine the area of concentration based on the special education program completed out of state.

(5) Has successfully completed a criminal background check conducted under Sections 44339, 44340, and 44341 for credentialing purposes.

(b) The commission shall issue a professional clear multiple subject, single subject, or education specialist teaching credential to any applicant who satisfies the requirements of subdivision (a), provides verification of two or more years of teaching experience, including, but not limited to, two satisfactory performance evaluations, and documents, in a manner prescribed by the commission, that he or she fulfills each of the following requirements:

(1) The applicant has completed 150 clock hours of activities that contribute to his or her competence, performance, and effectiveness in the education profession, and that assist the applicant in meeting or exceeding standards for professional preparation established by the commission, or the applicant has earned a master's degree or higher in a field related to the credential, or the equivalent semester units, from a regionally accredited institution of higher education.

(2) The applicant has met the state requirements for teaching English language learners including, but not limited to, the requirements in Section 44253.3.

(c) For applicants who do not meet the experience requirement described in subdivision (b), the commission shall issue a professional clear multiple subject, single subject, or education specialist teaching credential upon verification of the following requirements:

(1) The commission has issued to the applicant a preliminary five-year teaching credential pursuant to subdivision (a).

(2) The applicant has completed a beginning teacher induction program pursuant to paragraph (2) of subdivision (c) of Section 44259.

(3) The applicant has met the requirements for teaching English language learners including, but not limited to, the requirements in Section 44253.3.

(4) Prior to issuing an education specialist credential under this subdivision, the commission shall verify completion of a program for the Professional Level II credential accredited by the commission.

(d) All applicants for credentials pursuant to this section shall satisfy the basic skills proficiency requirement set forth in Section 44252.

SEC. 16. Section 44275.3 of the Education Code is repealed.

SEC. 17. Section 44275.4 of the Education Code is amended to read:

44275.4. Notwithstanding any other provision of law:

(a) It is the intent of the Legislature that both of the following occur:

(1) That this section provide flexibility to enable school districts to recruit credentialed elementary, secondary, and special education teachers prepared in countries other than the United States to relocate temporarily or permanently to this state.

(2) That any and all teachers prepared in countries other than the United States who are granted a California teaching credential pursuant to this section fully meet the requirements of this state.

(b) Coursework, programs, or degrees completed at an institution of higher education outside of the United States are acceptable toward certification when the Commission on Teacher Credentialing or an evaluating agency approved by the commission has determined that the institution's coursework, programs, or degrees are equivalent to those offered by a regionally accredited institution in the United States. The commission reserves the right to accept or reject an approved evaluating agency's determination. Notwithstanding any other provision of this chapter, the commission shall issue a five-year preliminary multiple subject teaching credential, a five-year preliminary single subject teaching credential, or a five-year preliminary education specialist credential to a teacher prepared in a country other than the United States who meets all of the following requirements:

(1) The teacher holds or is eligible for a credential from another country that required a baccalaureate or higher degree determined to be equivalent to those offered by a regionally accredited institution in the United States and completion of a professional preparation program approved by the appropriate agency in the country where the program was completed that requires the teacher to meet requirements equivalent to the multiple or single subject teaching credential requirements in Section 44259 or the special education credential requirements described in Section 44265. The commission shall determine the area of concentration for the California education specialist credential based on the special education program completed out of country.

(2) The teacher successfully completes a criminal background check conducted pursuant to Sections 44339, 44340, and 44341 for credentialing purposes.

(c) A teacher prepared in a country other than the United States who has been issued by the commission a five-year preliminary multiple subject, single subject, or education specialist teaching credential shall pass the state basic skills proficiency test, administered by the commission pursuant to Section 44252, within one year of the issuance date of the credential in order to be eligible to continue teaching pursuant to this section.

(d) The commission shall issue a professional clear credential to a teacher prepared in a country other than the United States who has met the requirements in subdivisions (b) and (c) and who meets the following requirements:

(1) Demonstration of subject matter competence pursuant to paragraph (5) of subdivision (b) of Section 44259.

(2) Completion of a course, or for multiple subject and education specialist credentials, a course or an examination, on the various methods of teaching reading pursuant to paragraph (4) of subdivision (b) of Section 44259. Completion of coursework in another state or country determined by the commission to be comparable and equivalent shall meet this requirement.

(3) Completion of a course or examination on the provisions and principles of the United States Constitution pursuant to paragraph (6) of subdivision (b) of Section 44259. Completion of coursework in another state or country determined by the commission to be comparable and equivalent shall meet this requirement.

(4) Completion of the study of health education pursuant to subparagraph (A) of paragraph (3) of subdivision (c) of Section 44259. Completion of coursework in another state or country determined by the commission to be comparable and equivalent shall meet this requirement.

(5) With the exception of the education specialist credential, completion of study and field experience in methods of delivering appropriate educational services to pupils with exceptional needs in regular education programs. Completion of coursework in another state or country determined by the commission to be comparable and equivalent shall meet this requirement.

(6) Completion of the study of computer-based technology through demonstration by course or examination of basic competence in the use of computers in the classroom, and study of advanced computer-based technology including the uses of technology in educational settings pursuant to paragraph (3) of subdivision (c) of Section 44259. Completion

of coursework in another state or country determined by the commission as comparable and equivalent shall meet this requirement.

(7) Completion of a beginning teacher induction program pursuant to paragraph (2) of subdivision (c) of Section 44259.

(8) A teacher holding a specialist credential pursuant to this section shall complete the requirements for nonspecial education pedagogy and a supervised field experience program in general education pursuant to Section 44265.

(9) A teacher holding a specialist credential pursuant to this section shall complete a program for the Professional Level II credential accredited by the commission.

SEC. 18. Section 44275.5 of the Education Code is repealed.

SEC. 19. Section 44277 of the Education Code is amended to read:

44277. The Legislature recognizes that effective professional growth must continue to occur throughout the careers of all teachers, in order that teachers remain informed of changes in pedagogy, subject matter, and pupil needs. In enacting this section, it is the intent of the Legislature to encourage teachers to engage in an individual program of professional growth that extends their content knowledge and teaching skills and for school districts to establish professional growth programs that give individual teachers a wide range of options to pursue as well as significant roles in determining the course of their professional growth.

(a) An individual program of professional growth may consist of activities that are aligned with the California Standards for the Teaching Profession that contribute to competence, performance, or effectiveness in the profession of education and the classroom assignments of the teacher. Acceptable activities may include, among other acceptable activities, the completion of courses offered by regionally accredited colleges and universities, including instructor-led interactive courses delivered through online technologies; participation in professional conferences, workshops, teacher center programs, staff development programs, or a California Reading Professional Development Program operated pursuant to Article 2 (commencing with Section 99220) of Chapter 5 of Part 65; service as a mentor teacher; participation in school curriculum development projects; participation in systematic programs of observation and analysis of teaching; service in a leadership role in a professional organization; and participation in educational research or innovation efforts. Employing agencies and the bargaining agents of employees may negotiate to agree on the terms of programs of professional growth within their jurisdictions, provided that the agreements shall be consistent with this section.

(b) An individual program of professional growth may include a basic course in cardiopulmonary resuscitation, which includes training in the

subdiaphragmatic abdominal thrust (also known as the "Heimlich maneuver") and meets or exceeds the standards established by the American Heart Association or the American Red Cross for courses in that subject or minimum standards for training programs established by the Emergency Medical Services Authority. An individual program of professional growth may also include a course in first aid that meets or exceeds the standards established by the American Red Cross for courses in that subject or minimum standards for training programs established by the Emergency Medical Services Authority.

SEC. 20. Section 44278 of the Education Code is repealed.

SEC. 21. Section 44279 of the Education Code is repealed.

SEC. 22. Section 44279.1 of the Education Code is amended to read:

44279.1. (a) The Legislature finds and declares that the beginning years of the career of a teacher are a critical time in which it is necessary that intensive professional development and assessment occur. The Legislature recognizes that the public invests heavily in the preparation of prospective teachers, and that more than half of all new teachers leave some California school districts after one or two years in the classroom. Intensive professional development and assessment are necessary to build on the preparation that precedes initial certification, to transform academic preparation into practical success in the classroom, to retain greater numbers of capable beginning teachers, and to remove novices who show little promise as teachers. It is the intent of the Legislature that the commission and the Superintendent develop and implement policies to govern the support and assessment of beginning teachers, as a condition for the professional certification of those teachers in the future.

(b) There is hereby established the California Beginning Teacher Support and Assessment System, to be administered jointly by the commission and the Superintendent. In administering the system, the commission and the Superintendent shall approve the most cost-effective programs of support and assessment. The commission and the Superintendent shall also ensure that programs meet the Standards of Quality and Effectiveness for Beginning Teacher Support and Assessment Programs adopted by the commission in 1997 and that local programs support beginning teachers in meeting the competencies described in the California Standards for the Teaching Profession adopted by the commission in January 1997. The system shall do all of the following:

(1) Provide an effective transition into the teaching career for first-year and second-year teachers in California.

(2) Improve the educational performance of pupils through improved training, information, and assistance for new teachers.

(3) Enable beginning teachers to be effective in teaching pupils who are culturally, linguistically, and academically diverse.

(4) Ensure the professional success and retention of new teachers.

(5) Ensure that a support provider provides intensive individualized support and assistance to each participating beginning teacher.

(6) Improve the rigor and consistency of individual teacher performance assessments and the usefulness of assessment results to teachers and decisionmakers.

(7) Establish an effective, coherent system of performance assessments that are based on the California Standards for the Teaching Profession adopted by the commission in January 1997.

(8) Examine alternative ways in which the general public and the educational profession may be assured that new teachers who remain in teaching have attained acceptable levels of professional competence.

(9) Ensure that an individual induction plan is in place for each participating beginning teacher and is based on an ongoing assessment of the development of the beginning teacher.

(10) Ensure continuous program improvement through ongoing research, development, and evaluation.

(c) Participation in the system shall be voluntary for teachers, school districts, and county offices of education and participation by certificated employees shall not be made a condition of employment. The commission and the Superintendent shall adopt and implement criteria and standards for participation in the system, including criteria regarding the eligibility of teachers and standards of local program quality and intensity for schools, school districts, county offices of education, colleges, universities, and other educational and professional organizations. The criteria and standards shall be consistent with the purposes of the system.

(d) For purposes of this article, unless the context otherwise requires, "beginning teacher" means a teacher with a valid California credential, as defined in Section 44259, or an intern participating in the program established pursuant to Article 11 (commencing with Section 44380), who is serving in the first year or second year of service.

(e) Subject to verification and approval by an induction program director, a beginning teacher shall not be required to demonstrate that an induction standard has been met, or complete an element of an approved induction program designed to assist a candidate in mastering a given standard, if the candidate previously met the induction standard while participating in a commission-approved preparation program.

(f) For a beginning teacher who holds a professional clear teaching credential that is subject to the requirements of subdivisions (b) and (c) of Section 44277, participation in the program may, at the discretion of

the teacher, serve as part or all of the individual program of professional growth.

(g) The Superintendent and the commission shall disseminate the California Standards for the Teaching Profession adopted by the commission in January 1997 to colleges, universities, school districts, county offices of education, and professional associations, who shall be encouraged to use the standards in efforts to improve teacher preparation and support programs. Performance assessments developed under this article shall be designed to provide useful, helpful feedback to beginning teachers and their support providers. That information shall not be used for employment-related evaluations, as a condition of employment, or as a basis for terminating employment.

(h) It is the intent of the Legislature that the commission and the Superintendent establish a statewide teacher induction program that supports locally designed, high-quality induction programs that provide individualized support and formative assessment for all participating beginning teachers as defined in subdivision (d). At the discretion of the local beginning teacher support and assessment system teacher induction program, funds allocated to a program on the basis of eligible beginning teachers may be used to provide support, assistance, and preparation services to other credential candidates who are in their first or second year of employment as a classroom teacher.

(i) This article shall be known, and may be cited, as the Marian Bergeson Beginning Teacher Support and Assessment System.

SEC. 23. Section 44279.25 is added to the Education Code, to read:

44279.25. (a) By December 1, 2007, the Superintendent and the commission shall report to the Legislature and the Governor on the current state of the Beginning Teacher Support and Assessment System. The report shall review the articulation of teacher preparation programs and teacher induction programs to eliminate duplicative requirements and, at a minimum, do all of the following:

(1) Recommend revisions to laws, regulations, or policies to eliminate duplicative requirements between teacher preparation and teacher induction programs, with particular attention paid to eliminating duplication between induction requirements and requirements for completion of state-approved alternative certification programs.

(2) Recommend revisions to the system to ensure that teacher credential candidates achieve teaching competence and programs use best practices to transition candidates from teacher preparation programs to induction programs.

(3) Recommend ways to ensure that beginning teachers receive direct assistance from experienced teachers who are familiar with the grade

span, subject matter, and teaching and classroom management techniques appropriate to the teaching assignment of each beginning teacher.

(b) By July 1, 2008, the Superintendent and the commission shall review and revise, as necessary, the Standards of Quality and Effectiveness for Professional Teacher Induction Programs of March 2002 to ensure that these standards address the application of knowledge and skills previously acquired in a preliminary credential program and to remove any requirements or activities that require candidates to duplicate the acquisition of knowledge through coursework. This review shall include, but need not be limited to, all of the following:

(1) A review of formative assessment systems in use to ensure that the systems are appropriately flexible and may be adapted to reflect progress of individual candidates.

(2) A review of professional development provided to induction participants to ensure that it is not duplicative of coursework completed during teacher preparation.

(3) A review of new teacher support to ensure that the focus is on application and enhancement of skills and knowledge acquired in a preliminary credential program.

(4) Recommendations for program monitoring with respect to this subdivision.

(c) In consultation with the Superintendent, the commission shall revise the formative assessment system for beginning teachers, as necessary to ensure that related tasks and activities are aligned to the revised standards.

(d) The Superintendent and the commission shall identify effective practices and techniques and provide for the dissemination of these to local induction program providers.

(e) Immediately following the adoption of revised standards pursuant to subdivision (b), the commission shall review induction programs to determine whether local teacher induction programs are meeting standards of quality and effectiveness adopted pursuant to subdivision (b) and to assure greater program quality and consistency. The commission shall schedule regular reviews following the initial review of programs pursuant to this subdivision.

(f) The Superintendent and the commission shall ensure that teacher credential candidates are notified of the opportunity to choose an early completion option pursuant to Section 44468.

(g) It is the intent of the Legislature that funds appropriated in Provision 44 of Item 6110-001-0890 of Section 2.00 of the Budget Act of 2006 (Chapter 47 of the Statutes of 2006) be made available for reviews and preparation of the reports required pursuant to subdivisions

(a) and (b), and that the implementation of recommendations proceed immediately following the adoption of those reviews and reports.

SEC. 24. Section 44320.2 of the Education Code is amended to read:

44320.2. (a) The Legislature finds and declares that the competence and performance of teachers are among the most important factors in influencing the quality and effectiveness of education in elementary and secondary schools.

(b) Commencing July 1, 2008, for a program of professional preparation to satisfy the requirements of paragraph (3) of subdivision (b) of Section 44259, the program shall include a teaching performance assessment that is aligned with the California Standards for the Teaching Profession and that is congruent with state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605. In implementing this requirement, institutions or agencies may do the following:

(1) Voluntarily develop an assessment for approval by the commission. Approval of any locally developed performance assessment shall be based on assessment quality standards adopted by the commission, which shall encourage the use of alternative assessment methods including portfolios of teaching artifacts and practices.

(2) Participate in an assessment training program for assessors and implement the commission developed assessment.

(c) The commission shall implement the performance assessment in a manner that does not increase the number of assessments required for teacher credential candidates prepared in this state. Each candidate shall be assessed during the normal term or duration of the preparation program of the candidate.

(d) Subject to the availability of funds in the annual Budget Act, the commission shall perform all of the following duties with respect to the performance assessment:

(1) Assemble and convene an expert panel to advise the commission about performance standards and developmental scales for teaching credential candidates and the design, content, administration, and scoring of the assessment. At least one-third of the panel members shall be classroom teachers in California public schools.

(2) Design, develop, and implement assessment standards and an institutional assessor training program for the sponsors of professional preparation programs to use if they choose to use the commission developed assessment.

(3) Establish a review panel to examine each assessment developed by an institution or agency in relation to the standards set by the commission and advise the commission regarding approval of each assessment system.

(4) Initially and periodically analyze the validity of assessment content and the reliability of assessment scores that are established pursuant to this section.

(5) Establish and implement appropriate standards for satisfactory performance in assessments that are established pursuant to this section. The commission shall ensure that oral proficiency in English is a criterion for scoring the performance of each candidate in each assessment.

(6) Analyze possible sources of bias in the performance assessment and act promptly to eliminate any bias that is discovered.

(7) Collect and analyze background information provided by candidates who participate in the performance assessment, and report and interpret the individual and aggregated results of the assessment.

(8) Examine and revise, as necessary, the institutional accreditation system pursuant to Article 10 (commencing with Section 44370), for the purpose of providing a strong assurance to teaching candidates that ongoing opportunities are available in each credential preparation program that is offered pursuant to Section 44320, Article 6 (commencing with Section 44310), Article 7.5 (commencing with Section 44325), or Article 3 (commencing with Section 44450) of Chapter 3 for candidates to acquire the knowledge, skills, and abilities measured by the assessment system.

(9) Ensure that the aggregated results of the assessment for groups of candidates who have completed a credential program are used as one source of information about the quality and effectiveness of that program.

(e) The commission shall ensure that each performance assessment pursuant to subdivision (b) is state approved and aligned with the California Standards for the Teaching Profession and is consistently applied to candidates in similar preparation programs. To the maximum feasible extent, each performance assessment shall be ongoing and blended into the preparation program, and shall produce the following benefits for credential candidates, sponsors of preparation programs, and local education agencies that employ program graduates:

(1) The performance assessment shall be designed to provide formative assessment information during the preparation program for use by the candidate, instructors, and supervisors for the purpose of improving the teaching knowledge, skill, and ability of the candidate.

(2) The performance assessment results shall be reported so that they may serve as one basis for a recommendation by the program sponsor that the commission award a teaching credential to a candidate who has successfully met the performance assessment standards.

(3) The formative assessment information pursuant to paragraph (1) and the performance assessment results pursuant to paragraph (2) shall

be reported so that they may serve as one basis for the individual induction plan of the new teacher pursuant to Section 44279.2.

(f) It is the intent of the Legislature that assessments in accordance with paragraphs (1) and (2) of subdivision (b), including the administrative costs of the commission, be fully funded.

SEC. 25. Section 44387 is added to the Education Code, to read:

44387. (a) From funds appropriated for purposes of this section, the commission may award increased funding, in addition to incentive grants awarded pursuant to Section 44386, to any school district or county office of education that agrees to enhance internship programs as provided in subdivision (b) and to address the distribution of teacher interns as required in subdivision (c).

(b) To qualify for increased intern program funding pursuant to this section, a school district or county office of education shall do all of the following:

(1) Provide teacher interns with the greater of (1) 120 hours of intensive preservice training focused on the teaching of English language learners, or (2) 40 hours of the preservice training in addition to all other required training, including, but not limited to, training required pursuant to Sections 44253.3, 44253.4, and 44253.10.

(2) Provide all teacher interns with 40 hours of classroom observation, supervision, assistance, and assessment by one or more experienced teachers who possess valid certification to teach at the same grade level and the same subject matter and who are assigned to teach at the same school as the intern who is being assisted.

(3) Maintain a ratio of no fewer than one experienced teacher to five teacher interns at the same schoolsite.

(c) To continue to receive increased intern program funding pursuant to this section, a school district annually, commencing with the receipt of funding for a second year, shall show to the commission that no high priority school, as described in Section 52055.605, will have a higher percentage of teacher interns than the districtwide average of teacher interns at a school in that year.

(d) Increased funding up to a total of three thousand five hundred dollars ($3,500) per intern, per year, may be awarded by the commission to any school district or county office of education that meets the requirements of this section.

(e) Participants in an alternative certification program pursuant to this article, a district intern program conducted pursuant to Article 7.5 (commencing with Section 44325), or an intern program conducted pursuant to Article 3 (commencing with Section 44450) of Chapter 3, who have received a preliminary credential and who are generating funding for participating in an induction program pursuant to Article 4.5

(commencing with Section 44279.1) are eligible to generate enhanced funding under this section.

(f) When reporting to the Legislature and the Governor pursuant to Section 44225.6, the commission shall include the number of school districts and county offices of education receiving increased funding, and the number of interns for whom increased funding is claimed, pursuant to this section.

SEC. 26 Article 6 (commencing with Section 44560) of Chapter 3 of Part 25 of the Education Code is repealed.

SEC. 27. Article 6 (commencing with Section 44560) is added to Chapter 3 of Part 25 of the Education Code, to read:

Article 6. Certificated Staff Mentoring Program

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 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.

44561. (a) Any 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 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.

(3) 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.

44562. (a) To be eligible for a stipend under this article, an experienced teacher must meet all of the following criteria:

(1) The experienced teacher must have a professional clear credential that would allow the teacher to instruct at the grade level and in the subject matter to which the beginning teachers or interns that the experienced teacher is assisting are assigned.

(2) The experienced teacher must have no less than seven years of recent experience instructing at one or more of the grade levels and in the subject matter to which the beginning teachers or interns that the experienced teacher is assisting are assigned.

(3) The experienced teacher must teach in a staff priority school and agree to provide assistance to at least one, but not more than five, intern teachers or beginning teachers, for a period of at least five years.

(4) The experienced teacher must meet the needs of the school and have demonstrated ability to foster pupil achievement and learning, as determined by the school principal.

(b) An annual stipend for an experienced teacher who meets the criteria of subdivision (a) and agrees to teach in a staff priority school shall be six thousand dollars ($6,000) per year, or another amount as specified in the Budget Act for the fiscal year in which the stipend is provided to the teacher.

SEC. 28. Chapter 3.8 (commencing with Section 44740) is added to Part 25 of the Education Code, to read:

Chapter 3.8. Personnel Management Assistance Teams

44740. (a) The Legislature finds and declares that effective school district personnel management, recruitment, and hiring processes are essential to the placement of qualified teachers in our public schools and particularly important to secure qualified teachers for high priority schools that are often characterized as hard to staff. The Legislature

therefore intends to establish personnel management assistance teams to provide technical assistance to school districts in establishing and maintaining effective personnel management, recruitment, and hiring processes. It is the intent of the Legislature that personnel management assistance teams not modify or contradict policy that falls within the scope of any collective bargaining agreement.

(b) (1) The Superintendent shall designate up to six regions of the state so that all school districts are located within a region.

(2) (A) The Superintendent shall select a county office of education, from among those offices that apply pursuant to subparagraph (B), within each region that is most likely to have the capacity to serve all school districts within the region, to establish and house a personnel management assistance team to assist and serve school districts within that region.

(B) A county office of education may apply to the Superintendent to establish a personnel management assistance team by showing how the county will address the personnel management needs of school districts within its region.

(c) From funds appropriated for purposes of this section, the Superintendent may grant funds to county offices that are selected to provide personnel management services through personnel management assistance teams and may provide further technical assistance to the selected county offices.

(d) Each personnel management assistance team shall consist of persons having extensive experience in school district personnel administration, including recruitment, selection, organization, and staffing.

(e) The superintendent of any school district, or county superintendent of schools, may request that the regional personnel management assistance team review the personnel practices of a school district under his or her jurisdiction and recommend practices or organizational functions to facilitate the timely hiring and placement of qualified teachers consistent with the personnel policies established by agreement with the exclusive representatives of employee organizations.

44741. The Superintendent may select one county office of education from among those county offices that have a personnel management assistance team pursuant to Section 44740 to serve as a clearinghouse of effective personnel management and hiring practices.

SEC. 29. Section 45028 of the Education Code is amended to read:

45028. (a) (1) Effective July 1, 1970, each person employed by a school district in a position requiring certification qualifications, except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience, except

if a public school employer and the exclusive representative negotiate and mutually agree to a salary schedule based on criteria other than a uniform allowance for years of training and years of experience pursuant to Chapter 10.7 (commencing with Section 3540) of the Government Code. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

(2) In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof.

(3) This section shall not apply to teachers of special day and evening classes in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and substitute teachers.

(b) (1) It is not a violation of the uniformity requirement of this section for a school district, with the agreement of the exclusive representative of certificated employees, if any, to grant any employee hired after a locally specified date differential credit for prior years of experience or prior units of credit for purposes of initial placement on the salary schedule of the district.

(2) This subdivision is declaratory of existing law.

(c) A public school employer and the exclusive representative of credentialed teachers may jointly apply to the Superintendent for technical assistance and planning grant funding to facilitate the planning of a salary schedule for teachers based on criteria in addition to years of training and years of experience, as described in subdivision (a). The Superintendent may make planning grants from funds appropriated for this purpose in the annual Budget Act or other legislation.

(d) To be eligible for grant funding pursuant to subdivision (c), the public school employer and the exclusive representative of credentialed teachers should consider a salary schedule designed to compensate teachers for the additional responsibilities, time, and effort required to serve in challenging school settings, and reward teachers for professional growth tied to their particular assignments.

(e) Public school employers and exclusive representatives of credentialed teachers are encouraged to recognize teacher contributions to improving pupil achievement, provide incentives to teachers to accept teaching assignments in areas of highest need, and recognize relevant professional experience on the salary schedule in lieu of units and degrees or in lieu of teaching experience.

SEC. 30. Section 47634.4 of the Education Code is amended to read:

47634.4. (a) A charter school that elects to receive its funding directly, pursuant to Section 47651, may apply individually for federal and state categorical programs, not excluded in this section, but only to the extent it is eligible for funding and meets the provisions of the program. For purposes of determining eligibility for, and allocation of, state or federal categorical aid, a charter school that applies individually shall be deemed to be a school district, except as otherwise provided in this chapter.

(b) A charter school that does not elect to receive its funding directly, pursuant to Section 47651, may, in cooperation with its chartering authority, apply for federal and state categorical programs not specified in this section, but only to the extent it is eligible for funding and meets the provisions of the program.

(c) Notwithstanding any other provision of law, for the 2006–07 fiscal year and each fiscal year thereafter, a charter school may not apply directly for categorical programs for which services are exclusively or almost exclusively provided by a county office of education.

(d) Consistent with subdivision (c), a charter school may not receive direct funding for any of the following county-administered categorical programs:

(1) American Indian Education Centers.

(2) The California Association of Student Councils.

(3) California Technology Assistance Project established pursuant to Article 15 (commencing with Section 51870) of Chapter 5 of Part 28.

(4) The Center for Civic Education.

(5) County Office Fiscal Crisis and Management Assistance Team.

(6) The K-12 High Speed Network.

(e) A charter school may apply separately for district-level or school-level grants associated with any of the categorical programs specified in subdivision (d).

(f) Notwithstanding any other provision of law, for the 2006–07 fiscal year and each fiscal year thereafter, in addition to the programs listed in subdivision (d), a charter school may not apply for any of the following categorical programs:

(1) Agricultural Career Technical Education Incentive Program, as set forth in Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28.

(2) Bilingual Teacher Training Assistance Program, as set forth in Article 4 (commencing with Section 52180) of Chapter 7 of Part 28.

(3) California Peer Assistance and Review Program for Teachers, as set forth in Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25.

(4) College preparation programs, as set forth in Chapter 12 (commencing with Section 11020) of Part 7, Chapter 8.3 (commencing with Section 52240) of Part 28, and Chapter 8 (commencing with Section 60830) of Part 33.

(5) English Language Acquisition Program, as set forth in Chapter 4 (commencing with Section 400) of Part 1.

(6) Foster youth programs pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24.

(7) Gifted and talented pupil programs pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(8) Home-to-school transportation programs, as set forth in Article 2 (commencing with Section 39820) of Chapter 1 of Part 23.5 and Article 10 (commencing with Section 41850) of Chapter 5 of Part 24.

(9) International Baccalaureate Diploma Program, as set forth in Chapter 12.5 (commencing with Section 52920) of Part 28.

(10) Mathematics and Reading Professional Development Program, as set forth in Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

(11) Principal Training Program, as set forth in Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(12) Professional Development Block Grant, as set forth in Article 5 (commencing with Section 41530) of Chapter 3.2 of Part 24.

(13) Program to Reduce Class Size in Two Courses in Grade 9 (formerly The Morgan-Hart Class Size Reduction Act of 1989), as set forth in Chapter 6.8 (commencing with Section 52080) of Part 28.

(14) Pupil Retention Block Grant, as set forth in Article 2 (commencing with Section 41505) of Chapter 3.2 of Part 24.

(15) Reader services for blind teachers, as set forth in Article 8.5 (commencing with Section 45370) of Chapter 5 of Part 25.

(16) School and Library Improvement Block Grant, as set forth in Article 7 (commencing with Section 41570) of Chapter 3.2 of Part 24.

(17) School Safety Consolidated Competitive Grant, as set forth in Article 3 (commencing with Section 41510) of Chapter 3.2 of Part 24.

(18) School safety programs, as set forth in Article 3.6 (commencing with Section 32228) and Article 3.8 (commencing with Section 32239.5) of Chapter 2 of Part 19.

(19) Specialized secondary schools pursuant to Chapter 6 (commencing with Section 58800) of Part 31.

(20) State Instructional Materials Fund, as set forth in Article 3 (commencing with Section 60240) of Chapter 2 of Part 33.

(21) Targeted Instructional Improvement Block Grant, as set forth in Article 6 (commencing with Section 41540) of Chapter 3.2 of Part 24.

(22) Teacher dismissal apportionment, as set forth in Section 44944.

(23) The deferred maintenance program, as set forth in Article 1 (commencing with Section 17565) of Chapter 5 of Part 10.5.

(24) The General Fund contribution to the State Instructional Materials Fund pursuant to Article 3 (commencing with Section 60240) of Chapter 2 of Part 33.

(25) Year-Round School Grant Program, as set forth in Article 3 (commencing with Section 42260) of Chapter 7 of Part 24.

CHAPTER 518

An act to add Section 35036 to the Education Code, relating to teachers.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 35036 is added to the Education Code, to read:

35036. (a) Notwithstanding subdivision (d) of Section 35035, the superintendent of a school district may not transfer a teacher who requests to be transferred to a school offering kindergarten or any of grades 1 to 12, inclusive, that is ranked in deciles 1 to 3, inclusive, on the Academic Performance Index if the principal of the school refuses to accept the transfer.

(b) The governing board of a school district may not adopt a policy or regulation, or enter into a collective bargaining agreement, that assigns, after April 15 of the school year prior to the school year in which the transfer would become effective, priority to a teacher who requests to be transferred to another school over other qualified applicants who have applied for positions requiring certification qualification at the school.

(c) The prohibitions in this section shall become operative on January 1, 2007. If the prohibitions in this section are in direct conflict with the terms of a collective bargaining agreement in effect on January 1, 2007, the prohibitions of this section shall become operative on the employees governed by that agreement upon its expiration.

CHAPTER 519

An act to amend Sections 2655 and 10214.5 of the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 2655 of the Unemployment Insurance Code is amended to read:

2655. (a) Except as provided in subdivisions (b), (c), and (d), an individual's "weekly benefit amount" shall be the amount appearing in column B in the table set forth in this subdivision on the line of which in column A of the table there appears the wage bracket containing the amount of wages paid to the individual for employment by employers during the quarter of his or her disability base period in which wages were the highest.

A Amount of wages in highest quarter	B Weekly benefit amount
$75–1,149.99	$50
1,150–1,174.99	51
1,175–1,199.99	52
1,200–1,224.99	53
1,225–1,249.99	54
1,250–1,274.99	55
1,275–1,299.99	56
1,300–1,324.99	57
1,325–1,349.99	58
1,350–1,374.99	59
1,375–1,399.99	60
1,400–1,424.99	61
1,425–1,449.99	62
1,450–1,474.99	63
1,475–1,499.99	64
1,500–1,524.99	65
1,525–1,549.99	66
1,550–1,574.99	67
1,575–1,599.99	68

A Amount of wages in highest quarter	B Weekly benefit amount
1,600–1,624.99	69
1,625–1,649.99	70
1,650–1,674.99	71
1,675–1,699.99	72
1,700–1,724.99	73
1,725–1,749.20	74

(b) For periods of disability commencing on or after January 1, 1990, and prior to January 1, 1991, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding two hundred sixty-six dollars ($266) or the maximum workers' compensation temporary disability indemnity weekly benefit amount, whichever is less. If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(c) For periods of disability commencing on or after January 1, 1991, but before January 1, 2000, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding three hundred thirty-six dollars ($336). If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(d) (1) For periods of disability commencing on or after January 1, 2000, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be equal to 55 percent of these wages divided by 13, but not exceeding the maximum workers' compensation temporary disability indemnity weekly benefit amount.

(2) Notwithstanding the maximum workers' compensation temporary disability indemnity weekly benefit amount of paragraph (1) of subdivision (d), if the benefit under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

SEC. 2. Section 10214.5 of the Unemployment Insurance Code is amended to read:

10214.5. (a) The panel may allocate up to 10 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 weekly 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.

CHAPTER 520

An act to amend Sections 17021.6, 18214, and 18862.39 of the Health and Safety Code, relating to housing.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 17021.6 of the Health and Safety Code is amended to read:

17021.6. (a) The owner of any employee housing who has qualified or intends to qualify for a permit to operate pursuant to this part may invoke this section.

(b) Any employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be deemed an agricultural land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing that is not required of any other agricultural activity in the same zone. The permitted occupancy in employee housing in an agricultural zone shall include agricultural employees who do not work on the property where the employee housing is located.

(c) Except as otherwise provided in this part, employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other agricultural activities in the same zone are not likewise subject. This subdivision does not forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other agricultural activities in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee to the owner, operator, or any resident for enforcing fire inspection regulation pursuant to state law or regulations or local ordinance, with respect to employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be considered an agricultural use of property, notwithstanding any disclaimers to the contrary. For purposes of this section, "employee housing" includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local need. This section shall apply equally to any charter city, general law city, county, city and county, district, and any other local public entity.

(f) If any owner who invokes the provisions of this section fails to maintain a permit to operate pursuant to this part throughout the first 10 consecutive years following the issuance of the original certificate of occupancy, both of the following shall occur:

(1) The enforcement agency shall notify the appropriate local government entity.

(2) The public agency that has waived any taxes, fees, assessments, or charges for employee housing pursuant to this section may recover the amount of those taxes, fees, assessments, or charges from the landowner, less 10 percent of that amount for each year that a valid permit has been maintained.

(g) Subdivision (f) shall not apply to an owner of any prospective, planned, or unfinished employee housing facility who has applied to the

appropriate state and local public entities for a permit to construct or operate pursuant to this part prior to January 1, 1996.

SEC. 2. Section 18214 of the Health and Safety Code is amended to read:

18214. (a) "Mobilehome park" is any area or tract of land where two or more lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate manufactured homes, mobilehomes, or recreational vehicles used for human habitation. The rental paid for a manufactured home, a mobilehome, or a recreational vehicle shall be deemed to include rental for the lot it occupies. This subdivision shall not be construed to authorize the rental of a mobilehome park space for the accommodation of a recreational vehicle in violation of Section 798.22 of the Civil Code.

(b) Notwithstanding subdivision (a), employee housing that has obtained a permit to operate pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000)) and that both meets the criteria of Section 17021.6 and is comprised of two or more lots or units held out for lease or rent or provided as a term or condition of employment shall not be deemed a mobilehome park for the purposes of the requirement to obtain an initial or annual permit to operate or pay any related fees required by this part.

(c) Notwithstanding subdivision (a), an area or tract of land shall not be deemed a mobilehome park if the structures on it consist of residential structures that are rented or leased, or held out for rent or lease, if those residential structures meet both of the following requirements:

(1) The residential structures are manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. Sec. 5401 et seq.) or mobilehomes containing two or more dwelling units for human habitation.

(2) Those manufactured homes or mobilehomes have been approved by a city, county, or city and county pursuant to subdivision (d) of Section 17951 as an alternate which is at least the equivalent to the requirements prescribed in the California Building Standards Code or Part 1.5 (commencing with Section 17910) in performance, safety, and for the protection of life and health.

SEC. 3. Section 18862.39 of the Health and Safety Code is amended to read:

18862.39. (a) "Recreational vehicle park" is any area or tract of land, or a separate designated section within a mobilehome park where two or more lots are rented, leased, or held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to

accommodate owners or users of recreational vehicles, camping cabins, or tents.

(b) Notwithstanding subdivision (a), employee housing that has obtained a permit to operate pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000)) and that both meets the criteria of Section 17021.6 and is comprised of two or more lots or units held out for lease or rent or provided as a term or condition of employment shall not be deemed a recreational vehicle park for the purposes of the requirement to obtain an initial or annual permit to operate or pay any fees related thereto required by this part.

SEC. 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 521

An act to amend Sections 1788.2 and 1788.18 of the Civil Code, relating to debt collection.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 1788.2 of the Civil Code is amended to read:

1788.2. (a) Definitions and rules of construction set forth in this section are applicable for the purpose of this title.

(b) The term "debt collection" means any act or practice in connection with the collection of consumer debts.

(c) The term "debt collector" means any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection. The term includes any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection, but does not include an attorney or counselor at law.

(d) The term "debt" means money, property or their equivalent which is due or owing or alleged to be due or owing from a natural person to another person.

(e) The term "consumer credit transaction" means a transaction between a natural person and another person in which property, services

or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.

(f) The terms "consumer debt" and "consumer credit" mean money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.

(g) The term "person" means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association or other similar entity.

(h) Except as provided in Section 1788.18, the term "debtor" means a natural person from whom a debt collector seeks to collect a consumer debt which is due and owing or alleged to be due and owing from such person.

(i) The term "creditor" means a person who extends consumer credit to a debtor.

(j) The term "consumer credit report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for person, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under any applicable federal or state law or regulation. The term does not include (a) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (b) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (c) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to that request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under any applicable federal or state law or regulation.

(k) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, and which uses any means or facility for the purpose of preparing or furnishing consumer credit reports.

SEC. 2. Section 1788.18 of the Civil Code is amended to read:

1788.18. (a) Upon receipt from a debtor of all of the following, a debt collector shall cease collection activities until completion of the review provided in subdivision (d):

(1) A copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt being collected by the debt collector.

(2) The debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector.

(b) The written statement described in paragraph (2) of subdivision (a) shall consist of any of the following:

(1) A Federal Trade Commission's Affidavit of Identity Theft.

(2) A written statement containing the content of the Identity Theft Victim's Fraudulent Account Information Request offered to the public by the California Office of Privacy Protection.

(3) A written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting the certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor. The statement shall contain or be accompanied by, the following, to the extent that an item listed below is relevant to the debtor's allegation of identity theft with respect to the debt in question:

(A) A statement that the debtor is a victim of identity theft.

(B) A copy of the debtor's driver's license or identification card, as issued by the state.

(C) Any other identification document that supports the statement of identity theft.

(D) Specific facts supporting the claim of identity theft, if available.

(E) Any explanation showing that the debtor did not incur the debt.

(F) Any available correspondence disputing the debt after transaction information has been provided to the debtor.

(G) Documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred.

(H) A telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.

(I) To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible.

(J) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.

(K) The certification required pursuant to this paragraph shall be sufficient if it is in substantially the following form:

"I certify the representations made are true, correct, and contain no
material omissions of fact.

_____ _____"
(Date and Place) (Signature)

(c) If a debtor notifies a debt collector orally that he or she is a victim of identity theft, the debt collector shall notify the debtor, orally or in writing, that the debtor's claim must be in writing. If a debtor notifies a debt collector in writing that he or she is a victim of identity theft, but omits information required pursuant to subdivision (a) or, if applicable, the certification required pursuant to paragraph (3) of subdivision (b), if the debt collector does not cease collection activities, the debt collector shall provide written notice to the debtor of the additional information that is required, or the certification required pursuant to paragraph (3) of subdivision (b), as applicable or send the debtor a copy of the Federal Trade Commission's Affidavit of Identity Theft form.

(d) Upon receipt of the complete statement and information described in subdivision (a), the debt collector shall review and consider all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor. The debt collector may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector's determination shall be made in a manner consistent with the provisions of 15 U.S.C. Sec. 1692f(1), as incorporated by Section 1788.17. The debt collector shall notify the debtor in writing of that determination and the basis for that determination before proceeding with any further collection activities. The debt collector's determination shall be based on all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor.

(e) No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, shall arise if the debt collector decides after the review described in subdivision (d) to cease or recommence the debt collection activities. The exercise or nonexercise

of rights under this section is not a waiver of any other right or defense of the debtor or debt collector.

(f) The statement and supporting documents that comply with subdivision (a) may also satisfy, to the extent those documents meet the requirements of, the notice requirement of paragraph (5) of subdivision (c) of Section 1798.93.

(g) A debt collector who ceases collection activities under this section and does not recommence those collection activities, shall do all of the following:

(1) If the debt collector has furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information.

(2) Notify the creditor that debt collection activities have been terminated based upon the debtor's claim of identity theft.

(h) A debt collector who has possession of documents that the debtor is entitled to request from a creditor pursuant to Section 530.8 of the Penal Code is authorized to provide those documents to the debtor.

(i) Notwithstanding subdivision (h) of Section 1788.2, for the purposes of this section, "debtor" means a natural person, firm, association, organization, partnership, business trust, company, corporation, or limited liability company from which a debt collector seeks to collect a debt that is due and owing or alleged to be due and owing from the person or entity. The remedies provided by this title shall apply equally to violations of this section.

CHAPTER 522

An act to amend Section 530.5 of, and to add Section 530.55 to the Penal Code, relating to crime.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. This act shall be known and may be cited as the "Personal Information Trafficking and Mail Theft Prevention Act."

SEC. 2. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or

medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

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

(c) (1) Every person who, with the intent to defraud, acquires, or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or both a fine and imprisonment.

(2) Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and who has previously been convicted of a violation of this section upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

(3) Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of 10 or more other persons is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

(d) (1) Every person who, with the intent to defraud, sells, transfers, or conveys the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

(2) Every person who, with actual knowledge that the personal identifying information, as defined in subdivision (b) of Section 530.55, of a specific person will be used to commit a violation of subdivision (a), sells, transfers, or conveys that same personal identifying information is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in the state prison, or by both fine and imprisonment.

(e) Every person who commits mail theft, as defined in Section 1705 of Title 18 of the United States Code, is guilty of a public offense, and

upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. Prosecution under this subdivision shall not limit or preclude prosecution under any other provision of law, including, but not limited to subdivisions (a) to (c), inclusive, of this section.

(f) An interactive computer service or access software provider, as defined in subsection (f) of Section 230 of Title 47 of the United States Code, shall not be liable under this section unless the service or provider acquires, transfers, sells, conveys, or retains possession of personal information with the intent to defraud.

SEC. 3. Section 530.55 is added to the Penal Code, to read:

530.55. (a) For purposes of this chapter, "person" means a natural person, living or deceased, firm, association, organization, partnership, business trust, company, corporation, limited liability company, or public entity, or any other legal entity.

(b) For purposes of this chapter, "personal identifying information" means

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

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 523

An act to amend Section 25401.1 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 25401.1 of the Health and Safety Code is amended to read:

25401.1. For purposes of this chapter, the following terms have the following meanings:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Hazardous material" means a substance or waste that because of its physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment. "Hazardous material" includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in Section 25281 or 25316.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 13050 of the Water Code or as defined in paragraph (2) of subdivision (b) of Section 101075.

(c) "Local agency" means the local department, office, or other agency of a city or county designated pursuant to subdivision (a) of Section 25401.2.

(d) "Oversight agency" means the department or the regional board, as appropriate, that oversees a site investigation and remedial action pursuant to this chapter.

(e) "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. "Person" also includes a city, county, city and county, district, commission, or the state, or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(f) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been, or may have been, a release of hazardous material on or near the property, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, historical aerial photographs of the property and the area in

its vicinity, relevant files of federal, state, and local agencies, regulatory correspondence, records of prior releases of hazardous materials and environmental reports, database searches, visual and other surveys of the property, and interviews with available current and previous owners and operators of the property. A phase I environmental assessment does not require sampling or testing on or around a property.

(g) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials that pose a threat to public health or the environment. A preliminary endangerment assessment shall be conducted in a manner that complies with the guidelines published by the department entitled "Preliminary Endangerment Assessment: Guidance Manual," and that evaluates whether a hazardous material has been discharged, threatens to discharge, or is discharging, to waters of the state. A preliminary endangerment assessment requires sampling and analysis of a property, a preliminary determination of the type and extent of hazardous materials release or threatened release on contamination of the property, and a preliminary evaluation of the risks that hazardous materials contamination of the property may pose to public health or the environment, including waters of the state.

(h) (1) "Property" means real property, as defined in Section 658 of the Civil Code.

(2) "Property" does not include any of the following:

(A) A site listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) or proposed for, and ranked as, qualifying for this list.

(B) A site on the list maintained by the department pursuant to Section 25356.

(C) An active or former federal military base or property that is or was owned by a department, agency, or instrumentality of the United States.

(D) A site that is, or becomes, subject to a corrective action order issued pursuant to Section 25187, or a site that is, or becomes, authorized or permitted pursuant to Chapter 6.5 (commencing with Section 25100) for the treatment, storage, or disposal of hazardous waste.

(E) A property for which a no-further-action determination has been issued by the department or a regional board, under applicable statutes or regulations.

(F) A site that is, or becomes, subject to a response or cleanup operation under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code.

(G) A site that is, or becomes, subject to an order for corrective action issued pursuant to Part 5 (commencing with Section 45000) of Division 30 of the Public Resources Code.

(H) A site located within a redevelopment area established pursuant to Division 24 (commencing with Section 33000).

(I) A site that is larger than five acres of contiguous property under the same ownership, unless the site is an infill site, as defined in Section 21061.3 of the Public Resources Code.

(i) For purposes of this subparagraph, a "qualified urban use," as defined in Section 21072 of the Public Resources Code, includes an industrial use.

(ii) For purposes of this subparagraph, a parcel is adjoining or immediately adjacent to the site, as required by subdivision (a) of Section 21061.3 of the Public Resources Code, if the parcel is separated from the site only by an improved public right-of-way.

(J) A site that is owned by a state or local public agency.

(K) A site that is being used for productive agriculture.

(L) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, enters into a voluntary agreement with an oversight agency to commence and complete a site investigation and remediation of the property under that oversight agency's oversight and jurisdiction.

(M) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, requests the designation of an administering agency to oversee a site investigation and remedial action at the site pursuant to Chapter 6.65 (commencing with Section 25260).

(N) Property that is the subject of continuous expansion or improvement, and is owned or operated by an operating industrial or commercial activity.

(O) Residential property with an owner-occupied dwelling.

(P) Property occupied by a family-owned business that has no employees other than members of the family or a business that has no employees other than the owners.

(Q) Property that is dedicated to a public use by a public utility, as provided in Section 1007 of the Civil Code.

(R) Property acquired, to be acquired or proposed for use as a schoolsite, prior to its occupancy for a school, if a school district has entered into an enforceable environmental oversight agreement with the department to conduct a preliminary endangerment assessment or other

response action at the property pursuant to Section 17213.1 of the Education Code. The exclusion provided in this subparagraph shall not apply if the school district determines, after entering into that agreement, not to pursue the use of the site as a school, or if the agreement between the department and the school district is terminated or expires.

(i) (1) "Qualified person" means one of the following:

(A) For activities conducted under Section 25401.6, an environmental assessor, as defined in paragraph (2).

(B) For activities conducted under Section 25401.7, an environmental assessor, as defined in paragraph (2), who also has demonstrated expertise in hazardous materials site investigation and cleanup.

(2) "Environmental assessor" means a class II environmental assessor registered by the department pursuant to Chapter 6.98 (commencing with Section 25570), a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science, engineering geology, or environmental or public health, or a directly related science field. In addition, a person who conducts a phase I environmental assessment shall have at least two years of experience in the preparation of those assessments and a person who conducts a preliminary endangerment assessment shall have at least three years of experience in conducting those assessments.

(j) "Reasonably foreseeable uses" means land uses that are authorized under the applicable general plan and zoning code, and any additional uses that are identified by the local land use agency as reasonably foreseeable uses for a property at the time the preliminary endangerment assessment for that property is being prepared pursuant to Section 25401.4 or 25401.6.

(k) "Remedial action" means a remedial action, as defined in subdivision (g) of Section 25260.

(*l*) "Remediation plan" means a proposal to complete a site investigation and a remedial action on a property, a schedule for the conduct of that site investigation and remedial action, the method for the oversight of those actions, and the state and local laws, ordinances, regulations, and standards that are applicable to those actions, for approval by the oversight agency pursuant to Section 25401.5 or 25401.7.

(m) "Regional board" means a California regional water quality control board.

(n) "Release" has the same meaning as defined in Section 25320, but with respect to a hazardous material.

(o) "Responsible party" means a "responsible party" or "liable person" as defined in subdivision (a) of Section 25323.5, or a person subject to an order pursuant to subdivision (a) of Section 13304 of the Water Code.

(p) "Site investigation" has the same meaning as defined in Section 25260.

(q) "Written determination of completion" means a document issued by the oversight agency that certifies that a remedial action carried out pursuant to this chapter has been satisfactorily completed, in accordance with an approved remediation plan, that applicable remedial action standards and objectives have been achieved, that financial assurance for all operation and maintenance activities, if applicable, has been obtained, and that the property for which the written determination of completion is issued does not pose a significant risk to human health or the environment, does not impact the beneficial uses of waters of the state, and is in a condition that allows it permanently to be used for its reasonably foreseeable uses without any significant risk to human health or any significant potential for future environmental damage. The written determination of completion shall also specifically describe any conditions, restrictions, or limitations imposed on the site, including financial assurance, if applicable, and any land use controls placed on the property. The written determination of completion shall specifically identify the locations where the remediation plan that formed the basis of the determination is kept on file by the oversight agency and the local agency. These files shall be made available to the public upon request.

CHAPTER 524

An act to amend Sections 99231, 99233, 99234, 99235, 99237, 99240, and 99242 of, to add Section 99237.5 to, and to repeal Sections 99234.5, 99238, and 99241 of, the Education Code, relating to instructional programs, and making an appropriation therefor.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 99231 of the Education Code is amended to read:

99231. For the purpose of this article, the following terms have the following meanings:

(a) "Instructional aide" means a person who is employed on either a full-time or a part-time basis for the purpose of directly assisting with classroom instruction in mathematics or reading in a California public school in which kindergarten or any of grades 1 to 12, inclusive, are taught and who does not possess a valid teaching credential, certificate, authorization, or permit issued by the Commission on Teacher Credentialing and does not include a paraprofessional, as defined in subdivision (b).

(b) "Paraprofessional" means a teacher aide, a teacher assistant, or a speech language pathology assistant who is employed on either a full-time or a part-time basis for the purpose of directly assisting with classroom instruction in mathematics or reading in a California public school in which kindergarten or any of grades 1 to 12, inclusive, are taught and who does not possess a valid teaching credential, certificate, authorization, or permit issued by the Commission on Teacher Credentialing.

(c) "Instructional materials that are aligned to state standards" means, for kindergarten and grades 1 to 8, inclusive, materials adopted by the state board after January 1, 2001, unless otherwise authorized by the state board. For grades 9 to 12, inclusive, "instructional materials that are aligned to state standards" means materials that the governing board of the local education agency has, after careful review, certified are aligned to the state mathematics or reading content standards and the curriculum frameworks for these subjects.

(d) "Local education agency" means a school district, county office of education, state special school, or charter school.

(e) "Teacher" means a person who holds a valid teaching credential, certificate, authorization, or permit issued by the Commission on Teacher Credentialing and is employed on either a full-time or a part-time basis in a California public school in which kindergarten or any of grades 1 to 12, inclusive, are taught.

SEC. 2. Section 99233 of the Education Code is amended to read:

99233. (a) This program is intended to serve the following categories of staff:

(1) Teachers employed in a public school for the purpose of teaching in a self-contained classroom that serves pupils in kindergarten or any

of grades 1 to 8, inclusive. Teachers described in this paragraph are eligible to receive instruction in both mathematics and reading.

(2) Teachers employed in a public school for the purpose of providing mathematics or reading instruction to pupils with exceptional needs. Teachers described in this paragraph are eligible to receive instruction in both mathematics and reading.

(3) Teachers who hold a single-subject teaching credential, certificate, or authorization issued by the Commission on Teacher Credentialing that authorizes them to teach English or social science in a classroom that is not self-contained and who are employed in a public school. Teachers described in this paragraph are eligible to receive instruction in reading.

(4) Holders of one-year emergency teaching permits and emergency career substitute teaching permits who are employed in a public school and assigned to teach English or social science courses in a classroom that is not self-contained. Teachers described in this paragraph are eligible to receive instruction in reading.

(5) Teachers who hold a single-subject teaching credential, certificate, or authorization issued by the Commission on Teacher Credentialing that authorizes them to teach mathematics or science in a classroom that is not self-contained and who are employed in a public school. Teachers described in this paragraph are eligible to receive instruction in mathematics.

(6) Holders of one-year emergency teaching permits and emergency career substitute teaching permits who are employed in a public school and assigned to teach mathematics or science courses in a classroom that is not self-contained. Teachers described in this paragraph are eligible to receive instruction in mathematics.

(7) Instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics or reading who are employed in a public school for the purpose of assisting teachers in the instruction of pupils in kindergarten or any of grades 1 to 12, inclusive. Instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics or reading, as described in this subdivision, are eligible to receive instruction in mathematics or reading.

(b) Holders of emergency 30-day substitute teaching permits issued by the Commission on Teacher Credentialing are not eligible to receive training offered pursuant to this article.

SEC. 3. Section 99234 of the Education Code is amended to read:

99234. (a) (1) The Superintendent shall notify local educational agencies that they are eligible to receive an incentive award based on the percentage of eligible teachers calculated in accordance with provisions of an item of appropriation in the annual Budget Act. It is the

intent of the Legislature that a local educational agency give highest priority to training teachers who are new to the teaching profession, who are assigned to high-priority schools, who are assigned to schools that are under state sanctions as specified under Section 52055.5 or 52055.650, or who have recently changed teaching assignments.

(2) It is also the intent of the Legislature that funding appropriated in one fiscal year that is not expended by a local educational agency be redirected to local educational agencies that have trained more eligible teachers than the percentage funded. If a redirection of funding occurs, funding in subsequent fiscal years for the local educational agencies involved shall be adjusted to reflect the redirection of funding.

(b) A school district that cannot make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237 for all the grade levels it maintains in mathematics or reading may apply for and receive incentive funding for the grade levels and subjects for which it can make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237, in which case the certified assurance submitted pursuant to Section 99237 applies only to the professional development provided to teachers, instructional aides, and paraprofessionals who directly assist with classroom instruction in mathematics or reading in the grade levels and subjects for which it can make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237.

(c) Of the incentive provided pursuant to subdivision (a), a local educational agency may use not more than one thousand dollars ($1,000) of the per teacher per subject amount to provide an individual teacher stipend.

(d) The Superintendent shall notify local educational agencies that the maximum funding for the purpose of this article for which they are eligible each year is equal to the percentage calculated in accordance with provisions of an item of appropriation in the annual Budget Act, multiplied by the sum of the following two factors multiplied by two thousand five hundred dollars ($2,500):

(1) Twice the number of multiple subjects teachers teaching in a self-contained classroom and special education teachers, as specified in paragraphs (1) and (2) of subdivision (a) of Section 99233, that provide direct instruction in mathematics or reading as reported in the most recent available CBEDS data, who have not received training pursuant to either this article or Article 2 (commencing with Section 99220).

(2) The number of mathematics, English, science, and social science teachers, as specified in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 99233 that were reported in the most recent available

CBEDS data, who have not received training pursuant to either this article or Article 2 (commencing with Section 99220).

(e) The Superintendent shall allocate funding appropriated for the purposes of this article in the following order of priority:

(1) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to subdivision (a) in the prior year for whom the local educational agency did not receive funding due to insufficient availability of funds in the prior fiscal year.

(2) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to this article, subject to the limitations in subdivision (d).

(3) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to this article in excess of limitations in subdivision (d).

(f) Funding may not be provided to a local educational agency until the state board approves the certified assurance of the agency submitted pursuant to subdivision (a) of Section 99237.

(g) Of the funding a local educational agency is eligible to receive pursuant to this section for each eligible teacher, 50 percent shall be awarded following the provision of 40 hours of professional development based on the statewide academic content standards adopted pursuant to Section 60605, the Mathematics and Reading/English Language Arts frameworks adopted by the State Board of Education, and instructional materials adopted by the state board or standards-aligned instructional materials, as specified in subdivision (b) of Section 99237, with the remaining funding to be awarded following certification of the provision of the 80 hours of followup instruction as specified in subdivision (b) of Section 99237. The 80 hours of training may be completed over a two-year period.

(h) A local educational agency may not receive funds pursuant to this article for teachers who receive training pursuant to Article 2 (commencing with Section 99220) using funding provided pursuant to that article.

SEC. 4. Section 99234.5 of the Education Code is repealed.

SEC. 5. Section 99235 of the Education Code is amended to read:

99235. (a) The Superintendent of Public Instruction shall notify local educational agencies that they are eligible to receive funding to provide instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics or reading with professional development training in mathematics or reading, in an amount equal to one thousand dollars ($1,000) per qualifying instructional aide. Funding will be provided to local educational agencies on a first-come-first-served basis. A local educational agency that chooses to participate in the

program is eligible to receive funding for no greater than the percentage calculated in accordance with provisions of an item of appropriation in the annual Budget Act for its instructional aides and paraprofessionals. However, the statewide total number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading served under this program may not exceed 9,600 over two consecutive fiscal years.

(b) Of the incentive provided pursuant to subdivision (a), a local educational agency may not use more than five hundred dollars ($500) of the amount per instructional aide or paraprofessional who directly assists with classroom instruction in mathematics or reading to provide an individual instructional aide stipend.

SEC. 6. Section 99237 of the Education Code is amended to read:

99237. (a) As a condition of receipt of funds for purposes of Section 99234 or 99235, a local education agency shall submit a certified assurance signed by the appropriate agency official and approved in a public session by the governing body of the agency to the state board that contains its proposal to satisfy the following:

(1) It contracted with a provider whose training curriculum was based upon one of the training models outlined in guidelines and criteria for approval of training providers established by the State Board of Education, and was approved by the state board, or the local education agency's training curriculum was based upon one of the training models outlined in guidelines and criteria for approval of training providers established by the State Board of Education and approved by the state board. Approval by the state board of the training curriculum shall be based on the criteria contained in paragraph (4) and in subdivision (b).

(2) It or the provider with whom it contracted provided professional development training focused primarily on the following:

(A) The mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(B) The curriculum frameworks adopted by the state board for mathematics and English language arts.

(C) The use of instructional materials that will be used by pupils and are aligned to the mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(D) The training shall include instructional strategies designed to help all pupils gain mastery of the California academic content standards with special emphasis on English language learners and pupils with exceptional needs.

(3) (A) It provides each pupil with instructional materials that are aligned to the state content standards in mathematics and English language arts no later than the first day of the first school term that

commences 12 months or less after those materials are adopted by the state board in the case of instructional materials for kindergarten and grades 1 to 8, inclusive, or by the governing board of the school district in the case of instructional materials for grades 9 to 12, inclusive.

(B) For local education agencies that are piloting or evaluating instructional materials that are aligned to the state content standards in mathematics and English language arts, those materials shall be provided to each pupil no later than the first day of the first school term that commences 24 months or less after those materials were adopted by the state board in the case of instructional materials for grades 1 to 8, inclusive, or by the governing board of the school district in the case of instructional materials for grades 9 to 12, inclusive.

(C) If a local education agency has not adopted instructional materials as required by subparagraph (A) for one or more grade levels because it is piloting or evaluating those instructional materials, the local education agency may only claim funding pursuant to Section 99234 for grade levels and subjects where the local education agency is in compliance with subparagraphs (A) and (B).

(D) For each teacher, in each core area for which funding is claimed pursuant to this article and for which there are not standards-aligned textbooks for each pupil, as determined through an audit, the Superintendent of Public Instruction, on a one-time basis, shall withhold from the next monthly principal apportionment payment to the local education agency an amount equal to one hundred dollars ($100) for each of those pupils. The funds withheld are deemed to be an offset against the training funds provided pursuant to this article.

(4) It provides in-house professional development that focuses primarily on the following:

(A) The mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(B) The curriculum frameworks adopted by the state board for mathematics and English language arts.

(C) The use of instructional materials that will be used by pupils and are aligned to the mathematics or English language arts content standards adopted by the state board pursuant to Section 60605.

(D) The training shall include instructional strategies designed to help all pupils gain mastery of the California academic content standards, with special emphasis on English language learners and pupils with exceptional needs.

(5) It provides the data elements required pursuant to Section 99240.

(b) As an additional condition of receipt of funds for purposes of Section 99234, a local education agency shall certify that:

(1) Forty hours of professional development based on the statewide academic content standards adopted pursuant to Section 60605, the Mathematics and Reading/English Language Arts frameworks adopted by the State Board of Education, and instructional materials adopted by the state board or standards-aligned instructional materials and 80 hours of followup instruction, coaching, or additional schoolsite assistance, in mathematics or reading, based upon the individual school needs, as appropriate, was provided to teachers who meet the criteria specified in paragraphs (1) and (2) of subdivision (a) of Section 99233.

(2) Forty hours of reading or English language arts professional development that includes strategies to help all pupils gain mastery of the California content standards and based on the statewide academic content standards adopted pursuant to Section 60605, the Reading/English Language Arts framework adopted by the State Board of Education, and instructional materials adopted by the state board or standards-aligned instructional materials, and 80 hours of followup instruction, coaching, or additional schoolsite assistance, based upon the individual teacher or school needs, was provided to teachers who meet the criteria specified in paragraphs (3) and (4) of subdivision (a) of Section 99233.

(3) Forty hours of professional development in mathematics based on the statewide academic content standards adopted pursuant to Section 60605, the Mathematics framework adopted by the State Board of Education, instructional strategies designed to help all pupils gain mastery of the California academic content standards, and instructional materials adopted by the state board or standards-aligned instructional materials, and 80 hours of followup instruction, coaching, or additional schoolsite assistance, based upon the individual teacher or school needs, was provided to teachers who meet the criteria specified in paragraphs (5) and (6) of subdivision (a) of Section 99233.

(c) If, as the result of a program audit, it is found that the participating local education agency served fewer participants than it was funded to serve, the Superintendent of Public Instruction shall withhold from the next monthly principal apportionment payment to the local education agency an amount proportional to the amount of funding associated with the number of teachers that were not served.

(d) If, as the result of a program audit, it is found that the training provided by the local education agency or the provider with whom it contracted did not meet the requirements of paragraph (4) of subdivision (a), the Superintendent shall withhold from the next monthly principal apportionment payment to the local education agency an amount equal to the amount of funding associated with the training that was not aligned to state standards and curriculum frameworks.

(e) It is the intent of the Legislature that audits referenced in subdivisions (c) and (d) be conducted as part of a compliance audit performed in accordance with Sections 14503, 14508, and 41020.

SEC. 7. Section 99237.5 is added to the Education Code, to read:

99237.5. (a) (1) For the purposes of this section, the Superintendent of Public Instruction shall provide funding to local education agencies, with the approval of the State Board of Education, to provide professional development in reading language arts and mathematics to teachers of English language learner pupils. The criteria for the provision of funding shall include quality standards for the persons who train others to perform professional development training and for those who provide the training. Training providers shall have knowledge of the English language arts content standards, the mathematics content standards, the English language development standards, and second language acquisition skills. All providers shall have a thorough knowledge of all of the following instructional materials:

(A) The required state board adopted programs for kindergarten to grade 8, inclusive.

(B) The English language development components of the state board adopted programs for kindergarten and grades 1 to 8, inclusive.

(C) The standards-aligned programs purchased by local education agencies for grades 9 to 12, inclusive.

(D) A means of incorporating the supplemental instructional materials adopted pursuant to the Budget Act of 2004 and pursuant to Chapter 79 of the Statutes of 2006, designed to assist English learner pupils become proficient in reading, writing, and speaking English.

(2) For purposes of this section, "trainer provider" is defined as a currently or prospectively approved provider who may contract with a local education agency to offer any of the following:

(A) The 40 hours of training as authorized in Section 99237.

(B) The 40 hours of training authorized in Section 99237, in addition to the 40 hours of training for teachers of English learner pupils authorized in this section.

(C) The 40 hours of training authorized in Section 99237, in addition to the 40 hours of training for teachers of English learner pupils authorized in this section and the followup training authorized in Section 99237.

(3) Nothing in this section shall be construed to preclude training providers to apply to only offer the 40 hours of training for teachers of English language learner pupils.

(4) The State Department of Education, no later than January 1, 2007, shall establish the criteria for the professional development offered pursuant to this section. The professional development training shall

include, but not necessarily be limited to, all of the following characteristics:

(A) It shall be sufficient in scope, depth, and duration to fully equip teachers with comprehensive instructional strategies using state board adopted instructional materials, including the universal access components of the state board adopted programs.

(B) It shall include English Language Development components of the state board adopted programs, and also provide strategies to differentiate instruction as needed in the basic programs, including, but not necessarily limited to, English language proficiency levels as measured by the California English Language Development Test.

(C) It shall include strategies to use supplementary materials with the state board adopted program to meet the needs of English language learner pupils.

(D) It shall be capable of delivering a thorough knowledge of the core academic content standards using the English language development standards to deliver instruction, as applicable.

(b) From funds appropriated pursuant to Provision (2) of Item 6110-137-0001 of Section 2.00 of the Budget Act of 2006 (Ch. 47, Stats. 2006) for the purposes of this section, the Superintendent of Public Instruction shall award funding to provide eligible elementary and secondary teachers with 40 hours of instruction, followup instruction, and support in areas including, but not necessarily limited to, all of the following:

(1) Vocabulary development.

(2) Writing development.

(3) Core academic standards and English Language Development Standards.

(4) Comprehensive instructional strategies using state board adopted instructional materials, including the universal access components of the state board adopted programs.

(5) Analyzing achievement of English learners to improve pupil performance through the use of multiple measures including state and local pupil assessment instruments and the Standardized Testing and Reporting (STAR) Program.

(6) English Language Development targeted to the pupils' English language proficiency level as measured by the California English Language Development Test.

(7) Early intervention techniques for pupils experiencing difficulty.

(8) Instructional strategies to teach essential content to address the varied learning needs of English learner pupils, including the different proficiency levels of English language learner pupils as determined by the California English Language Development Test.

(9) Any additional instruction and training areas that may be considered to improve pupil learning and achievement based upon the needs of participating teachers.

(c) All local education agencies are eligible to participate in the professional development training for teachers of English language learner pupils authorized pursuant to this section. Priority in funding shall be awarded to any local education agency that meets one or more of the following criteria:

(1) Twenty percent or more of its total enrollment is English language learner pupils.

(2) It has one or more schools identified as in program improvement under the federal No Child Left Behind Act of 2001 (20 U.S.C. Secs. 6301 et seq.).

(3) It has one or more schools that have not met their English language learner subgroup targets pursuant to Section 52052.

(d) In order to be eligible to participate in the training described under this section, a teacher shall have completed 40 hours of professional development training pursuant to Section 99237, at any prior time. As a condition of receipt of funding to provide the professional development described in this section, a local education agency shall submit a certified assurance to the State Board of Education, signed by the appropriate agency official and approved in a public session by the governing body of the agency, declaring that the teachers who participated in the professional development for teachers of English language learner pupils described in this section have previously completed 40 hours of professional development pursuant to Section 99237.

(e) A teacher who has completed 40 hours of professional development for teachers of English learner pupils described in this section shall have the option of allowing this participation to fulfill 50 percent of the 80 hours of followup training required pursuant to Section 99237.

(f) The Superintendent of Public Instruction shall allocate funding appropriated for the purposes of professional development training for teachers of English language learner pupils, as described in this section, in the amount of one thousand two hundred fifty dollars ($1,250) per qualifying teacher. The Superintendent of Public Instruction shall provide the funding to eligible local education agencies upon the provision, to qualified teachers, of the 40 hours of training described in this section. Of the funding allocated pursuant to this subdivision, a local educational agency may not use more than five hundred dollars ($500) of the per-teacher amount to provide an individual teacher stipend.

(g) (1) On or before April 1, 2007, the Superintendent of Public Instruction shall submit estimates of both of the following to the Department of Finance and the Legislature:

(A) The number of teachers who intend to participate in the professional development for teachers of English language learner pupils as described in this section, but who have not already participated in professional development offered pursuant to Section 99234.

(B) The number of teachers who intend to participate only in the professional development offered pursuant to Section 99234.

(2) The report prepared under this subdivision shall estimate the cost of accommodating the teachers referenced in subparagraphs (A) and (B) of paragraph (1). If the Superintendent of Public Instruction finds that the cost of accommodating the numbers estimated in the report exceeds the amount of funding available pursuant to the Budget Act of 2006 for the professional training authorized pursuant to Section 99234, the Superintendent of Public Instruction shall notify the Department of Finance and the Legislature of the need to transfer funds from those appropriated for professional development for teachers of English language learner pupils under Provision 2 of Item 6110-137-0001 of Section 2.00 of the Budget Act of 2006 in order to accommodate providing the 40 hours of training authorized pursuant to Section 99237 for teachers of English language learner pupils.

(h) (1) The Superintendent of Public Instruction shall appoint an advisory committee, consisting of at least eight members, in order to ensure the quality and effectiveness of the training provided pursuant to this section. The advisory committee shall be made up of elementary and secondary teachers and teachers of English language learner pupils, schoolsite and school district administrators, representatives from higher education, researchers, and representatives from county offices. The majority of advisory committee members shall have expertise in second language acquisition and experience in teaching the academic content standards and English Language Development standards.

(2) The advisory committee shall make recommendations to the Superintendent of Public Instruction, including, but not necessarily limited to, all of the following:

(A) Training criteria.

(B) Training providers.

(C) Implementation of the program.

(D) Whether or not this type of training to teachers of English learners in other subjects besides reading and mathematics is appropriate.

(3) The Superintendent of Public Instruction shall make any recommendations made by the advisory committee available to the Legislature and the Governor upon request. To the extent practicable, the Superintendent of Public Instruction shall use the advisory committee established under the English Language Learner Acquisition and

Development Pilot Program pursuant to Section 420, if that section is added in the 2005–06 Regular Session of the Legislature.

(i) The Superintendent of Public Instruction shall include information on this training in the reports provided to the Legislature pursuant to Section 99240.

SEC. 8. Section 99238 of the Education Code is repealed.

SEC. 9. Section 99240 of the Education Code is amended to read:

99240. (a) By June 30, 2008, the department shall submit, subject to review and approval by the state board, a report to the Legislature regarding the program established pursuant to this article. The report shall, at a minimum, detail all of the following:

(1) The number of teachers, by credential type, who have received training offered pursuant to this article.

(2) The number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics or reading who have received training offered pursuant to this article.

(3) The entities that have received funds for the purpose of offering training pursuant to this article, and the number of teachers, instructional aides, and paraprofessionals who directly assist with classroom instruction in mathematics or reading, respectively, that each has trained.

(4) Information detailing the effectiveness of the program established pursuant to this article. This information shall, at a minimum, incorporate survey data concerning program effectiveness and preprogram and postprogram pupil achievement that has been gathered from program participants and school principals.

(5) To the extent that information is available, information detailing, by credential type, the retention rate of teachers who participated in training offered pursuant to this article. The information shall, at a minimum, incorporate sample data concerning teachers who are no longer in the profession.

(6) To the extent that information is available, information detailing the retention rate of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics, reading, science, or social science who participated in training offered pursuant to this article. The information shall, at a minimum, incorporate sample data concerning aides who are no longer in the profession, as well as aides who have obtained a teaching credential subsequent to the training.

(b) By December 31, 2012, the department shall submit, subject to review and approval by the state board, a report to the Legislature regarding the program established pursuant to this article. The report shall, at a minimum, detail the following:

(1) The number of teachers, by credential type, who received training offered pursuant to this article.

(2) The number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics or reading who received training offered pursuant to this article.

(3) The entities that received funds for the purpose of offering training pursuant to this article and the number of teachers, instructional aides, paraprofessionals who directly assist with classroom instruction in mathematics or reading, respectively, that each has trained.

(4) Information detailing the effectiveness of the program established pursuant to this article. This information shall, at a minimum, incorporate survey data concerning program effectiveness and preprogram and postprogram pupil achievement that has been gathered from program participants and school principals.

(5) To the extent that information is available, information detailing, by credential type, the retention rate of teachers who participated in training offered pursuant to this article. The information shall, at a minimum, incorporate sample data concerning teachers who are no longer in the profession.

(6) To the extent that information is available, information detailing the retention rate of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics or reading who participated in training offered pursuant to this article. The information shall, at a minimum, incorporate sample data concerning aides who are no longer in the profession, as well as aides who have obtained a teacher credential subsequent to training.

SEC. 10. Section 99241 of the Education Code is repealed.

SEC. 11. Section 99242 of the Education Code is amended to read:

99242. This article shall become inoperative on July 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. It is the intent of the Legislature:

(a) That providers of the training provided pursuant to subdivision (d) of Section 99234 of the Education Code and subdivision (a) of Section 99235 of the Education Code, as approved by the State Board of Education, shall primarily emphasize the statewide academic content standards adopted pursuant to Section 60605 of the Education Code. This emphasis includes ensuring that providers of training do not solely rely on the state-adopted instructional materials in their training sessions as the sole resource for teaching the statewide academic content standards.

(b) To work with the State Board of Education and the State Department of Education to achieve the goals set forth in subdivision (a).

SEC. 13. The sum of one hundred twenty thousand dollars ($120,000) is hereby appropriated, without regard to fiscal year, from the General Fund to the Superintendent of Public Instruction for the purposes of the administration, by the State Department of Education, of the Mathematics and Reading Professional Development Program (Article 3 (commencing with Section 99230) of Chapter 5 of Part 65 of the Education Code). The department is authorized to establish a position for these purposes.

CHAPTER 525

An act to add Section 14105.16 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 14105.16 is added to the Welfare and Institutions Code, to read:

14105.16. (a) The department may establish per diem or bundled reimbursement rates for pharmacies that provide home infusion supplies and services. The per diem or bundled reimbursement rate shall be budget neutral. Only pharmacies that comply with Sections 4127 and 4127.1 of the Business and Professions Code may be determined to be eligible for reimbursement rates established under this subdivision.

(b) In implementing this section the department shall consult with pharmacies providing home infusion supplies and services with respect to all of the following:

(1) Notifying the provider representatives of the proposed change.

(2) Scheduling at least one meeting to discuss the change.

(3) Obtaining actual costs from providers regarding supplies, services, and administrative costs.

(4) Allowing for written input regarding the change.

(5) Providing 30-day advance notice to providers on the implementation and effective date of the change.

(c) Changes made in the Medi-Cal program pursuant to this section are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code), and shall

not be subject to the review and approval of the Office of Administrative Law.

CHAPTER 526

An act to add Article 3.5 (commencing with Section 1288.5) to Chapter 2 of Division 2 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

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

(1) Health care facilities across the nation have seen a steady increase in the risk of healthcare associated infection (HAI) during recent decades.

(2) According to published estimates, approximately 5 to 10 percent of hospitalized patients develop one or more HAI every year.

(3) Infections associated with catheters, blood stream infections associated with central venous lines, pneumonia associated with the use of ventilators, and surgical site infections account for more than 80 percent of all HAI.

(4) Approximately 25 percent of HAI cases occur among patients in intensive care units, and two-thirds of those cases are linked to antimicrobial resistance.

(5) Conservative estimates indicate that approximately 240,000 patients admitted to California hospitals each year develop HAI, which results in an estimated cost of $3.1 billion to the state.

(6) A significant percentage of HAI cases can be eliminated with intensive programs for surveillance and prevention of HAI.

(b) It is the intent of the Legislature, in enacting this measure, to improve existing disease surveillance and infection prevention measures in all California general acute care hospitals, thereby preventing prolonged and unnecessary hospitalizations and decreasing mortality rates resulting from HAI.

SEC. 2. Article 3.5 (commencing with Section 1288.5) is added to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 3.5. Hospital Infectious Disease Control Program

1288.5. By July 1, 2007, the department shall appoint a Healthcare Associated Infection (HAI) Advisory Committee that shall make recommendations related to methods of reporting cases of hospital acquired infections occurring in general acute care hospitals, and shall make recommendations on the use of national guidelines and the public reporting of process measures for preventing the spread of HAI that are reported to the department pursuant to subdivision (b) of Section 1288.8. The advisory committee shall include persons with expertise in the surveillance, prevention, and control of hospital-acquired infections, including department staff, local health department officials, health care infection control professionals, hospital administration professionals, health care providers, health care consumers, physicians with expertise in infectious disease and hospital epidemiology, and integrated health care systems experts or representatives.

1288.6. (a) (1) Each general acute care hospital, in collaboration with infection prevention and control professionals, and with the participation of senior health care facility leadership shall, as a component of its strategic plan, at least once every three years, prepare a written report that examines the hospital's existing resources and evaluates the quality and effectiveness of the hospital's infection surveillance and prevention program.

(2) The report shall evaluate and include information on all of the following:

(A) The risk and cost of the number of invasive patient procedures performed at the hospital.

(B) The number of intensive care beds.

(C) The number of emergency department visits to the hospital.

(D) The number of outpatient visits by departments.

(E) The number of licensed beds.

(F) Employee health and occupational health measures implemented at the hospital.

(G) Changing demographics of the community being served by the hospital.

(H) An estimate of the need and recommendations for additional resources for infection prevention and control programs necessary to address the findings of the plan.

(3) The report shall be updated annually, and shall be revised at regular intervals, if necessary, to accommodate technological advances and new information and findings contained in the triennial strategic plan with respect to improving disease surveillance and the prevention of HAI.

(b) Each general acute care hospital that uses central venous catheters (CVCs) shall implement policies and procedures to prevent occurrences of health care associated infection, as recommended by the Centers for Disease Control and Prevention intravascular bloodstream infection guidelines or other evidence-based national guidelines, as recommended by the advisory committee. A general acute care hospital that uses CVCs shall internally report CVC associated blood stream infection rates in intensive care units, utilizing device days to calculate the rate for each type of intensive care unit, to the appropriate medical staff committee of the hospital on a regular basis.

1288.7. By July 1, 2007, the department shall require that each general acute care hospital, in accordance with the Centers for Disease Control guidelines, take all of the following actions:

(a) Annually offer onsite influenza vaccinations, if available, to all hospital employees at no cost to the employee. Each general acute care hospital shall require its employees to be vaccinated, or if the employee elects not to be vaccinated, to declare in writing that he or she has declined the vaccination.

(b) Institute respiratory hygiene and cough etiquette protocols, develop and implement procedures for the isolation of patients with influenza, and adopt a seasonal influenza plan.

(c) Revise an existing or develop a new disaster plan that includes a pandemic influenza component. The plan shall also document any actual or recommended collaboration with local, regional, and state public health agencies or officials in the event of an influenza pandemic.

1288.8. (a) By January 1, 2008, the department shall take all of the following actions to protect against health care associated infection (HAI) in general acute care hospitals statewide:

(1) Implement an HAI surveillance and prevention program designed to assess the department's resource needs, educate health facility evaluator nurses in HAI, and educate department staff on methods of implementing recommendations for disease prevention.

(2) Investigate the development of electronic reporting databases and report its findings to the HAI advisory committee established pursuant to Section 1288.5.

(3) Revise existing and adopt new administrative regulations, as necessary, to incorporate current Centers for Disease Control and Prevention guidelines and standards for HAI prevention.

(4) Require that general acute care hospitals develop a process for evaluating the judicious use of antibiotics, the results of which shall be monitored jointly by appropriate representatives and committees involved in quality improvement activities.

(b) On and after January 1, 2008, each general acute care hospital shall implement and annually report to the department on its implementation of infection surveillance and infection prevention process measures that have been recommended by the Centers for Disease Control and Prevention (CDC) Healthcare Infection Control Practices Advisory Committee, as suitable for a mandatory public reporting program. Initially, these process measures shall include the CDC guidelines for central line insertion practices, surgical antimicrobial prophylaxis, and influenza vaccination of patients and healthcare personnel. In consultation with the advisory committee established pursuant to Section 1288.5, the department shall make this information public no later than six months after receiving the data.

(c) The Healthcare Associated Infection Advisory Committee shall make recommendations for phasing in the implementation and public reporting of additional process measures and outcome measures by January 1, 2008, and, in doing so, shall consider the measures recommended by the CDC.

(d) Each general acute care hospital shall also submit data on implemented process measures to the National Healthcare Safety Network of the CDC, or to any other scientifically valid national HAI reporting system based upon the recommendation of the Centers for Disease Control (CDC) Healthcare Infection Control Practices Advisory Committee. Hospitals shall utilize the Centers for Disease Control and Prevention definitions and methodology for surveillance of HAI. Hospitals participating in the California Hospital Assessment and Reporting Task Force (CHART) shall publicly report those HAI measures as agreed to by all CHART hospitals.

1288.9. By January 1, 2009, the department shall do all of the following:

(a) Require each general acute care hospital to develop, implement, and periodically evaluate compliance with policies and procedures to prevent secondary surgical site infections (SSI). The results of this evaluation shall be monitored by the infection prevention committee and reported to the surgical committee of the hospital.

(b) Require each general acute care hospital to develop policies and procedures to implement the current Centers for Disease Control and Prevention guidelines and Institute for Healthcare Improvement (IHI) process measures designed to prevent ventilator associated pneumonia.

(c) During surveys, evaluate the facility's compliance with existing policies and procedures to prevent HAI, including any externally or internally reported HAI process and outcome measures.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that

may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, 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 527

An act to amend Section 12012.45 of the Government Code, relating to gaming.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 12012.45 of the Government Code is amended to read:

12012.45. (a) The following tribal-state gaming compacts and amendments of tribal-state gaming compacts entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) are hereby ratified:

(1) The amendment of the compact between the State of California and the Buena Vista Rancheria of Me-Wuk Indians, executed on August 23, 2004.

(2) The compact between the State of California and the Fort Mojave Indian Tribe, executed on August 23, 2004.

(3) The compact between the State of California and the Coyote Valley Band of Pomo Indians, executed on August 23, 2004.

(4) The amendment to the compact between the State of California and the Ewiiaapaayp Band of Kumeyaay Indians, executed on August 23, 2004.

(5) The amendment to the compact between the State of California and the Quechan Tribe of the Fort Yuma Indian Reservation, executed on June 26, 2006.

(b) The terms of each compact apply only to the State of California and the tribe that has signed it, and the terms of these compacts do not bind any tribe that is not a signatory to any of the compacts. The Legislature acknowledges the right of federally recognized tribes to exercise their sovereignty to negotiate and enter into compacts with the state that are materially different from the compacts ratified pursuant to subdivision (a).

(c) (1) In deference to tribal sovereignty, none of the following shall be deemed a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code):

(A) The execution of an amendment of a tribal-state gaming compact ratified by this section.

(B) The execution of a tribal-state gaming compact ratified by this section.

(C) The execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express authority of, or as expressly referenced in, a tribal-state gaming compact or an amended tribal-state gaming compact ratified by this section.

(D) The execution of an intergovernmental agreement between a tribe and the California Department of Transportation negotiated pursuant to the express authority of, or as expressly referenced in, a tribal-state gaming compact or an amended tribal-state gaming compact ratified by this section.

(E) The on-reservation impacts of compliance with the terms of a tribal-state gaming compact or an amended tribal-state gaming compact ratified by this section.

(F) The sale of compact assets, as defined in subdivision (a) of Section 63048.6, or the creation of the special purpose trust established pursuant to Section 63048.65.

(2) Except as expressly provided herein, nothing in this subdivision shall be construed to exempt a city, county, a city and county, or the California Department of Transportation from the requirements of the California Environmental Quality Act.

(d) Revenue contributions made to the state by tribes pursuant to the tribal-state gaming compacts and amendments of tribal-state gaming compacts ratified by this section shall be deposited in the General Fund.

CHAPTER 528

An act to amend Section 1266.9 of the Health and Safety Code, and to amend Sections 10544, 11363, 11367, and 15200 of the Welfare and

Institutions Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 1266.9 of the Health and Safety Code is amended to read:

1266.9. There is hereby created in the State Treasury the State Department of Health Services Licensing and Certification Program Fund. The revenue collected in accordance with Section 1266 shall be deposited in the State Department of Health Services Licensing and Certification Program Fund and shall be available for expenditure, upon appropriation by the Legislature, to support the Licensing and Certification Program's operation. Interest earned on the funds in the State Department of Health Services Licensing and Certification Program Fund shall be deposited as revenue into the fund to support the Licensing and Certification Program's operation.

SEC. 2. Section 10544 of the Welfare and Institutions Code is amended to read:

10544. (a) If the department finds that a county is experiencing significantly worsened outcomes, it shall report this finding to the Chairs of the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate Committee on Health and Human Services, and the Assembly Committee on Human Services.

(b) If the state does not achieve the outcomes required by federal law and, as a result, is subject to a fiscal penalty, the penalty shall be shared equally by the state and the counties after exhaustion of all reasonable and available federal administrative remedies. If a county's single allocation pursuant to Section 15204.2 is reduced by the state to offset the county's share of any federal penalty imposed pursuant to this section, the county shall be required to utilize county general funds to replace the offset amount, so that total funding remains equal to the county's single allocation. These funds shall be in addition to the funds required to meet the maintenance-of-effort requirement pursuant to Section 15204.4. Only those counties that have failed to meet the federal requirements shall be required to share in the fiscal penalty imposed on the state. Those counties' share of the penalty imposed on the state shall equal 50 percent of that penalty. Each county's share of the penalty shall be based, in consultation with the County Welfare Directors Association,

on the county's degree of performance that contributes to the failure to meet the federal requirement.

(c) A county may be provided relief, in whole or in part, from a penalty imposed pursuant to subdivision (b) if the department determines that there were circumstances beyond the control of the county. A county may also be provided relief based on the degree of success or progress in meeting federal requirements, and, to the extent that there are differences between state and federal program requirements, the degree of success in meeting state participation requirements. Any adjustment made pursuant to this subdivision shall be reported to the Chair of the Joint Legislative Budget Committee. If a county is granted relief, that portion of the total penalty shall not be imposed on the other counties that failed to meet the federal requirements.

(d) A county that fails, without good cause, to submit accurate and timely data used to measure work participation, as required by the department, shall be deemed to have failed to meet applicable federal requirements. For purposes of this subdivision, good cause shall include, but shall not be limited to, the lack of accurate, timely, and complete instructions from the department.

(e) The amendments made to subdivision (b) by the amendment of this section in 2006 by Chapter 75 of the Statutes of 2006, clarify existing law, as enacted by Assembly Bill 1542 (Ch. 270, Stats. 1997).

SEC. 3. Section 11363 of the Welfare and Institutions Code, as added by Chapter 75 of the Statutes of 2006, is amended to read:

11363. (a) Aid in the form of Kin-GAP shall be provided under this article on behalf of any child under 18 years of age who meets all of the following conditions:

(1) Has been adjudged a dependent child of the juvenile court pursuant to Section 300, or ward of the juvenile court pursuant to Section 601 or 602.

(2) Has been living with a relative for at least 12 consecutive months.

(3) Has had a kinship guardianship with that relative established as the result of the implementation of a permanent plan pursuant to Section 366.26.

(4) Has had his or her dependency dismissed after January 1, 2000, pursuant to Section 366.3, or his or her wardship terminated pursuant to subdivision (e) of Section 728, concurrently or subsequently to the establishment of the kinship guardianship.

(b) Kin-GAP payments shall continue after the child's 18th birthday if the conditions specified in Section 11403 are met.

(c) Termination of the guardianship with a kinship guardian shall terminate eligibility for Kin-GAP; provided, however, that if an alternate guardian or coguardian is appointed pursuant to Section 366.3 who is

also a kinship guardian, the alternate or coguardian shall be entitled to receive Kin-GAP on behalf of the child pursuant to this article. A new period of 12 months of placement with the alternate guardian or coguardian shall not be required if that alternate guardian or coguardian has been assessed pursuant to Section 361.3 and the court terminates dependency jurisdiction.

(d) This section shall become operative on October 1, 2006, but only if the department suspends the voluntary enrollment of Kin-GAP beneficiaries into the Kin-GAP Plus Program pursuant to subdivision (b) of Section 11380.1.

SEC. 4. Section 11367 of the Welfare and Institutions Code is amended to read:

11367. Kin-GAP, in an amount equal to the applicable regional per-child CalWORKs grant, shall be paid by the state. The balance of Kin-GAP shall be paid in equal portions by the state and the counties. Notwithstanding Section 11216, effective July 1, 2006, the state share of benefits and administration of the Kin-GAP Program shall be funded with General Fund resources.

SEC. 5. Section 15200 of the Welfare and Institutions Code is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting federal funds available, the following sums:

(a) To each county for the support and maintenance of needy children, 95 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e), of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 95 percent of the sum specified in subdivisions (b) and (c) of Section 11450.

(c) For the adequate care of each child pursuant to subdivision (d) of Section 11450, as follows:

(1) For any county that meets the performance standards or outcome measures in Section 11215, an amount equal to 40 percent of the sum necessary for the adequate care of each child.

(2) For any county that does not meet the performance standards or outcome measures in Section 11215, an amount which shall not be less than 67.5 percent of one hundred twenty dollars ($120), and multiplied by the number of children receiving foster care in the county, added to an additional twelve dollars and fifty cents ($12.50) a month per eligible child.

(3) The department shall determine the percentage of state reimbursement for those counties that fail to meet the requirements of

subparagraph (1) according to the regulations required by subdivision (b) of Section 11215.

(d) Notwithstanding subdivision (c), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for foster care maintenance payments shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

(e) To each county for the support and care of hard-to-place adoptive children, 75 percent of the nonfederal share of the amount specified in Section 16121.

(f) To each county for the support and care of former dependent children who have been made wards of related guardians, an amount equal to 50 percent of the Kin-GAP payment under Article 4.5 (commencing with Section 11360) of Chapter 2 minus the federal TANF block grant contribution specified in Section 11364. This subdivision shall become inoperative on July 1, 2006.

(g) The State Department of Social Services shall not implement any change in the current funding ratios to counties as a reimbursement for out-of-home care placement until the development of a new performance standard system. The State Department of Social Services shall notify the Department of Finance when the new performance standard system is developed and ready for implementation. The Department of Finance, pursuant to the provisions of Section 28 of the Budget Act, shall notify the Joint Legislative Budget Committee in writing of its intent to implement a new performance standard that would impact the counties' funding allocation. The notification shall include the text of the draft regulations to implement the performance standards. Any adjustment in the county funding allocation shall not be implemented sooner than 60 days after receipt and review of the new performance standard by the Joint Legislative Budget Committee and a review of the proposed changes by the Legislative Analyst.

(h) Federal funds received under Title XX of the federal Social Security Act (42 U.S.C. Sec. 1397 et seq.) and appropriated by the Legislature for the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program shall be considered part of the state share of cost and not part of the federal expenditures for purposes of subdivision (c).

SEC. 6. (a) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, until emergency regulations are filed with the Secretary of State, the State

Department of Social Services may implement the changes made to Sections 10544 and 11367 of the Welfare and Institutions Code by this act through all-county letters or similar instructions from the director. The department shall adopt emergency regulations, as necessary to implement those amendments no later than July 1, 2008.

(b) The adoption of regulations pursuant to subdivision (a) shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days, by which time the final regulations shall be adopted.

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 make necessary statutory changes to implement the Budget Act of 2006 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 529

An act to amend Sections 1771.7, 1782, 1783.3, 1788, and 1790 of the Health and Safety Code, relating to continuing care.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 1771.7 of the Health and Safety Code is amended to read:

1771.7. (a) No resident of a continuing care retirement community shall be deprived of any civil or legal right, benefit, or privilege guaranteed by law, by the California Constitution, or by the United States Constitution, solely by reason of status as a resident of a community. In addition, because of the discretely different character of residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599), Sections 72527 and 87572 of Title 22 of the California Code of Regulations, and other applicable state and federal law and regulations.

(b) A prospective resident shall have the right to visit each of the different care levels and to inspect assisted living and skilled nursing home licensing reports including, but not limited to, the most recent inspection reports and findings of complaint investigations covering a period of no less than two years, prior to signing a continuing care contract.

(c) All residents in residential living units shall have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or provider's governing body.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.

(6) To manage his or her financial affairs.

(7) To be assured that all donations, contributions, gifts, or purchases of provider-sponsored financial products shall be voluntary, and may not be a condition of acceptance or of ongoing eligibility for services.

(8) To maintain and establish ties to the local community.

(9) To organize and participate freely in the operation of independent resident organizations and associations.

(d) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall do both of the following:

(1) Encourage the formation of a resident association by interested residents who may elect a governing body. The provider shall provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to promote a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life, quality of care, exercise of rights, safety and quality of the physical environment, concerns about the contract, fiscal matters, or other issues of concern to residents. The management shall respond, in writing, to a written request or concern of the resident association within 20 working days of receiving the written request or

concern. Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. The provider shall biennially conduct a resident satisfaction survey that shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the governing board of the provider required by subdivision (c) of Section 1771.8. A copy of the survey shall be posted in a conspicuous location at each facility.

(e) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at the time or before the resident signs a continuing care contract, and at any time when the resident is proposed to be moved to a different level of care.

(f) Each continuing care retirement community shall prominently post in areas accessible to the residents and visitors a notice that a copy of rights applicable to residents pursuant to this section and any governing regulation issued by the Continuing Care Contracts Branch of the State Department of Social Services is available upon request from the provider. The notice shall also state that the residents have a right to file a complaint with the Continuing Care Contracts Branch for any violation of those rights and shall contain information explaining how a complaint may be filed, including the telephone number and address of the Continuing Care Contracts Branch.

(g) The resident has the right to freely exercise all rights pursuant to this section, in addition to political rights, without retaliation by the provider.

(h) The department may, upon receiving a complaint of a violation of this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations and consult with the Continuing Care Advisory Committee for determination of compliance.

(i) Failure to comply with this section shall be grounds for the imposition of conditions on, suspension of, or revocation of the provisional certificate of authority or certificate of authority pursuant to Section 1793.21.

(j) Failure to comply with this section constitutes a violation of residents' rights. Pursuant to Section 1569.49 of the Health and Safety Code, the department shall impose and collect a civil penalty of not more

than one hundred fifty dollars ($150) per violation upon a continuing care retirement community that violates a right guaranteed by this section.

SEC. 2. Section 1782 of the Health and Safety Code is amended to read:

1782. (a) An applicant shall not begin construction on any phase of a continuing care retirement community without first obtaining a written acknowledgment from the department that all of the following prerequisites have been met:

(1) A completed application has been submitted to the department.

(2) A permit to accept deposits has been issued to the applicant or, in the case of continuing care retirement community renovation projects, the department has issued a written approval of the applicant's application.

(3) For new continuing care retirement communities, or construction projects adding new units to an existing continuing care retirement community, deposits equal to at least 10 percent of each depositor's applicable entrance fee have been placed into escrow for each phase for at least 50 percent of the number of residential living units to be constructed.

(b) Applicants shall notify depositors in writing when construction is commenced.

(c) For purposes of this chapter only, construction shall not include site preparation, demolition, or the construction of model units.

SEC. 3. Section 1783.3 of the Health and Safety Code is amended to read:

1783.3. (a) In order to seek a release of escrowed funds, the applicant shall petition in writing to the department and certify to each of the following:

(1) The construction of the proposed continuing care retirement community or phase is at least 50 percent completed.

(2) At least 10 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any unit for which a refund is pending may not be counted toward that 60-percent requirement.

(3) Deposits made with cash equivalents have been either converted into, or substituted with, cash or held for transfer to the provider. A cash equivalent deposit may be held for transfer to the provider, if all of the following conditions exist:

(A) Conversion of the cash equivalent instrument would result in a penalty or other substantial detriment to the depositor.

(B) The provider and the depositor have a written agreement stating that the cash equivalent will be transferred to the provider, without

conversion into cash, when the deposit escrow is released to the provider under this section.

(C) The depositor is credited the amount equal to the value of the cash equivalent.

(4) The applicant's average performance over any six-month period substantially equals or exceeds its financial and marketing projections approved by the department, for that period.

(5) The applicant has received a commitment for any permanent mortgage loan or other long-term financing.

(b) The department shall instruct the escrow agent to release to the applicant all deposits in the deposit escrow account when all of the following requirements have been met:

(1) The department has confirmed the information provided by the applicant pursuant to subdivision (a).

(2) The department, in consultation with the Continuing Care Advisory Committee, has determined that there has been substantial compliance with projected annual financial statements that served as a basis for issuance of the permit to accept deposits.

(3) The applicant has complied with all applicable licensing requirements in a timely manner.

(4) The applicant has obtained a commitment for any permanent mortgage loan or other long-term financing that is satisfactory to the department.

(5) The applicant has complied with any additional reasonable requirements for release of funds placed in the deposit escrow accounts, established by the department under Section 1785.

(c) The escrow agent shall release the funds held in escrow to the applicant only when the department has instructed it to do so in writing.

(d) When an application describes different phases of construction that will be completed and commence operating at different times, the department may apply the 50 percent construction completion requirement to any one or group of phases requested by the applicant, provided the phase or group of phases is shown in the applicant's projections to be economically viable.

SEC. 4. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) A continuing care contract shall contain all of the following:

(1) The legal name and address of each provider.

(2) The name and address of the continuing care retirement community.

(3) The resident's name and the identity of the unit the resident will occupy.

(4) If there is a transferor other than the resident, the transferor shall be a party to the contract and the transferor's name and address shall be specified.

(5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider or the obligations specified in the continuing care contract, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the resident that the organization is not financially responsible.

(6) The date the continuing care contract is signed by the resident and, where applicable, any other transferor.

(7) The duration of the continuing care contract.

(8) A list of the services that will be made available to the resident as required to provide the appropriate level of care. The list of services shall include the services required as a condition for licensure as a residential care facility for the elderly, including all of the following:

(A) Regular observation of the resident's health status to ensure that his or her dietary needs, social needs, and needs for special services are satisfied.

(B) Safe and healthful living accommodations, including housekeeping services and utilities.

(C) Maintenance of house rules for the protection of residents.

(D) A planned activities program, which includes social and recreational activities appropriate to the interests and capabilities of the resident.

(E) Three balanced, nutritious meals and snacks made available daily, including special diets prescribed by a physician as a medical necessity.

(F) Assisted living services.

(G) Assistance with taking medications.

(H) Central storing and distribution of medications.

(I) Arrangements to meet health needs, including arranging transportation.

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract.

(10) The procedures and conditions under which a resident may be voluntarily and involuntarily transferred from a designated living unit. The transfer procedures, at a minimum, shall include provisions addressing all of the following circumstances under which a transfer may be authorized:

(A) A continuing care retirement community may transfer a resident under the following conditions, taking into account the appropriateness

and necessity of the transfer and the goal of promoting resident independence:

(i) The resident is nonambulatory. The definition of "nonambulatory," as provided in Section 13131, shall either be stated in full in the continuing care contract or be cited. If Section 13131 is cited, a copy of the statute shall be made available to the resident, either as an attachment to the continuing care contract or by specifying that it will be provided upon request. If a nonambulatory resident occupies a room that has a fire clearance for nonambulatory residence, transfer shall not be necessary.

(ii) The resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person.

(iii) The resident's condition or needs require the resident's transfer to an assisted living care unit or skilled nursing facility, because the level of care required by the resident exceeds that which may be lawfully provided in the living unit.

(iv) The resident's condition or needs require the resident's transfer to a nursing facility, hospital, or other facility, and the provider has no facilities available to provide that level of care.

(B) Before the continuing care retirement community transfers a resident under any of the conditions set forth in subparagraph (A), the community shall satisfy all of the following requirements:

(i) Involve the resident and the resident's responsible person, as defined in paragraph (6) of subdivision (r) of Section 87101 of Title 22 of the California Code of Regulations, and upon the resident's or responsible person's request, family members, or the resident's physician or other appropriate health professional, in the assessment process that forms the basis for the level of care transfer decision by the provider. The provider shall offer an explanation of the assessment process. If an assessment tool or tools, including scoring and evaluating criteria, are used in the determination of the appropriateness of the transfer, the provider shall make copies of the completed assessment available upon the request of the resident or the resident's responsible person.

(ii) Prior to sending a formal notification of transfer, the provider shall conduct a care conference with the resident and the resident's responsible person, and upon the resident's or responsible person's request, family members, and the resident's health care professionals, to explain the reasons for transfer.

(iii) Notify the resident and the resident's responsible person the reasons for the transfer in writing.

(iv) Notwithstanding any other provision of this subparagraph, if the resident does not have impairment of cognitive abilities, the resident

may request that his or her responsible person not be involved in the transfer process.

(v) The notice of transfer shall be made at least 30 days before the transfer is expected to occur, except when the health or safety of the resident or other residents is in danger, or the transfer is required by the resident's urgent medical needs. Under those circumstances, the written notice shall be made as soon as practicable before the transfer.

(vi) The written notice shall contain the reasons for the transfer, the effective date, the designated level of care or location to which the resident will be transferred, a statement of the resident's right to a review of the transfer decision at a care conference, as provided for in subparagraph (C), and for disputed transfer decisions, the right to review by the Continuing Care Contracts Branch of the State Department of Social Services, as provided for in subparagraph (D). The notice shall also contain the name, address, and telephone number of the department's Continuing Care Contracts Branch.

(vii) The continuing care retirement community shall provide sufficient preparation and orientation to the resident to ensure a safe and orderly transfer and to minimize trauma.

(C) The resident has the right to review the transfer decision at a subsequent care conference that shall include the resident, the resident's responsible person, and upon the resident's or responsible person's request, family members, the resident's physician or other appropriate health care professional, and members of the provider's interdisciplinary team. The local ombudsperson may also be included in the care conference, upon the request of the resident, the resident's responsible person, or the provider.

(D) For disputed transfer decisions, the resident or the resident's responsible person has the right to a prompt and timely review of the transfer process by the Continuing Care Contracts Branch of the State Department of Social Services.

(E) The decision of the department's Continuing Care Contracts Branch shall be in writing and shall determine whether the provider failed to comply with the transfer process pursuant to subparagraphs (A) to (C), inclusive. Pending the decision of the Continuing Care Contracts Branch, the provider shall specify any additional care the provider believes is necessary in order for the resident to remain in his or her unit. The resident may be required to pay for the extra care, as provided in the contract.

(F) Transfer of a second resident when a shared accommodation arrangement is terminated.

(11) Provisions describing any changes in the resident's monthly fee and any changes in the entrance fee refund payable to the resident that will occur if the resident transfers from any unit.

(12) The provider's continuing obligations, if any, in the event a resident is transferred from the continuing care retirement community to another facility.

(13) The provider's obligations, if any, to resume care upon the resident's return after a transfer from the continuing care retirement community.

(14) The provider's obligations to provide services to the resident while the resident is absent from the continuing care retirement community.

(15) The conditions under which the resident must permanently release his or her living unit.

(16) If real or personal properties are transferred in lieu of cash, a statement specifying each item's value at the time of transfer, and how the value was ascertained.

(A) An itemized receipt which includes the information described above is acceptable if incorporated as a part of the continuing care contract.

(B) When real property is or will be transferred, the continuing care contract shall include a statement that the deed or other instrument of conveyance shall specify that the real property is conveyed pursuant to a continuing care contract and may be subject to rescission by the transferor within 90 days from the date that the resident first occupies the residential unit.

(C) The failure to comply with paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the continuing care contract shall describe how any refund of entrance fees is allocated.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For continuing care contracts that require a monthly care fee or other periodic payment, the continuing care contract shall include the following:

(A) A statement that the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) A provision specifying whether payment will be made in advance or after services have been provided.

(D) A provision specifying the provider will adjust monthly care fees for the resident's support, maintenance, board, or lodging, when a resident requires medical attention while away from the continuing care retirement community.

(E) A provision specifying whether a credit or allowance will be given to a resident who is absent from the continuing care retirement community or from meals. This provision shall also state, when applicable, that the credit may be permitted at the discretion or by special permission of the provider.

(F) A statement of billing practices, procedures, and timelines. A provider shall allow a minimum of 14 days between the date a bill is sent and the date payment is due. A charge for a late payment may only be assessed if the amount and any condition for the penalty is stated on the bill.

(22) All continuing care contracts that include monthly care fees shall address changes in monthly care fees by including either of the following provisions:

(A) For prepaid continuing care contracts, which include monthly care fees, one of the following methods:

(i) Fees shall not be subject to change during the lifetime of the agreement.

(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.

(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.

(B) For monthly fee continuing care contracts, except prepaid contracts, changes in monthly care fees shall be based on projected costs, prior year per capita costs, and economic indicators.

(23) A provision requiring that the provider give written notice to the resident at least 30 days in advance of any change in the resident's monthly care fees or in the price or scope of any component of care or other services.

(24) A provision indicating whether the resident's rights under the continuing care contract include any proprietary interests in the assets of the provider or in the continuing care retirement community, or both. Any statement in a contract concerning an ownership interest shall appear in a large-sized font or print.

(25) If the continuing care retirement community property is encumbered by a security interest that is senior to any claims the residents may have to enforce continuing care contracts, a provision shall advise the residents that any claims they may have under the continuing care

contract are subordinate to the rights of the secured lender. For equity projects, the continuing care contract shall specify the type and extent of the equity interest and whether any entity holds a security interest.

(26) Notice that the living units are part of a continuing care retirement community that is licensed as a residential care facility for the elderly and, as a result, any duly authorized agent of the department may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the entire premises at any time, without advance notice.

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signatures of the resident and, if applicable, the transferor, that provides as follows: "You, the resident or transferor, may cancel the transaction without cause at any time within 90 days from the date you first occupy your living unit. See the attached notice of cancellation form for an explanation of this right."

(28) Notice that during the cancellation period, the continuing care contract may be canceled upon 30 days' written notice by the provider without cause, or that the provider waives this right.

(29) The terms and conditions under which the continuing care contract may be terminated after the cancellation period by either party, including any health or financial conditions.

(30) A statement that, after the cancellation period, a provider may unilaterally terminate the continuing care contract only if the provider has good and sufficient cause.

(A) Any continuing care contract containing a clause that provides for a continuing care contract to be terminated for "just cause," "good cause," or other similar provision, shall also include a provision that none of the following activities by the resident, or on behalf of the resident, constitutes "just cause," "good cause," or otherwise activates the termination provision:

(i) Filing or lodging a formal complaint with the department or other appropriate authority.

(ii) Participation in an organization or affiliation of residents, or other similar lawful activity.

(B) The provision required by this paragraph shall also state that the provider shall not discriminate or retaliate in any manner against any resident of a continuing care retirement community for contacting the department, or any other state, county, or city agency, or any elected or appointed government official to file a complaint or for any other reason, or for participation in a residents' organization or association.

(C) Nothing in this paragraph diminishes the provider's ability to terminate the continuing care contract for good and sufficient cause.

(31) A statement that at least 90 days' written notice to the resident is required for a unilateral termination of the continuing care contract by the provider.

(32) A statement concerning the length of notice that a resident is required to give the provider to voluntarily terminate the continuing care contract after the cancellation period.

(33) The policy or terms for refunding any portion of the entrance fee, in the event of cancellation, termination, or death. Every continuing care contract that provides for a refund of all or a part of the entrance fee shall also do all of the following:

(A) Specify the amount, if any, the resident has paid or will pay for upgrades, special features, or modifications to the resident's unit.

(B) State that if the continuing care contract is canceled or terminated by the provider, the provider shall do both of the following:

(i) Amortize the specified amount at the same rate as the resident's entrance fee.

(ii) Refund the unamortized balance to the resident at the same time the provider pays the resident's entrance fee refund.

(34) The following notice at the bottom of the signatory page:

"NOTICE" (date)

This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (*l*) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.

(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: "Nothing in this continuing care contract limits either the provider's obligation to provide adequate care and supervision for the resident or any liability on the part of the provider which may result from the provider's failure to provide this care and supervision."

(b) A life care contract shall also provide that:

(1) All levels of care, including acute care and physicians' and surgeons' services will be provided to a resident.

(2) Care will be provided for the duration of the resident's life unless the life care contract is canceled or terminated by the provider during the cancellation period or after the cancellation period for good cause.

(3) A comprehensive continuum of care will be provided to the resident, including skilled nursing, in a facility under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

(4) Monthly care fees will not be changed based on the resident's level of care or service.

(5) A resident who becomes financially unable to pay his or her monthly care fees shall be subsidized provided the resident's financial need does not arise from action by the resident to divest the resident of his or her assets.

(c) Continuing care contracts may include provisions that do any of the following:

(1) Subsidize a resident who becomes financially unable to pay for his or her monthly care fees at some future date. If a continuing care contract provides for subsidizing a resident, it may also provide for any of the following:

(A) The resident shall apply for any public assistance or other aid for which he or she is eligible and that the provider may apply for assistance on behalf of the resident.

(B) The provider's decision shall be final and conclusive regarding any adjustments to be made or any action to be taken regarding any charitable consideration extended to any of its residents.

(C) The provider is entitled to payment for the actual costs of care out of any property acquired by the resident subsequent to any adjustment extended to the resident under paragraph (1), or from any other property of the resident which the resident failed to disclose.

(D) The provider may pay the monthly premium of the resident's health insurance coverage under Medicare to ensure that those payments will be made.

(E) The provider may receive an assignment from the resident of the right to apply for and to receive the benefits, for and on behalf of the resident.

(F) The provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is reasonably available from any governmental agency, or any private insurance.

(G) Any refund due to the resident at the termination of the continuing care contract may be offset by any prior subsidy to the resident by the provider.

(2) Limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In these cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the continuing care contract or in a medical report attached to and made a part of the continuing care contract.

(3) Identify legal remedies which may be available to the provider if the resident makes any material misrepresentation or omission pertaining to the resident's assets or health.

(4) Restrict transfer or assignments of the resident's rights and privileges under a continuing care contract due to the personal nature of the continuing care contract.

(5) Protect the provider's ability to waive a resident's breach of the terms or provisions of the continuing care contract in specific instances without relinquishing its right to insist upon full compliance by the resident with all terms or provisions in the contract.

(6) Provide that the resident shall reimburse the provider for any uninsured loss or damage to the resident's unit, beyond normal wear and tear, resulting from the resident's carelessness or negligence.

(7) Provide that the resident agrees to observe the off-limit areas of the continuing care retirement community designated by the provider for safety reasons. The provider may not include any provision in a continuing care contract that absolves the provider from liability for its negligence.

(8) Provide for the subrogation to the provider of the resident's rights in the case of injury to a resident caused by the acts or omissions of a third party, or for the assignment of the resident's recovery or benefits in this case to the provider, to the extent of the value of the goods and services furnished by the provider to or on behalf of the resident as a result of the injury.

(9) Provide for a lien on any judgment, settlement, or recovery for any additional expense incurred by the provider in caring for the resident as a result of injury.

(10) Require the resident's cooperation and assistance in the diligent prosecution of any claim or action against any third party.

(11) Provide for the appointment of a conservator or guardian by a court with jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Allow a provider, whose property is tax exempt, to charge the resident on a pro rata basis property taxes, or in-lieu taxes, that the provider is required to pay.

(13) Make any other provision approved by the department.

(d) A copy of the resident's rights as described in Section 1771.7 shall be attached to every continuing care contract.

(e) A copy of the current audited financial statement of the provider shall be attached to every continuing care contract. For a provider whose current audited financial statement does not accurately reflect the financial ability of the provider to fulfill the continuing care contract obligations, the financial statement attached to the continuing care contract shall include all of the following:

(1) A disclosure that the reserve requirement has not yet been determined or met, and that entrance fees will not be held in escrow.

(2) A disclosure that the ability to provide the services promised in the continuing care contract will depend on successful compliance with the approved financial plan.

(3) A copy of the approved financial plan for meeting the reserve requirements.

(4) Any other supplemental statements or attachments necessary to accurately represent the provider's financial ability to fulfill its continuing care contract obligations.

(f) A schedule of the average monthly care fees charged to residents for each type of residential living unit for each of the five years preceding execution of the continuing care contract shall be attached to every continuing care contract. The provider shall update this schedule annually at the end of each fiscal year. If the continuing care retirement community has not been in existence for five years, the information shall be provided for each of the years the continuing care retirement community has been in existence.

(g) If any continuing care contract provides for a health insurance policy for the benefit of the resident, the provider shall attach to the continuing care contract a binder complying with Sections 382 and 382.5 of the Insurance Code.

(h) The provider shall attach to every continuing care contract a completed form in duplicate, captioned "Notice of Cancellation." The notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

"NOTICE OF CANCELLATION" (date)

Your first date of occupancy under this contract is: _____

"You may cancel this transaction, without any penalty within 90 calendar days from the above date.

If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider. Any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated to pay a reasonable processing fee to cover costs and to pay for the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.

If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when you took possession.

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____
(Name of provider)

at _____
(Address of provider's place of business)

not later than midnight of _____ (date).

I hereby cancel this transaction _____
(Resident or Transferor's signature)"

SEC. 5. Section 1790 of the Health and Safety Code is amended to read:

1790. (a) Each provider that has obtained a provisional or final certificate of authority and each provider that possesses an inactive certificate of authority shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, the reserve information required by paragraph (2), Continuing Care Provider Fee and Calculation Sheet, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been

approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status, description, and amount of all reserves that the provider currently designates and maintains, and on per capita costs of operation for each continuing care retirement community operated.

(3) Disclosure of any funds accumulated for identified projects or purposes and any funds maintained or designated for specific contingencies. Nothing in this subdivision shall be construed to require the accumulation of funds or funding of contingencies, nor shall it be interpreted to alter existing law regarding the reserves that are required to be maintained.

(4) Full details on any increase in monthly care fees, the basis for determining the increase, and the data used to calculate the increase.

(5) The required reserve calculation schedules shall be accompanied by the auditor's opinion as to compliance with applicable statutes.

(6) Any other information as the department may require.

(b) Each provider shall file the annual report with the department within four months after the provider's fiscal yearend. If the complete annual report is not received by the due date, a one thousand dollar ($1,000) late fee shall accompany submission of the reports. If the reports are more than 30 days past due, an additional fee of thirty-three dollars ($33) for each day over the first 30 days shall accompany submission of the report. The department may, at its discretion, waive the late fee for good cause.

(c) The annual report and any amendments thereto shall be signed and certified by the chief executive officer of the provider, stating that, to the best of his or her knowledge and belief, the items are correct.

(d) A copy of the most recent annual audited financial statement shall be transmitted by the provider to each transferor requesting the statement.

(e) A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is necessary to prevent the report from containing a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal

yearend. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the waiver. If the department approves the request, the following shall be submitted to the department annually:

(1) Evidence of trust fund or performance bond and its amount.

(2) A list of continuing care residents. If the number of continuing care residents exceeds 10 at any time, the provider shall comply with the requirements of this section.

(3) A provider fee as required by subdivision (c) of Section 1791.

(g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund.

CHAPTER 530

An act to amend Section 1599.1 of the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 1599.1 of the Health and Safety Code is amended to read:

1599.1. Written policies regarding the rights of patients shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. Those policies and procedures shall ensure that each patient admitted to the facility has the following rights and is notified of the following facility obligations, in addition to those specified by regulation:

(a) The facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.

(b) Each patient shall show evidence of good personal hygiene and be given care to prevent bedsores, and measures shall be used to prevent and reduce incontinence for each patient.

(c) The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.

(d) The facility shall provide an activity program staffed and equipped to meet the needs and interests of each patient and to encourage self-care and resumption of normal activities. Patients shall be encouraged to participate in activities suited to their individual needs.

(e) The facility shall be clean, sanitary, and in good repair at all times.

(f) A nurses' call system shall be maintained in operating order in all nursing units and provide visible and audible signal communication between nursing personnel and patients. Extension cords to each patient's bed shall be readily accessible to patients at all times.

(g) (1) If a facility has a significant beneficial interest in an ancillary health service provider or if a facility knows that an ancillary health service provider has a significant beneficial interest in the facility, as provided by subdivision (a) of Section 1323, or if the facility has a significant beneficial interest in another facility, as provided by subdivision (c) of Section 1323, the facility shall disclose that interest in writing to the patient, or his or her representative, and advise the patient, or his or her representative, that the patient may choose to have another ancillary health service provider, or facility, as the case may be, provide any supplies or services ordered by a member of the medical staff of the facility.

(2) A facility is not required to make any disclosures required by this subdivision to any patient, or his or her representative, if the patient is enrolled in an organization or entity that provides or arranges for the provision of health care services in exchange for a prepaid capitation payment or premium.

(h) (1) If a resident of a long-term health care facility has been hospitalized in an acute care hospital and asserts his or her rights to readmission pursuant to bed hold provisions, or readmission rights of either state or federal law, and the facility refuses to readmit him or her, the resident may appeal the facility's refusal.

(2) The refusal of the facility as described in this subdivision shall be treated as if it were an involuntary transfer under federal law, and the rights and procedures that apply to appeals of transfers and discharges of nursing facility residents shall apply to the resident's appeal under this subdivision.

(3) If the resident appeals pursuant to this subdivision, and the resident is eligible under the Medi-Cal program, the resident shall remain in the hospital and the hospital may be reimbursed at the administrative day rate, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(4) If the resident appeals pursuant to this subdivision, and the resident is not eligible under the Medi-Cal program, the resident shall remain in the hospital if other payment is available, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(5) If the resident is not eligible for participation in the Medi-Cal program and has no other source of payment, the hearing and final determination shall be made within 48 hours.

(i) Effective July 1, 2007, Sections 483.10, 483.12, 483.13, and 483.15 of Title 42 of the Code of Federal Regulations in effect on July 1, 2006, shall apply to each skilled nursing facility and intermediate care facility, regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the skilled nursing facility or intermediate care facility in which the resident resides, except that a noncertified facility is not obligated to provide notice of Medicaid or Medicare benefits, covered services, or eligibility procedures.

CHAPTER 531

An act to amend Section 27255 of the Government Code, and to add Article 3 (commencing with Section 5096.520) to Chapter 1.695 of Division 5 of the Public Resources Code, relating to resource conservation.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

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

(a) Conservation easements, open-space easements, and agricultural conservation easements are a valuable tool and a cost-effective way to protect the state's natural resources.

(b) It is important to ensure that the public has information on how moneys are spent by state agencies when purchasing easements for the preservation and protection of critically needed conservation and agricultural lands.

(c) Information regarding easements should be disseminated in a readily and easily available manner.

(d) A central public registry of conservation easements, open-space easements, and agricultural conservation easements would provide information that would lead to better conservation and resource planning

among state agencies, local governments, nonprofit organizations, and the public.

SEC. 2. Section 27255 of the Government Code is amended to read:

27255. (a) The county recorder in each county shall develop and maintain, within the existing indexing system, a comprehensive index of conservation easements and Notice of Conservation Easement on land within that county. The conservation easement index developed and maintained pursuant to this subdivision shall include all conservation easements recorded on and after January 1, 2002.

(b) For the purposes of this section, "conservation easement" means any limitation in a recorded instrument that contains an easement, restriction, covenant, condition, or offer to dedicate, which is or has been executed by or on behalf of the owner of the land subject to that limitation and is binding upon successive owners of the land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. "Conservation easement" includes a conservation easement as defined in Section 815.1 of the Civil Code, an open-space easement as defined in Section 51075 of this code, and an agricultural conservation easement as defined in Section 10211 of the Public Resources Code.

(c) On and after January 1, 2002, when a county recorder records a new conservation easement affecting property within the county, he or she shall include the easement in the index developed and maintained pursuant to subdivision (a), if the document containing the easement is entitled "Conservation Easement," or the following document is properly filled out by the submitter, and recorded at the same time, or at a later date:

Recording Requested by and
When Recorded Return to:

NOTICE OF CONSERVATION EASEMENT

The undersigned hereby gives notice that a Conservation Easement was recorded in the _____ County Recorder's Office on _____ _____ and recorded as Document Number _____.

The grantors and grantees of the conservation easement were

Grantors _____

_____

Grantees _____

_____

I declare under penalty of perjury that the above statement is true and correct.

Signed_____

Dated_____

THIS NOTICE IS FOR INDEXING PURPOSES ONLY AND DOES NOT, BY ITSELF, CONSTITUTE A CONSERVATION EASEMENT

(d) In order to include conservation easements recorded prior to January 1, 2002, the comprehensive index of conservation easements and "Notice of Conservation Easement" developed and maintained pursuant to subdivision (a), any parties to conservation easements, including, but not limited to, the counties, cities, recreation and park districts or agencies, state conservancies, state agencies, the California Coastal Commission, land trusts, and nonprofit organizations may fill out and record a Notice of Conservation Easement pursuant to subdivision (c) for each previously recorded conservation easement, in the county in which the affected real property is located.

(e) Pursuant to Section 27361, the standard fee charged by the county recorder for recording the conservation easement document shall include funds to cover the costs associated with indexing the document.

(f) It is the intent of the Legislature that nothing in this section shall be construed to require a county recorder to develop and maintain an index separate from the existing indexing system, and that the conservation easement index be established by using existing resources.

SEC. 3. Article 3 (commencing with Section 5096.520) is added to Chapter 1.695 of Division 5 of the Public Resources Code, to read:

Article 3. Conservation Easement Registry

5096.520. (a) The Secretary of the Resources Agency shall establish a central public registry of all conservation easements held or required by the state, or purchased with state grant funds provided by any agency, department, or division of the state on or after January 1, 2006. In constructing the registry, the Resources Agency shall draw upon the Department of General Services' property inventory, and other information held by a state agency, department, division, or other sources.

(b) For the purposes of this section, "conservation easement" means any limitation in a recorded instrument that contains an easement, restriction, covenant, condition, or offer to dedicate, that has been executed by or on behalf of the owner of the land subject to that limitation and is binding upon successive owners of the land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. "Conservation easement" includes a conservation easement as defined in Section 815.1 of the Civil Code, an open-space easement as defined in Section 51075 of the Government Code, and an agricultural conservation easement as defined in Section 10211.

(c) The registry shall only include the following information on each conservation easement listed in the registry:

(1) The recordation number assigned by the county recorder.

(2) The purpose of the easement.

(3) The location of the easement, identified by county and nearest city.

(4) The identity of the easement holder.

(5) The size of the easement in acres.

(6) The date the easement transaction was recorded.

(d) An agency, department, or division of the state with conservation easements that are held or required by the state or purchased with state grant funds shall enter and keep current the information specified in subdivision (c) for those easements in the registry established pursuant to this section.

(e) On or before January 1, 2009, the Secretary of the Resources Agency shall make the registry available for use by the general public. Only the information pertaining to paragraphs (2) to (6), inclusive, of subdivision (c) shall be provided by the Secretary of the Resources Agency on the Internet. No personal identifying information shall be posted on the Internet. The registry shall be updated biennially.

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CHAPTER 532

An act to amend Sections 8870, 8870.1, 8870.2, 8870.3, 8870.35, 8870.4, 8870.5, 8870.71, 8870.9, 8870.95, and 12804 of, and to repeal Section 8870.25 of, the Government Code, relating to the Seismic Safety Commission.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 8870 of the Government Code is amended to read:

8870. The Legislature finds and declares as follows:

First, many different agencies at various levels of government have substantial responsibilities in the fields of earthquake preparedness and seismic safety.

Second, there is a pressing need to provide a consistent policy framework and a means for coordinating on a continuing basis the earthquake-related programs of agencies at all governmental levels and their relationships with elements of the private sector involved in practices important to seismic safety. This need is not being addressed by any continuing state government organization.

Third, through concerted efforts of broad scope, coordinated by a seismic safety commission, long-term progress should be made toward higher levels of seismic safety.

Fourth, to provide and maintain effective policy guidance and leadership on seismic safety issues, and to fulfill its duties under this chapter, it is imperative that the State Seismic Safety Commission carry out its mission as an independent state agency, with direct access and accountability to the Governor and the Legislature.

Fifth, it is not the purpose of this chapter to transfer to the commission the authorities and responsibilities now vested by law in state and local agencies.

SEC. 2. Section 8870.1 of the Government Code is amended to read:

8870.1. (a) (1) There is created in the state government the Alfred E. Alquist Seismic Safety Commission as an independent unit within the State and Consumer Services Agency.

(2) Any reference in statute or regulation to the Seismic Safety Commission shall be deemed to refer to the Alfred E. Alquist Seismic Safety Commission.

(b) The commission shall report annually to the Governor and to the Legislature on its findings, progress, and recommendations relating to earthquake hazard reduction, and any other seismic safety issues, as requested by the Governor or the Legislature.

SEC. 3. Section 8870.2 of the Government Code is amended to read:

8870.2. (a) The Alfred E. Alquist Seismic Safety Commission shall consist of 15 members appointed by the Governor and confirmed by the Senate, one member representing the Governor's Office of Emergency Services, one member representing the Division of the State Architect in the Department of General Services, one member representing the California State Building Standards Commission, one member appointed by the Senate Rules Committee, and one member appointed by the Speaker of the Assembly. The commission shall elect annually from its membership its own chairperson and vice chairperson and may replace them with other commissioners by majority vote. Commission members shall be residents of California.

(b) A quorum shall consist of 11 members if there are no vacancies, or else a majority of the members of the commission at the time.

(c) The Legislature declares that the individuals appointed to the commission are intended to represent the professions of architecture, planning, fire protection, public utilities, structural engineering, geotechnical engineering, geology, seismology, local government, insurance, social services, emergency services, and the Legislature and that such representation serves the public interest. Accordingly, the Legislature finds that for purposes of persons who hold this office the specified professions are tantamount to and constitute the public generally within the meaning of Section 87103.

(d) The commission exists as a separate unit within the State and Consumer Services Agency, and has the functions of prescribing policy, holding meetings and setting dates of the meetings, conducting investigations, and holding hearings insofar as those powers are given by statute to the commission.

(e) The decisions and actions of the commission, with respect to exercising its authority and carrying out its duties under this chapter, or any other applicable law, are not subject to review by the Secretary of the State and Consumer Services Agency, but are final within the limits provided by this chapter.

(f) The Legislature further declares that the highest level of service that the individuals appointed to the commission can provide to the residents of California is to offer professional, unbiased, scientifically based advice to the Governor and the Legislature. To maintain this quality of service, it is imperative that the commission retain its functional autonomy and access to the Governor and the Legislature. As such, the

commission shall retain its existing authority to issue reports, publications, and literature, as well as to sponsor legislation, and to take official positions on proposed state and federal legislation.

SEC. 4. Section 8870.25 of the Government Code is repealed.

SEC. 5. Section 8870.3 of the Government Code is amended to read:

8870.3. (a) The membership of the Alfred E. Alquist Seismic Safety Commission shall be appointed by the Governor and confirmed by the Senate from lists of nominees submitted by organizations as listed below:

(1) Four members appointed from established organizations in the fields of architecture and planning, fire protection, public utilities, electrical engineering, and mechanical engineering.

(2) Four members appointed from established organizations in the fields of structural engineering, geotechnical engineering, geology, and seismology.

(3) Four members submitted by the League of California Cities and the California State Association of Counties.

(4) Three members appointed from established organizations in the fields of insurance, social services, and emergency services. One of these members shall be a building official.

(b) One member shall be appointed from the Senate by the Senate Rules Committee, and one member shall be appointed from the Assembly by the Speaker of the Assembly. Each of the members appointed pursuant to this subdivision may designate an alternate who shall be counted toward a quorum, who may vote, and who may receive the expenses specified in Section 8870.4.

SEC. 6. Section 8870.35 of the Government Code is amended to read:

8870.35. The term of office for each member of the Seismic Safety Commission shall be four years and each shall hold office until the appointment and qualification of his or her successor. However, of the initial commissioners, the Governor shall appoint seven members whose terms will expire two years after appointment and seven members plus the chairperson whose terms shall expire four years after appointment. All initial appointments shall be made by July 1, 1975. Any vacancies shall be immediately filled by the appointing power for the unexpired portion of the term in which they occur.

SEC. 7. Section 8870.4 of the Government Code is amended to read:

8870.4. (a) Except as provided in subdivision (d), the members of the Alfred E. Alquist Seismic Safety Commission shall serve without compensation but shall be paid per diem expenses of one hundred dollars ($100) for each day's attendance at a meeting of the commission, plus actual necessary travel expenses as determined by Department of Personnel Administration rules.

(b) The members of the commission who represent the Governor's Office of Emergency Services, the California Building Standards Commission, and the Division of the State Architect shall be employees in good standing of those respective entities. Any per diem and travel expense of those members of the commission shall be paid by the agencies that they represent on the commission, in compliance with applicable conditions or regulations set by the Department of Personnel Administration.

SEC. 8. Section 8870.5 of the Government Code is amended to read:

8870.5. The commission, in the discharge of its responsibilities, may do any of the following:

(a) Accept grants, contributions, and appropriations from public agencies, private foundations, or individuals.

(b) Appoint committees from its membership, appoint advisory committees from interested public and private groups, and appoint ex officio members who shall not be entitled to vote, to advise the commission.

(c) Contract for or employ, with the approval of the Director of Finance, any professional services and research required by the commission or required for the performance of necessary work and services which, in the commission's opinion, cannot satisfactorily be performed by its officers and employees or by other federal, state, or local governmental agencies.

(d) Enter into agreements to act cooperatively with private nonprofit scientific, educational, or professional associations or foundations engaged in promoting seismic safety in California. These associations or foundations may furnish materials for sale, and the commission may provide personnel services and office space therefor. Subject to rules and regulations adopted by the commission, all moneys received from the sale of publications or other materials provided by an association or foundation shall be returned to the association or foundation for use in furthering seismic safety programs.

(e) Do any and all other things necessary to carry out the purposes of this chapter.

SEC. 9. Section 8870.71 of the Government Code is amended to read:

8870.71. To implement the foregoing responsibilities, the commission may do any of the following:

(a) Review state budgets and review grant proposals, other than those grant proposals submitted by institutions of postsecondary education to the federal government, for earthquake related activities and to advise the Governor and Legislature thereon.

(b) Review legislative proposals related to earthquake safety to advise the Governor and Legislature concerning the proposals and to propose needed legislation.

(c) Recommend the addition, deletion, or changing of state agency standards when, in the commission's view, the existing situation creates undue hazards or when new developments would promote earthquake hazard mitigation, and conduct public hearings as deemed necessary on the subjects.

(d) In the conduct of any hearing, investigation, inquiry, or study that is ordered or undertaken in any part of the state, administer oaths and issue subpoenas for the attendance of witnesses and the production of papers, records, reports, books, maps, accounts, documents, and testimony.

(e) In addition, the commission may perform any of the functions contained in subdivisions (a) to (d), inclusive, in relation to disasters, as defined in subdivision (c) of Section 8870.7, in connection with issues or items reported or discussed with the Office of Emergency Services at any commission meeting.

SEC. 10. Section 8870.9 of the Government Code is amended to read:

8870.9. Prior to July 1, 2010, the Legislature shall hold public hearings to receive testimony from the Alfred E. Alquist Seismic Safety Commission, any interested organizations, and members of the public or private sector. At the hearing, the Legislature shall receive testimony and other information concerning the mission, membership, duties, and operations of the commission.

SEC. 11. Section 8870.95 of the Government Code is amended to read:

8870.95. The Hospital Building Safety Board established in Section 129925 of the Health and Safety Code shall report annually to the Alfred E. Alquist Seismic Safety Commission.

SEC. 12. Section 12804 of the Government Code is amended to read:

12804. The Agriculture and Services Agency is hereby renamed the State and Consumer Services Agency.

The State and Consumer Services Agency consists of the following: the Department of General Services; the Department of Consumer Affairs; the Franchise Tax Board; the Public Employees' Retirement System; the State Teachers' Retirement System; the Department of Fair Employment and Housing; the Fair Employment and Housing Commission; the California Science Center; the California Victim Compensation and Government Claims Board; the California

African-American Museum; the State Building and Standards Commission; and the Alfred E. Alquist Seismic Safety Commission.

CHAPTER 533

An act to amend Sections 12804, 13975, 14931, 14931.1, 15252, 15275, 15277, and 19857 of, to add Section 14930 to, and to add Chapter 5.5 (commencing with Section 11531) to Part 1 of Division 3 of Title 2 of, to repeal Sections 15276 and 15279 of, and to repeal Article 2 (commencing with Section 11792) and Article 3 (commencing with Section 11796) of Chapter 7.5 of Division 3 of Title 2 of, the Government Code, relating to information technology.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Chapter 5.5 (commencing with Section 11531) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 5.5. TECHNOLOGY

Article 1. General Provisions and Definitions

11531. This chapter shall be known and may be cited as the Technology Act of 2005.

11532. For purposes of this chapter, the following terms shall have the following meanings, unless the context requires otherwise:

(a) "Board member" means a member of the Technology Services Board.

(b) "Department" means the Department of Technology Services established by this chapter.

(c) "Board" means the Technology Services Board created pursuant to Section 11535.

(d) "Director" means the Director of Technology Services.

(e) "Technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, and business telecommunications systems and services.

(f) "Business telecommunications systems and services" includes, but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite facilities, equipment, system controls, simulation, electronic commerce, and all related interactions between people and machines. Public safety communications are excluded from this definition.

(g) "Public agencies" include, but are not limited to, all state and local governmental agencies in the state, including cities, counties, other political subdivisions of the state, state departments, agencies, boards, and commissions, and departments, agencies, boards, and commissions of other states and federal agencies.

Article 2. Department of Technology Services

11534. (a) There is in state government, in the State and Consumer Services Agency, the Department of Technology Services.

(b) The purpose of this article is to establish a general purpose technology services provider to serve the common technology needs of executive branch entities with accountability to customers for providing secure services that are responsive to client needs at a cost representing best value to the state.

(c) The purpose of this chapter is to improve and coordinate the use of technology and to coordinate and cooperate with all public agencies in the state in order to eliminate duplications and to bring about economies that could not otherwise be obtained.

11535. (a) There is, in the department, the Technology Services Board.

(b) The board shall consist of 13 members, as follows:

(1) The Governor's designee, who shall serve as the chair of the board.

(2) The Director of Finance, who shall serve as vice chair of the board.

(3) The Controller.

(4) The Secretaries of Food and Agriculture, the Business, Transportation and Housing Agency, the Environmental Protection Agency, the California Health and Human Services Agency, the Labor and Workforce Development Agency, the Resources Agency, the State and Consumer Services Agency, the Department of Veterans Affairs, and the Youth and Adult Correctional Agency.

(5) The Director of the Office of Emergency Services.

11536. The board shall meet not less than once each quarter. A quorum shall consist of seven members of the board. All decisions of the board shall be made by a majority vote of a quorum of the board.

11537. (a) The board shall engage an independent firm of certified public accountants to conduct an annual financial audit of all accounts

and transactions of the department. The audit shall be conducted in accordance with generally accepted government auditing standards. The audited financial statements shall be presented to the board, the Governor, and the Legislature not more than 120 days after the close of the fiscal year.

(b) The board may arrange for other audits as are necessary or prudent to ensure proper oversight and management of the department.

11538. The director shall be appointed by, and serve at the pleasure of, the Governor, subject to Senate confirmation. The director shall act as executive officer of the board.

11539. The director shall be responsible for managing the affairs of the department and shall perform all duties, exercise all powers and jurisdiction, and assume and discharge all responsibilities necessary to carry out the purposes of this chapter. The director shall employ professional, clerical, technical, and administrative personnel as necessary to carry out this chapter.

11540. (a) The director shall propose for board consideration and approval an annual budget for departmental operations. As part of the annual budget development, the department shall determine the impact of any rebates, abatements, or rate reductions resulting from excess reserve funds. At least 60 days before submitting the proposed budget to the board, the director shall submit the proposed budget to the Department of Finance. Submittal of the budget to the Department of Finance shall be in a format and timeframe determined by the Department of Finance. The Department of Finance shall prepare a report to the board evaluating the reasonableness of the proposed budget and any significant impact the department's budget is likely to have upon the budgets of other departments.

(b) The director shall propose for board consideration rates for department services based on a formal rate methodology approved by the board. At least 60 days before submitting proposed rates to the board, the director shall submit the proposed rates to the Department of Finance. Submittal of the rates to the Department of Finance shall be in a format and timeframe determined by the Department of Finance. The Department of Finance shall prepare a report to the board evaluating the reasonableness of the proposed rates and any significant impact the department's rates are likely to have upon the budgets of other departments.

(c) It is the intent of the Legislature that this section supersede Section 11540 of the Government Code, as added by Section 1 of the Governor's Reorganization Plan No. 2, effective July 9, 2005.

11541. (a) The department may acquire, install, equip, maintain, and operate new or existing business telecommunications systems and

services. Acquisitions for information technology goods and services shall be made pursuant to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code. To accomplish that purpose, it may enter into contracts, obtain licenses, acquire property, install necessary equipment and facilities, and do other acts that will provide adequate and efficient business telecommunications systems and services. Any system established shall be made available to all public agencies in the state on terms that may be agreed upon by the agency and the department.

(b) With respect to business telecommunications systems and services, the department may do all of the following:

(1) Provide representation of public agencies before the Federal Communications Commission in matters affecting the state and other public agencies regarding business telecommunications systems and services issues.

(2) Provide, upon request, advice to public agencies concerning existing or proposed business telecommunications systems and services between any and all public agencies.

(3) Recommend to public agencies rules, regulations, procedures, and methods of operation that it deems necessary to effectuate the most efficient and economical use of business telecommunications systems and services within the state.

(4) Carry out the policies of this chapter.

(c) The department has responsibilities with respect to business telecommunications systems, services, policy, and planning, which include, but are not limited to, all of the following:

(1) Assessing the overall long-range business telecommunications needs and requirements of the state considering both routine and emergency operations for business telecommunications systems and services, performance, cost, state-of-the-art technology, multiuser availability, security, reliability, and other factors deemed to be important to state needs and requirements.

(2) Developing strategic and tactical policies and plans for business telecommunications with consideration for the systems and requirements of public agencies.

(3) Recommending industry standards, service level agreements, and solutions regarding business telecommunications systems and services to assure multiuser availability and compatibility.

(4) Providing advice and assistance in the selection of business telecommunications equipment to ensure all of the following:

(A) Ensuring that the business telecommunications needs of state agencies are met.

(B) Ensuring that procurement is compatible throughout state agencies and is consistent with the state's strategic and tactical plans for telecommunications.

(C) Ensuring that procurement is designed to leverage the buying power of the state and encourage economies of scale.

(5) Providing management oversight of statewide business telecommunications systems and services developments.

(6) Providing for coordination of, and comment on, plans and policies and operational requirements from departments that utilize business telecommunications systems and services as determined by the department.

(7) Monitoring and participating, on behalf of the state, in the proceedings of federal and state regulatory agencies and in congressional and state legislative deliberations that have an impact on state governmental business telecommunications activities.

(d) The department shall develop and describe statewide policy on the use of business telecommunications systems and services by state agencies. In the development of that policy, the department shall assure that access to state business information and services is improved, and that the policy is cost effective for the state and its residents. The department shall develop guidelines that do all of the following:

(1) Describe what types of state business information and services may be accessed using business telecommunications systems and services.

(2) Characterize the conditions under which a state agency may utilize business telecommunications systems and services.

(3) Characterize the conditions under which a state agency may charge for information and services.

(4) Specify pricing policies.

(5) Provide other guidance as may be appropriate at the discretion of the department.

(e) It is the intent of the Legislature that this section supersede Section 11541 of the Government Code, as added by Section 1 of the Governor's Reorganization Plan No. 2, effective July 9, 2005.

11542. (a) The Stephen P. Teale Data Center and the California Health and Human Services Agency Data Center are consolidated within, and their functions are transferred to, the department.

(b) The business telecommunications systems and services functions of the Telecommunications Division of the Department of General Services are transferred to the department.

(c) Except as expressly provided otherwise in this chapter, the department is the successor to, and is vested with, all of the duties, powers, purposes, responsibilities, and jurisdiction of the Stephen P.

Teale Data Center, the California Health and Human Services Agency Data Center, and the business telecommunications systems and services functions of the Telecommunications Division of the Department of General Services. Any reference in statutes, regulations, or contracts to those entities with respect to the transferred functions shall be construed to refer to the Department of Technology Services unless the context clearly requires otherwise.

(d) No contract, lease, license, or any other agreement to which the Stephen P. Teale Data Center, the California Health and Human Services Agency Data Center, or the Telecommunications Division of the Department of General Services, with respect to the business telecommunications systems and services functions, is a party, shall be void or voidable by reason of this chapter, but shall continue in full force and effect, with the department assuming all of the rights, obligations, and duties of the Stephen P. Teale Data Center, the California Health and Human Services Agency Data Center, or the Telecommunications Division of the Department of General Services, respectively.

(e) Notwithstanding subdivision (e) of Section 11793 and subdivision (e) of Section 11797, on and after the effective date of this chapter, the balance of any funds available for expenditure by the Stephen P. Teale Data Center, the California Health and Human Services Agency Data Center, and the Telecommunications Division of the Department of General Services, with respect to business telecommunications systems and services functions in carrying out any functions transferred to the department by this chapter, shall be transferred to the Department of Technology Services Revolving Fund created by Section 11544, and shall be made available for the support and maintenance of the department.

(f) All references in statutes, regulations, or contracts to the former Stephen P. Teale Data Center Fund or the California Health and Human Services Data Center Revolving Fund shall be construed to refer to the Department of Technology Services Revolving Fund unless the context clearly requires otherwise.

(g) All books, documents, records, and property of the Stephen P. Teale Data Center, the California Health and Human Services Agency Data Center, excluding the Systems Integration Division, and the Telecommunications Division of the Department of General Services, with respect to business telecommunications systems and services functions, shall be transferred to the department.

(h) (1) All officers and employees of the former Stephen P. Teale Data Center, the California Health and Human Services Agency Data Center, and the Telecommunications Division of the Department of

General Services, with respect to business telecommunications systems and services functions, are transferred to the department.

(2) The status, position, and rights of any officer or employee of the Stephen P. Teale Data Center, the California Health and Human Services Agency Data Center, and the Telecommunications Division of the Department of General Services, with respect to business telecommunications systems and services functions, shall not be affected by the transfer and consolidation of their functions to the department.

11543. (a) The director shall confer as frequently as necessary or desirable, but not less than once every quarter, with the board, on the operation and administration of the department. The director shall make available for inspection by the board or any board member, upon request, all books, records, files, and other information and documents of the department and recommend any matters as he or she deems necessary and advisable to improve the operation and administration of the department.

(b) The director shall make and keep books and records to permit preparation of financial statements in conformity with generally accepted accounting principles and any state policy requirements.

Article 3. Department of Technology Services Revolving Fund

11544. (a) The Department of Technology Services Revolving Fund, hereafter known as the fund, is hereby created within the State Treasury. The fund shall be administered by the director, pursuant to the department's plan of operations, to receive all revenues from the sale of technology or technology services provided for in this chapter and all other moneys properly credited to the board and department from any other source, to pay, upon appropriation by the Legislature, all costs arising from this chapter, including, but not limited to, operating and other expenses of the board and department and costs associated with approved information technology projects, and to establish reserves. At the discretion of the director, segregated, dedicated accounts within the fund may be established.

(b) The fund shall consist of all of the following:

(1) Moneys appropriated and made available by the Legislature for the purpose of this chapter.

(2) Any other moneys that may be made available to the department for the purpose of this chapter from any other source, including the return from investments of moneys by the Treasurer.

(c) The department may collect payments from public agencies for providing services to those agencies that the agencies have contracted with the department to provide. The department may require monthly

payments by client agencies for the services the agencies have contracted the department to provide. Pursuant to Section 11255, the Controller shall transfer any amounts so authorized by the department, consistent with the annual budget of each department, to the fund. The department shall notify each affected state agency upon requesting the Controller to make the transfer.

(d) If the balance remaining in the fund at the end of any fiscal year exceeds 25 percent of the department's current fiscal year budget, the excess amount shall be used to reduce the billing rates for services rendered during the following fiscal year.

(e) It is the intent of the Legislature that this section supersede Section 11544 of the Government Code, as added by Section 1 of the Governor's Reorganization Plan No. 2, effective July 9, 2005.

11545. (a) There is in state government the office of the State Chief Information Officer. The State Chief Information Officer shall be appointed by, and serve at the pleasure of, the Governor, subject to Senate confirmation. The State Chief Information Officer shall be a member of the Governor's cabinet.

(b) The duties of the State Chief Information Officer shall include, but not be limited to, all of the following:

(1) Advising the Governor on the strategic management and direction of the state's information technology resources.

(2) Minimizing overlap, redundancy, and cost in state operations by promoting the efficient and effective use of information technology.

(3) Coordinating the activities of agency information officers, agency chief information officers, and the Director of Technology Services for purposes of integrating statewide technology initiatives, ensuring compliance with information technology policies and standards, and promoting alignment of information technology resources and effective management of information technology portfolios.

(4) Working to improve organizational maturity and capacity in the effective management of information technology.

(5) Establishing performance management and improvement processes to ensure state information technology systems and services are efficient and effective.

SEC. 2. Article 2 (commencing with Section 11792) of Chapter 7.5 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 3. Article 3 (commencing with Section 11796) of Chapter 7.5 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 4. Section 12804 of the Government Code is amended to read:

12804. The Agriculture and Services Agency is hereby renamed the State and Consumer Services Agency.

The State and Consumer Services Agency consists of the following: the Department of General Services; the Department of Technology Services; the Department of Consumer Affairs; the Franchise Tax Board; the Public Employees' Retirement System; the State Teachers' Retirement System; the Department of Fair Employment and Housing; the Fair Employment and Housing Commission; the California Science Center; the California Victim Compensation and Government Claims Board; the California African-American Museum; and the State Building and Standards Commission.

SEC. 4.5. Section 12804 of the Government Code is amended to read:

12804. The Agriculture and Services Agency is hereby renamed the State and Consumer Services Agency.

The State and Consumer Services Agency consists of the following: the Department of General Services; the Department of Technology Services; the Department of Consumer Affairs; the Franchise Tax Board; the Public Employees' Retirement System; the State Teachers' Retirement System; the Department of Fair Employment and Housing; the Fair Employment and Housing Commission; the California Science Center; the California Victim Compensation and Government Claims Board; the California African-American Museum; the State Building and Standards Commission; and the Alfred E. Alquist Seismic Safety Commission.

SEC. 5. 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 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. 6. Section 14930 is added to the Government Code, to read:

14930. This chapter shall not apply to Department of Justice public safety communications, including, but not limited to, communications operated pursuant to Chapter 2.5 (commencing with Section 15150) of Part 6 of Division 3 of Title 2.

SEC. 7. Section 14931 of the Government Code is amended to read:

14931. The department may acquire, install, equip, maintain, and operate new or existing public safety communications systems and

facilities for public safety agencies. To accomplish that purpose, it may, in the name of the state, enter into contracts, obtain licenses, acquire property, install necessary equipment and facilities, and do other acts that will provide adequate and efficient public safety communications systems. Any system established shall be available to all public agencies in the state on terms that may be agreed upon by the agency and the department.

SEC. 8. Section 14931.1 of the Government Code is amended to read:

14931.1. The department shall acquire, install, equip, maintain, and operate all new or replacement public safety communications systems operated by the state, excepting microwave equipment used exclusively for traffic signal and signing control, traffic metering, and roadway surveillance systems. To accomplish that purpose, it may, in the name of the state, enter into contracts, obtain licenses, acquire property, install necessary equipment and facilities, and do other acts that will provide adequate and efficient microwave communications systems. Any system established shall be available to all public agencies in the state on terms that may be agreed upon by the public agency and the department.

SEC. 9. Section 15252 of the Government Code is amended to read:

15252. The purpose of this part is to improve and coordinate the use of public safety radio and other public safety communications facilities owned and operated by the state, and to coordinate and cooperate with cities, counties, and other political subdivisions thereof, in order to eliminate duplications and interferences, to bring about economies that could not otherwise be obtained.

SEC. 10. Section 15275 of the Government Code is amended to read:

15275. The Department of General Services may do all of the following:

(a) Provide adequate representation of local and state governmental bodies and agencies before the Federal Communications Commission in matters affecting the state and its cities, counties, and other public agencies regarding public safety communications issues.

(b) Provide, upon request, adequate advice to state and local agencies in the state concerning existing or proposed public safety communications facilities between any and all of the following: cities, counties, other political subdivisions of the state, state departments, agencies, boards, and commissions, and departments, agencies, boards, and commissions of other states and federal agencies.

(c) Recommend to the appropriate state and local agencies rules, regulations, procedures, and methods of operation that it deems necessary to effectuate the most efficient and economical use of publicly owned and operated public safety communications facilities within this state.

(d) Provide, upon request, information and data concerning the public safety communications facilities that are owned and operated by public agencies in connection with official business of public safety services.

(e) Carry out the policy of this part.

SEC. 11. Section 15276 of the Government Code is repealed.

SEC. 12. Section 15277 of the Government Code is amended to read:

15277. There is hereby established within the department a Division of Telecommunications. The division shall include a policy and planning unit whose duties shall include, but not be limited to, all of the following:

(a) Assessing the overall long-range public safety communications needs and requirements of the state considering emergency operations, performance, cost, state-of-the-art technology, multiuser availability, security, reliability, and other factors deemed to be important to state needs and requirements.

(b) Developing strategic and tactical policies and plans for public safety communications with consideration for the systems and requirements of the state and all public agencies in this state, and preparing an annual strategic communications plan that includes the feasibility of interfaces with federal and other state telecommunications networks and services.

(c) Recommending industry standards for public safety communications systems to assure multiuser availability and compatibility.

(d) Providing advice and assistance in the selection of communications equipment to ensure that the public safety communications needs of state agencies are met and that procurements are compatible throughout state agencies and are consistent with the state's strategic and tactical plans for public safety communications.

(e) Providing management oversight of statewide public safety communications systems developments.

(f) Providing for coordination of, and comment on, plans, policies, and operational requirements from departments that utilize public safety communications in support of their principal function, such as the Office of Emergency Services, National Guard, health and safety agencies, and others with primary public safety communications programs.

(g) Monitoring and participating on behalf of the state in the proceedings of federal and state regulatory agencies and in congressional and state legislative deliberations that have an impact on state government public safety communications activities.

(h) Developing plans regarding teleconferencing as an alternative to state travel during emergency situations.

SEC. 13. Section 15279 of the Government Code is repealed.

SEC. 14. Section 19857 of the Government Code is amended to read:

19857. (a) The appointing power of any officer or employee not a member of the civil service may promulgate regulations governing vacations for these officers or employees. In the absence of these regulations, the rules of the department relating to the regulation and methods of accumulation of vacation for civil service employees shall govern.

(b) Notwithstanding subdivision (a), no paid leave including, but not limited to, vacation, annual leave, and sick leave shall be accrued by state officers in the following positions:

(1) Executive Director of the California Housing Finance Agency.
(2) Director of the Office of Administrative Law.
(3) Director of Emergency Medical Services Authority.
(4) Executive Director of the Office of Criminal Justice Planning.
(5) Director of the California Conservation Corps.
(6) Director of the Arts Council.

The department may adopt regulations for the application of this provision to similar positions established in the future.

SEC. 15. Section 4.5 of this bill incorporates amendments to Section 12804 of the Government Code proposed by both this bill and AB 1278. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 12804 of the Government Code, and (3) this bill is enacted after AB 1278, in which case Section 4 of this bill shall not become operative.

CHAPTER 534

An act to amend Section 6061 of, and to add Sections 6046.7, 6060.7, and 6061.5 to, the Business and Professions Code, and to amend Section 94900 of, and to add Section 94364 to, the Education Code, relating to law schools.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 6046.7 is added to the Business and Professions Code, to read:

6046.7. (a) (1) Notwithstanding any other provision of law, the Committee of Bar Examiners shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of unaccredited law schools that are required to be authorized to operate as a business

in California and to have an administrative office in California, including correspondence schools, that are not accredited by the American Bar Association or the Committee of Bar Examiners, with the goal of ensuring consumer protection and a legal education at an affordable cost.

(2) Notwithstanding any other provision of law, the committee shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of nonlaw school legal programs leading to a juris doctor (J.D.) degree, bachelor of laws (LL.B.) degree, or other law study degree.

(b) Commencing January 1, 2008, the committee shall assess and collect a fee from unaccredited law schools and legal programs in nonlaw schools in an amount sufficient to fund the regulatory and oversight responsibilities imposed by this section. Nothing in this subdivision precludes the board of governors from using other funds or fees collected by the State Bar or by the committee to supplement the funding of the regulatory and oversight responsibilities imposed by this section with other funds, if that supplemental funding is deemed necessary and appropriate to mitigate some of the additional costs of the regulation and oversight to facilitate the provision of a legal education at an affordable cost.

SEC. 2. Section 6061 of the Business and Professions Code is amended to read:

6061. Any law school that is not accredited by the examining committee of the State Bar shall provide every student with a disclosure statement, subsequent to the payment of any application fee but prior to the payment of any registration fee, containing all of the following information:

(a) The school is not accredited. However, in addition, if the school has been approved by other agencies, that fact may be so stated.

(b) Where the school has not been in operation for 10 years, the assets and liabilities of the school. However, if the school has had prior affiliation with another school that has been in operation more than 10 years, has been under the control of another school that has been in operation more than 10 years, or has been a successor to a school in operation more than 10 years, the requirements of this subdivision are not applicable.

(c) The number and percentage of students who have taken and who have passed the first-year law student's examination and the final bar examination in the previous five years, or since the establishment of the school, whichever time is less, which shall include only those students who have been certified by the school to take the examinations.

(d) The number of legal volumes in the library. This subdivision does not apply to correspondence schools.

(e) The educational background, qualifications and experience of the faculty, and whether or not the faculty members and administrators (e.g., the dean) are members of the California State Bar.

(f) The ratio of faculty to students for the previous five years or since the establishment of the school, whichever time is less.

(g) Whether or not the school has applied for accreditation, and if so, the date of application and whether or not that application has been withdrawn, is currently pending, or has been finally denied. The school need only disclose information relating to applications made in the previous five years.

(h) That the education provided by the school may not satisfy requirements of other states for the practice of law. Applicants should inquire regarding those requirements, if any, to the state in which they may wish to practice.

The disclosure statement required by this section shall be signed by each student, who shall receive as a receipt a copy of his or her signed disclosure statement. If any school does not comply with these requirements, it shall make a full refund of all fees paid by students.

Subject to approval by the board, the examining committee may adopt reasonable rules and regulations as are necessary for the purpose of ensuring compliance with this section.

SEC. 3. Section 6061.5 is added to the Business and Professions Code, to read:

6061.5. A law school that is not accredited by the examining committee of the State Bar may refer to itself as a university or part of a university and, if it so refers to itself, shall state whether or not the law school is associated with an undergraduate school.

SEC. 4. Section 6060.7 is added to the Business and Professions Code, to read:

6060.7. (a) From January 1, 2007, to December 31, 2007, law schools and law study degree programs shall be subject to the following:

(1) The examining committee shall be responsible for the approval, regulation, and oversight of degree-granting law schools that (A) exclusively offer bachelor's, master's, or doctorate degrees in law, such as juris doctor, and (B) do not meet the criteria set forth in Section 94750 of the Education Code. This paragraph does not apply to unaccredited law schools, which remain subject to the jurisdiction of the Bureau of Private Postsecondary Education or its successor agency.

(2) If a law school that does not meet the criteria set forth in Section 94750 of the Education Code offers educational services other than bachelor's, master's, or doctorate-degree programs in law, only the law school's degree programs in law shall be subject to the approval, regulation, and oversight of the examining committee.

(b) On and after January 1, 2008, law schools and law study degree programs shall be subject to the following:

(1) The examining committee shall be responsible for the approval, regulation, and oversight of degree-granting law schools that (A) exclusively offer bachelor's, master's, or doctorate degrees in law, such as juris doctor, and (B) do not meet the criteria set forth in Section 94750 of the Education Code.

(2) If a law school that does not meet the criteria set forth in Section 94750 of the Education Code offers educational services other than bachelor's, master's, or doctorate-degree programs in law, only the law school's degree programs in law shall be subject to the approval, regulation, and oversight of the examining committee.

(3) If a nonlaw school that does not meet the criteria set forth in Section 94750 of the Education Code offers educational programs leading to a juris doctor (J.D.) degree, bachelor of laws (LL.B.) degree, or other law study degree, those programs shall be subject to the regulation and oversight of the examining committee. The provisions of this paragraph shall not apply to paralegal programs.

SEC. 5. Section 94364 is added to the Education Code, to read:

94364. This chapter shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 6. Section 94900 of the Education Code is amended to read:

94900. (a) No private postsecondary educational institution may issue, confer, or award an academic or honorary degree unless the institution is approved by the council to operate in California and award degrees.

The council shall not issue an approval under paragraph (1) of subdivision (c) of Section 94901 or a conditional approval under paragraph (2) of subdivision (c) of Section 94901 until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined all of the following:

(1) The institution has the facilities, financial resources, administrative capabilities, faculty, and other necessary educational expertise and resources to ensure its capability of fulfilling the program or programs for enrolled students.

(2) The faculty are fully qualified to undertake the level of instruction that they are assigned and shall possess degrees or credentials appropriate to the degree program and level they teach and have demonstrated professional achievement in the major field or fields offered, in sufficient numbers to provide the educational services.

(3) The education services and curriculum clearly relate to the objectives of the proposed program or programs and offer students the opportunity for a quality education.

(4) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(5) The program of study for which the degree is granted provides the curriculum necessary to achieve its professed or claimed academic objective for higher education, and the institution requires a level of academic achievement appropriate to that degree.

(6) The institution provides adequate student advisement services, academic planning and curriculum development activities, research supervision for students enrolled in Ph.D. programs, and clinical supervision for students enrolled in various health profession programs.

(7) If the institution offers credit for prior experiential learning it may do so only after an evaluation by qualified faculty and only in disciplines within the institution's curricular offerings that are appropriate to the degree to be pursued. The council shall develop specific standards regarding the criteria for awarding credit for prior experiential learning at the graduate level, including the maximum number of hours for which credit may be awarded.

(b) The approval process shall include a qualitative review and assessment of all of the following:

(1) Institutional purpose, mission, and objectives.
(2) Governance and administration.
(3) Curriculum.
(4) Instruction.
(5) Faculty, including their qualifications.
(6) Physical facilities.
(7) Administrative personnel.
(8) Procedures for keeping educational records.
(9) Tuition, fee, and refund schedules.
(10) Admissions standards.
(11) Financial aid policies and practices.
(12) Scholastic regulations and graduation requirements.
(13) Ethical principles and practices.
(14) Library and other learning resources.
(15) Student activities and services.
(16) Degrees offered.

The standards and procedures utilized by the council shall foster the development of high quality, innovative educational programs and emerging new fields of study within postsecondary education. In addition,

the standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

(c) If a law school not exempt under Section 94750 offers educational services other than bachelor's, master's, or doctorate-degree programs in law, the law school and its nonlaw degree programs shall be subject to this chapter.

CHAPTER 535

An act to add Section 12805.4 to the Government Code, relating to the Sacramento-San Joaquin Delta.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 12805.4 is added to the Government Code, to read:

12805.4. (a) The Secretary of the Resources Agency shall convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, a Strategic Vision for a Sustainable Sacramento-San Joaquin Delta.

(b) The committee shall include all of the following:

(1) The Secretary of the Resources Agency.

(2) The Secretary of the Business, Transportation and Housing Agency.

(3) The Secretary for Environmental Protection.

(4) The Secretary of Food and Agriculture.

(5) The President of the Public Utilities Commission.

(c) The strategic vision shall address all of the following:

(1) Sustainable ecosystem functions, including aquatic and terrestrial flora and fauna.

(2) Sustainable land use and land use patterns.

(3) Sustainable transportation uses, including streets, roads and highways, and waterborne transportation.

(4) Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors.

(5) Sustainable water supply uses.

(6) Sustainable recreation uses, including current and future recreational and tourism uses.

(7) Sustainable flood management strategies.

(8) Other aspects of sustainability deemed desirable by the committee.

(d) The committee shall seek input from elected officials, governmental agencies, interested parties, educational institutions, and affected local communities. The Governor or the committee may appoint a "blue ribbon" or citizen commission, advisory committee, task force, or any other group or groups that the Governor or the committee deems necessary or desirable to assist in carrying out this section.

(e) For the purposes of carrying out this section, the committee may also seek input from other policy and resource leaders.

(f) All relevant state agencies, at the request of the committee, shall make available staff and resources to assist in the preparation of the strategic vision.

(g) (1) The committee, its members, and state agencies represented on the committee may contract for consultants to assist in the preparation of the strategic vision.

(2) Contracts entered into pursuant to paragraph (1) shall terminate no later than December 31, 2008.

(3) Contracts entered into pursuant to paragraph (1) are exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

CHAPTER 536

An act to add Sections 2509 and 2516 to the Business and Professions Code, relating to midwives.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 2509 is added to the Business and Professions Code, to read:

2509. The board shall create and appoint a Midwifery Advisory Council consisting of licensees of the board in good standing, who need not be members of the board, and members of the public who have an interest in midwifery practice, including, but not limited to, home births. At least one-half of the council members shall be California licensed midwives. The council shall make recommendations on matters specified by the board.

SEC. 2. Section 2516 is added to the Business and Professions Code, to read:

2516. (a) Each licensed midwife who assists, or supervises a student midwife in assisting, in childbirth that occurs in an out-of-hospital setting shall annually report to the Office of Statewide Health Planning and Development. The report shall be submitted in March, with the first report due in March 2008, for the prior calendar year, in a form specified by the board and shall contain all of the following:

(1) The midwife's name and license number.

(2) The calendar year being reported.

(3) The following information with regard to cases in which the midwife, or the student midwife supervised by the midwife, assisted in the previous year when the intended place of birth at the onset of care was an out-of-hospital setting:

(A) The total number of clients served as primary caregiver at the onset of care.

(B) The total number of clients served with collaborative care available through, or given by, a licensed physician and surgeon.

(C) The total number of clients served under the supervision of a licensed physician and surgeon.

(D) The number by county of live births attended as primary caregiver.

(E) The number, by county, of cases of fetal demise attended as primary caregiver at the discovery of the demise.

(F) The number of women whose primary care was transferred to another health care practitioner during the antepartum period, and the reason for each transfer.

(G) The number, reason, and outcome for each elective hospital transfer during the intrapartum or postpartum period.

(H) The number, reason, and outcome for each urgent or emergency transport of an expectant mother in the antepartum period.

(I) The number, reason, and outcome for each urgent or emergency transport of an infant or mother during the intrapartum or immediate postpartum period.

(J) The number of planned out-of-hospital births at the onset of labor and the number of births completed in an out-of-hospital setting.

(K) The number of planned out-of-hospital births completed in an out-of-hospital setting that were any of the following:

(i) Twin births.

(ii) Multiple births other than twin births.

(iii) Breech births.

(iv) Vaginal births after the performance of a caesarian section.

(L) A brief description of any complications resulting in the mortality of a mother or an infant.

(M) Any other information prescribed by the board in regulations.

(b) The Office of Statewide Health Planning and Development shall maintain the confidentiality of the information submitted pursuant to this section, and shall not permit any law enforcement or regulatory agency to inspect or have copies made of the contents of any reports submitted pursuant to subdivision (a) for any purpose, including, but not limited to, investigations for licensing, certification, or regulatory purposes.

(c) The office shall report to the board, by April, those licensees who have met the requirements of subdivision (a) for that year.

(d) The board shall send a written notice of noncompliance to each licensee who fails to meet the reporting requirement of subdivision (a). Failure to comply with subdivision (a) will result in the midwife being unable to renew his or her license without first submitting the requisite data to the Office of Statewide Health Planning and Development for the year for which that data was missing or incomplete. The board shall not take any other action against the licensee for failure to comply with subdivision (a).

(e) The board, in consultation with the office and the Midwifery Advisory Council, shall devise a coding system related to data elements that require coding in order to assist in both effective reporting and the aggregation of data pursuant to subdivision (f). The office shall utilize this coding system in its processing of information collected for purposes of subdivision (f).

(f) The office shall report the aggregate information collected pursuant to this section to the board by July of each year. The board shall include this information in its annual report to the Legislature.

(g) Notwithstanding any other provision of law, a violation of this section shall not be a crime.

CHAPTER 537

An act to amend Section 114870 of the Health and Safety Code, relating to radiologic technology.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 114870 of the Health and Safety Code is amended to read:

114870. The department shall do all of the following:

(a) Upon recommendation of the committee, adopt regulations as may be necessary to accomplish the purposes of this chapter.

(b) (1) Provide for certification of radiologic technologists, without limitation as to procedures or areas of application, except as provided in Section 106980. Separate certificates shall be provided for diagnostic radiologic technology, for mammographic radiologic technology, and for therapeutic radiologic technology. If a person has received accreditation to perform mammography from a private accreditation organization, the department shall consider this accreditation when deciding to issue a mammographic radiologic technology certificate.

(2) Provide, upon recommendation of the committee, that a radiologic technologist who operates digital radiography equipment devote a portion of his or her continuing education credit hours to continuing education in digital radiologic technology.

(c) (1) (A) Provide, as may be deemed appropriate, for granting limited permits to persons to conduct radiologic technology limited to the performance of certain procedures or the application of X-rays to specific areas of the human body, except for mammography, prescribe minimum standards of training and experience for these persons, and prescribe procedures for examining applicants for limited permits. The minimum standards shall include a requirement that persons granted limited permits under this subdivision shall meet those fundamental requirements in basic radiological health training and knowledge similar to those required for persons certified under subdivision (b) as the department determines are reasonably necessary for the protection of the health and safety of the public.

(B) Provide that an applicant for approval as a limited permit X-ray technician in the categories of chest radiography, extremities radiography, gastrointestinal radiography, genitourinary radiography, leg-podiatric radiography, skull radiography, and torso-skeletal radiography, as these categories are defined in Section 30443 of Title 17 of the California Code of Regulations, shall have at least 50 hours of education in radiological protection and safety. The department may allocate these hours as it deems appropriate.

(2) Provide that a limited permit X-ray technician in the categories of chest radiography, extremities radiography, gastrointestinal radiography, genitourinary radiography, leg-podiatric radiography, skull radiography, and torso-skeletal radiography, as these categories are defined in Section 30443 of Title 17 of the California Code of Regulations, may perform digital radiography within their respective scopes of practice after completion of 20 hours or more of instruction in digital radiologic technology approved by the department. This requirement shall not be construed to preclude limited permit X-ray

technicians in the categories of dental laboratory radiography and X-ray bone densitometry from performing digital radiography upon meeting the educational requirements determined by the department.

(3) Provide, upon recommendation of the committee, that a limited permit X-ray technician who has completed the initial instruction described in paragraph (2) devote a portion of his or her required continuing education credit hours to additional continuing instruction in digital radiologic technology.

(d) Provide for the approval of schools for radiologic technologists. Schools for radiologic technologists shall include 20 hours of approved instruction in digital radiography. The department may exempt a school from this requirement as it deems appropriate.

(e) Provide, upon recommendation of the committee, for certification of licentiates of the healing arts to supervise the operation of X-ray machines or to operate X-ray machines, or both, prescribe minimum standards of training and experience for these licentiates of the healing arts, and prescribe procedures for examining applicants for certification. This certification may limit the use of X-rays to certain X-ray procedures and the application of X-rays to specific areas of the human body.

(f) (1) Provide for certification of any physician and surgeon to operate, and supervise the operation of, a bone densitometer, if that physician and surgeon provides the department a certificate that evidences training in the use of a bone densitometer by a representative of a bone densitometer machine manufacturer, or through any radiologic technology school. The certification shall be valid for the particular bone densitometer the physician and surgeon was trained to use, and for any other bone densitometer that meets all of the criteria specified in subparagraphs (A) to (C), inclusive, if the physician and surgeon has completed training, as specified in subparagraph (A) of paragraph (2), for the use of that bone densitometer. The physician and surgeon shall, upon request of the department, provide evidence of training, pursuant to subparagraph (A) of paragraph (2), for the use of any bone densitometer used by the physician and surgeon. The activity covered by the certificate shall be limited to the use of an X-ray bone densitometer to which all of the following is applicable:

(A) The bone densitometer does not require user intervention for calibration.

(B) The bone densitometer does not provide an image for diagnosis.

(C) The bone densitometer is used only to estimate bone density of the heel, wrist, or finger of the patient.

(2) The certificate shall be accompanied by a copy of the curriculum covered by the manufacturer's representative or radiologic technology

school. The curriculum shall include, at a minimum, instruction in all of the following areas:

(A) Procedures for operation of the bone densitometer by the physician and surgeon, and for the supervision of the operation of the bone densitometer by other persons, including procedures for quality assurance of the bone densitometer.

(B) Proper radiation protection of the operator, the patient, and third parties in proximity to the bone densitometer.

(C) Provisions of Article 5 (commencing with Section 106955) of Chapter 4 of Part 1 of Division 104.

(D) Provisions of Chapter 6 (commencing with Section 114840) of Part 9 of Division 104.

(E) Provisions of Group 1 (commencing with Section 30100) of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(F) Provisions of Group 1.5 (commencing with Section 30108) of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(G) Provisions of Article 1 (commencing with Section 30250) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(H) Provisions of Article 2 (commencing with Section 30254) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(I) Provisions of Article 3 (commencing with Section 30265) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(J) Provisions of Article 4 (commencing with Section 30305) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(K) Provisions of Subchapter 4.5 (commencing with Section 30400) of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(3) (A) Notwithstanding any other provision of law, this subdivision shall constitute all the requirements that must be met by a physician and surgeon in order to operate, and supervise the operation of, a bone densitometer. The department may adopt regulations consistent with this section in order to administer the certification requirements.

(B) No person may be supervised by a physician and surgeon in the use of a bone densitometer unless that person possesses the necessary license or permit required by the department.

(C) Nothing in this subdivision shall affect the requirements imposed by the committee or the department for the registration of a bone

densitometer machine, or for the inspection of facilities in which any bone densitometer machine is operated.

(D) This subdivision shall not apply to a licentiate of the healing arts who is certified pursuant to subdivision (e) or pursuant to Section 107111.

(E) The department shall charge a fee for a certificate issued pursuant to this subdivision to the extent necessary to administer certification. The fee shall be in an amount sufficient to cover the department's costs of implementing this subdivision and shall not exceed the fee for certification to operate or supervise the operation of an X-ray machine pursuant to subdivision (e). The fees collected pursuant to this subparagraph shall be deposited into the Radiation Control Fund established pursuant to Section 114980.

(g) Upon recommendation of the committee, exempt from certification requirements those licentiates of the healing arts who have successfully completed formal courses in schools certified by the department and who have successfully passed a roentgenology technology and radiation protection examination approved by the department and administered by the board that issued his or her license.

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

CHAPTER 538

An act to amend Sections 690, 801, 809, 853, 2435.1, 2571, 3078, 4052, 4507, 6126.3, 6156, 6157, 7161, 7302, 7582.20, 7591.19, 7830.1, 9855.6, 11004.5, 12606.2, 14492, 17086, 17206.1, 17508, 17539.3, 18625, 18720, 18830, 19613.2, 21669.1, 22701, 22901, 22915, 23426.5, and 25660 of the Business and Professions Code, to amend Sections 43.97, 51.4, 54.6, 56.21, 799.2.5, 846.1, 1363.04, 1363.07, 1761, 1786.10, 1788.2, 1789.37, 1812.85, 1812.106, 1812.306, 1812.501, 1834.8, 2945.3, 2945.9, 2954.7, 3052.5, 3262, and 3415 of, and to amend and renumber Section 1812.97 of, the Civil Code, to amend Sections 77, 94, 338, 417.10, 425.11, 460.7, 1021.8, 1141.21, 1245.320, 1345, 1346, 1370, 1371, 1375, 1379, 1775.14, 1800, and 1985.6 of the Code of Civil Procedure, to amend Section 16101 of the Commercial Code, to amend Sections 118, 7312, 8724, 12663, 17104, and 25100.1 of the Corporations

Code, to amend Sections 1753, 1762, 7002.5, 8275, 8363.5, 8484.75, 8498, 8669, 8825, 12117, 17625, 19980, 22121, 24618, 32255, 32255.1, 33551, 35105, 41500, 42238.4, 44210, 44929.23, 44944, 45127, 45168.5, 47610, 47610.5, 47660, 49030, 49434, 49561, 49565.2, 49565.4, 52052, 52055.57, 52055.605, 52055.625, 52124, 52165, 52295.35, 52740, 56441, 58407, 58520, 60200, 66070, 66406, 66609, 69539, 69640, 76234, 81383, 81450, 81645, 88167.5, 89241, 89503, 89750.5, 92300, 92611.7, 94985, 94990, 99156, and 100603 of the Education Code, to amend Sections 7154, 7854, 9086, 9096, 10225, and 15375 of the Elections Code, to amend Section 1560 of the Evidence Code, to amend Sections 274, 3046, 3121, 4905, 7605, and 9201 of the Family Code, to amend Sections 687, 1800, 5303, 6503, 7263, 7273, 7274, 7509, 7600, 12100, 14402, 18062, 18415.3, 21050, and 22304 of the Financial Code, to amend Sections 854, 1122, 2120, 2125, 2127, 2150.4, 2765, 4190, 5653, 8277, 8278, 8494, 8495, 8610.7, 8615, 8841, 9023, 13007, and 15512 of the Fish and Game Code, and to amend Sections 3955, 4054, 5774.5, 13127.92, 14978.2, 19314, 30801, 36805, 39901, 42684, 52295, 52891.1, 62069, 73053, 73202, 75022, 77373, 77375, 77554, and 77941 of the Food and Agriculture Code, to amend Sections 800, 850.6, 905.3, 920, 925, 926.19, 965.1, 997.1, 998.2, 1151, 3515.7, 3539.5, 3543.1, 3549.1, 3572, 5906, 6254, 6254.26, 6577, 7072, 7509, 7520, 7901, 7907, 8902, 8652, 8894.1, 11007.6, 11014, 11030.1, 11030.2, 11031, 11125.7, 11125.8, 11270, 11275, 12467, 12807.5, 12838.1, 13300, 13332.09, 13905, 13972, 13973, 13974, 13974.1, 14084, 14670.4, 14682, 15202, 15492, 15815, 15952, 16302.1, 16304.6, 16366.3, 16383, 16431, 16585, 17051.5, 17201, 17520, 17553, 17556, 18708, 19583.5, 19583.51, 19792.5, 19815.4, 19816, 19816.4, 19816.6, 19879.1, 19999.2, 20035.6, 20094, 20163, 20462, 20805, 20808, 21095, 21223, 21265, 21752, 22100, 26749, 29965, 31461.1, 31469, 31470.25, 31485.12, 31585.1, 31691, 31691.1, 45002, 54957.1, 54999.5, 65050, 65852.9, 65971, 65973, 65974, 65979, 66000, 66017, 67401, 68058, 68059.15, 68503, 68506, 68511.3, 68543, 68543.5, 68543.8, 68565, 70622, 75560.4, 77202, 87102.6, 89513, 92201, 92251, 92268, and 92309 of, and to repeal Section 87104 of, the Government Code, to amend Sections 72.4, 303, 444, 504, 508, 773.2, 1176, and 6037.4 of the Harbors and Navigation Code, to amend Sections 1250.3, 1267.19, 1276.8, 1312, 1357.09, 1399.811, 1418.8, 1451, 1531.1, 1558, 1568.09, 1568.092, 1569.58, 1596.816, 1596.847, 1596.8865, 1596.8897, 1765.145, 4730.8, 11162.1, 11502, 11571.1, 12701, 13052, 17021.6, 18080.5, 19161, 19165, 19982, 25159.12, 25200.6, 25205.1, 25208.2, 25208.8, 25208.17, 25215.4, 25283.1, 25370, 33080.7, 33320.4, 33333.6, 33334.2, 33334.22, 33446, 33476, 33492.78, 33492.86, 35816, 38012, 39941, 40440.2, 40717.6, 42840, 43200.1, 43812, 43867, 44037, 44090, 44366, 50660.5,

50896, 50896.1, 50896.2, 51504, 52020, 53533, 101630, 105195, 105215, 105280, 107040, 107065, 107080, 108310, 109350, 109360, 111080, 112025, 112030, 113844, 113955, 114400, 115040, 115061, 115255, 116050, 116660, 117100, 120425, 120830, 120875, 121110, 121270, 121275, 121520, 122070, 127575, 129890, and 150204 of, and to repeal Section 113843 of, the Health and Safety Code, to amend Sections 134, 481.5, 676.2, 750.4, 1063.145, 1140.5, 1734.5, 1735, 1763.2, 1781.7, 1802.5, 1842, 1874.2, 1903, 10123.141, 10133.56, 10136, 10203.4, 10203.5, 10203.8, 10209, 10350.2, 11580.1, 11872, 12640.02, 12698.50, 12698.54, and 15039 of the Insurance Code, to amend Sections 98, 142.4, 226.4, 243, 270.6, 1182.6, 1289, 1301, 1302, 2686, 2855, 3364, 4753.5, 5277, 5307.1, 5907, 6315.3, 7384, and 7994 of the Labor Code, to amend Section 340 of the Military and Veterans Code, to amend Sections 171d, 186.2, 273.7, 290, 290.6, 652, 987.9, 1037.1, 1191.2, 1203.066, 1524, 1557, 2786, 2800, 3003, 4017.1, 4900, 4901, 4902, 4904, 4905, 4906, 5001, 5009, 5071, 5076.1, 6024, 11163, 11172, 12021, 12280, 13603, 13810, 13826.7, 13835.2, and 14030 of, and to repeal Section 13300.1 of, the Penal Code, to amend Sections 6108, 10240.5, 10329, 12183, 20105, 20118.4, 20133, 20407, 20448, 20450, 20451, 20452, 20456, 20487, 20522, 20563, 20582, 20688.2, 20853, 20894, 21020.8, 21040, 21071, 21471, and 21601 of, and to repeal the heading of Article 3 (commencing with Section 9201) of Chapter 9 of Part 1 of Division 2 of, the Public Contract Code, to amend Sections 2776, 4116, 4144, 4516.6, 4602.6, 5006.48, 5080.06, 5080.36, 5096.514, 5141.1, 5366, 5671, 6314, 6925.2, 8710, 9084, 21080.24, 21151.1, 21167.1, 25135, 25302.5, 26032, 26569.5, 29305, 29735, 30118.5, 30166, 30170, 30171.2, 30222.5, 30315.1, 30608, 30610.4, 30610.6, 30716, 31163, 31258, 32103, 33201, 33207.5, 42463, 42888, 42891, 43500, 44820, 49161, and 71081 of the Public Resources Code, to amend Sections 95.2, 531.7, 862, 2188.5, 2700, 4676, 4703.3, 6067, 6201.2, 6376.1, 6902.3, 9270, 11317, 11923, 13153, 17052.6, 19191, 20621, 23060, 23202, 23305b, 32364, 32475, 41120, 41176, 45304, 45451, 45872, 46442, 50124, and 50145 of the Revenue and Taxation Code, to amend Sections 156.3, 188.6, 2117, 6491.5, and 30162 of the Streets and Highways Code, to amend Sections 1222, 1256.5, 1262, 1855, 3254.5, 4701, 9608, 10200, 13002, and 13021 of the Unemployment Insurance Code, to amend Sections 1671, 2423, 11713.1, 12509, 12811, 14602.6, 15242, 17155, 23109, 24011.3, 27360, 29008, 35106, 40512, and 42001 of the Vehicle Code, to amend Sections 359, 5003, 8617.5, 10631, 12625, 12879.2, 12899.6, 12899.7, 12929.12, 13385.1, 13465, 13611, 13999.8, 20527.11, 23178, and 41027 of the Water Code, to amend Sections 241.1, 319, 1752.81, 1773, 1800, 1800.5, 2017, 3150, 3151, 4127, 4242, 4461, 4839, 5723.5, 7328, 7515, 10053, 11212, 11450.019, 11495.25, 14092.35,

14125.9, 14148.9, 14166.18, 14171.5, 14171.6, 14504, 15634, 15655.5, 16500.1, 16583, 16800.7, 17800, 18325.5, and 18906.5 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 260 of the Statutes of 2004, Section 31.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), Section 12 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), Sections 26.7 and 26.9 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), Section 8 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), Section 45 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), Section 510 of the Pajaro Valley Water Management Agency Act (Chapter 257 of the Statutes of 1984), Section 408 of Chapter 688 of, and Section 408 of Chapter 689 of, the Statutes of 1984, Section 602 of Chapter 1023 of the Statutes of 1982, Section 5.5 of the Santa Barbara County Floor Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), and Sections 13 and 16 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), relating to the maintenance of the codes.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

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

SECTION 1. Section 690 of the Business and Professions Code is amended to read:

690. (a) Except as provided in Section 4601 of the Labor Code and Section 2627 of the Unemployment Insurance Code, neither the administrators, agents, or employees of any program supported, in whole or in part, by funds of the State of California, nor any state agency, county, or city of the State of California, nor any officer, employee, agent, or governing board of a state agency, county, or city in the performance of its, his, or her duty, duties, function, or functions, shall prohibit any person, who is entitled to vision care that may be rendered by either an optometrist or a physician and surgeon within the scope of his or her license, from selecting a duly licensed member of either profession to render the service, provided the member has not been removed or suspended from participation in the program for cause.

(b) Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this

section, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the Attorney General, the district attorney of the county, or any person aggrieved.

For purposes of this subdivision, "person aggrieved" means the person who seeks the particular medical or optometric services mentioned in this section, or the holder of any certificate who is discriminated against in violation of this section.

(c) Nothing contained in this section shall prohibit any agency operating a program of services, including, but not limited to, a 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, from preparing lists of healing arts licensees and requiring patients to select a licensee on the list as a condition to payment by the program for the services, except that if the lists are established and a particular service may be performed by either a physician and surgeon or an optometrist the list shall contain a sufficient number of licensees so as to assure the patients an adequate choice.

SEC. 2. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800, except as provided in subdivisions (b), (c), (d), and (e), shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars ($30,000), arbitration award of any amount, or civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal, of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of

unauthorized professional services. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice, or by the licensee's rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), (c), or (d) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 3. Section 809 of the Business and Professions Code is amended to read:

809. (a) The Legislature hereby finds and declares the following:

(1) In 1986, Congress enacted the Health Care Quality Improvement Act of 1986 (Chapter 117 (commencing with Section 11101) Title 42, United States Code), to encourage physicians to engage in effective professional peer review, but giving each state the opportunity to "opt-out" of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to "opt-out" of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) Peer review that is not conducted fairly results in harm both to patients and healing arts practitioners by limiting access to care.

(5) Peer review, fairly conducted, will aid the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners.

(6) To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition.

(7) It is the intent of the Legislature that peer review of professional health care services be done efficiently, on an ongoing basis, and with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions.

(8) Sections 809 to 809.8, inclusive, shall not affect the respective responsibilities of the organized medical staff or the governing body of an acute care hospital with respect to peer review in the acute care hospital setting. It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws that shall be adopted by a vote of the members of the organized medical staff and shall be subject to governing body approval, which approval shall not be withheld unreasonably.

(9) (A) The Legislature thus finds and declares that the laws of this state pertaining to the peer review of healing arts practitioners shall apply in lieu of Chapter 117 (commencing with Section 11101) of Title 42 of the United States Code, because the laws of this state provide a more careful articulation of the protections for both those undertaking peer review activity and those subject to review, and better integrate public and private systems of peer review. Therefore, California exercises its right to opt out of specified provisions of the Health Care Quality Improvement Act relating to professional review actions, pursuant to Section 11111(c)(2)(B) of Title 42 of the United States Code. This election shall not affect the availability of any immunity under California law.

(B) The Legislature further declares that it is not the intent or purposes of Sections 809 to 809.8, inclusive, to opt out of any mandatory national data bank established pursuant to Subchapter II (commencing with Section 11131) of Chapter 117 of Title 42 of the United States Code.

(b) For the purpose of this section and Sections 809.1 to 809.8, inclusive, "healing arts practitioner" or "licentiate" means a physician and surgeon, podiatrist, clinical psychologist, or dentist; and "peer review body" means a peer review body as specified in paragraph (1) of subdivision (a) of Section 805, and includes any designee of the peer review body.

SEC. 4. Section 853 of the Business and Professions Code is amended to read:

853. (a) The Licensed Physicians and Dentists from Mexico Pilot Program is hereby created. This program shall allow up to 30 licensed physicians specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology, and up to 30 licensed dentists from Mexico to practice medicine or dentistry in California for a period not to exceed three years. The program shall also maintain an alternate list of program participants.

(b) The Medical Board of California shall issue three-year nonrenewable licenses to practice medicine to licensed Mexican

physicians and the Dental Board of California shall issue three-year nonrenewable permits to practice dentistry to licensed Mexican dentists.

(c) Physicians from Mexico eligible to participate in this program shall comply with the following:

(1) Be licensed, certified or recertified, and in good standing in their medical specialty in Mexico. This certification or recertification shall be performed, as appropriate, by the Consejo Mexicano de Ginecología y Obstetricia, A.C., the Consejo Mexicano de Certificación en Medicina Familiar, A.C., the Consejo Mexicano de Medicina Interna, A.C., or the Consejo Mexicano de Certificación en Pediatría, A.C.

(2) Prior to leaving Mexico, each physician shall have completed the following requirements:

(A) Passed the board review course with a score equivalent to that registered by United States applicants when passing a board review course for the United States certification examination in each of his or her specialty areas and passed an interview examination developed by the National Autonomous University of Mexico (UNAM) for each specialty area. Family practitioners who shall include obstetrics and gynecology in their practice shall also be required to have appropriately documented, as specified by United States standards, 50 live births. Mexican obstetricians and gynecologists shall be fellows in good standing of the American College of Obstetricians and Gynecologists.

(B) (i) Satisfactorily completed a six-month orientation program that addressed medical protocol, community clinic history and operations, medical administration, hospital operations and protocol, medical ethics, the California medical delivery system, health maintenance organizations and managed care practices, and pharmacology differences. This orientation program shall be approved by the Medical Board of California to ensure that it contains the requisite subject matter and meets appropriate California law and medical standards where applicable.

(ii) Additionally, Mexican physicians participating in the program shall be required to be enrolled in adult English-as-a-second-language (ESL) classes that focus on both verbal and written subject matter. Each physician participating in the program shall have transcripts sent to the Medical Board of California from the appropriate Mexican university showing enrollment and satisfactory completion of these classes.

(C) Representatives from the UNAM in Mexico and a medical school in good standing or a facility conducting an approved medical residency training program in California shall confer to develop a mutually agreed upon distant learning program for the six-month orientation program required pursuant to subparagraph (B).

(3) Upon satisfactory completion of the requirements in paragraphs (1) and (2), and after having received their three-year nonrenewable

medical license, the Mexican physicians shall be required to obtain continuing education pursuant to Section 2190. Each physician shall obtain an average of 25 continuing education units per year for a total of 75 units for a full three years of program participation.

(4) Upon satisfactory completion of the requirements in paragraphs (1) and (2), the applicant shall receive a three-year nonrenewable license to work in nonprofit community health centers and shall also be required to participate in a six-month externship at his or her place of employment. This externship shall be undertaken after the participant has received a license and is able to practice medicine. The externship shall ensure that the participant is complying with the established standards for quality assurance of nonprofit community health centers and medical practices. The externship shall be affiliated with a medical school in good standing in California. Complaints against program participants shall follow the same procedures contained in the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

(5) After arriving in California, Mexican physicians participating in the program shall be required to be enrolled in adult ESL classes at institutions approved by the Bureau of Private Post Secondary and Vocational Education or accredited by the Western Association of Schools and Colleges. These classes shall focus on verbal and written subject matter to assist a physician in obtaining a level of proficiency in English that is commensurate with the level of English spoken at community clinics where he or she will practice. The community clinic employing a physician shall submit documentation confirming approval of an ESL program to the board for verification. Transcripts of satisfactory completion of the ESL classes shall be submitted to the Medical Board of California as proof of compliance with this provision.

(6) (A) Nonprofit community health centers employing Mexican physicians in the program shall be required to have medical quality assurance protocols and either be accredited by the Joint Commission on Accreditation of Health Care Organizations or have protocols similar to those required by the Joint Commission on Accreditation of Health Care Organizations. These protocols shall be submitted to the Medical Board of California prior to the hiring of Mexican physicians.

(B) In addition, after the program participant successfully completes the six-month externship program, a free standing health care organization that has authority to provide medical quality certification, including, but not limited to, health plans, hospitals, and the Integrated Physician Association, is responsible for ensuring and overseeing the compliance of nonprofit community health centers medical quality assurance protocols, conducting site visits when necessary, and developing any additional protocols, surveys, or assessment tools to

ensure that quality of care standards through quality assurance protocols are being appropriately followed by physicians participating in the program.

(7) Participating hospitals shall have the authority to establish criteria necessary to allow individuals participating in this three-year pilot program to be granted hospital privileges in their facilities.

(8) The Medical Board of California shall provide oversight review of both the implementation of this program and the evaluation required pursuant to subdivision (j). The board shall consult with the medical schools applying for funding to implement and evaluate this program, executive and medical directors of nonprofit community health centers wanting to employ program participants, and hospital administrators who will have these participants practicing in their hospital, as it conducts its oversight responsibilities of this program and evaluation. Any funding necessary for the implementation of this program, including the evaluation and oversight functions, shall be secured from nonprofit philanthropic entities. Implementation of this program may not proceed unless appropriate funding is secured from nonprofit philanthropic entities. The board shall report to the Legislature every January during which the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions. Notwithstanding Section 11005 of the Government Code, the board may accept funds from nonprofit philanthropic entities. The board shall, upon appropriation in the annual Budget Act, expend funds received from nonprofit philanthropic entities for this program.

(d) (1) Dentists from Mexico eligible to participate in this program shall comply with the following requirements or the requirements contained in paragraph (2):

(A) Be graduates from the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontología).

(B) Meet all criteria required for licensure in Mexico that is required and being applied by the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontología), including, but not limited to:

(i) A minimum grade point average.

(ii) A specified English language comprehension and conversational level.

(iii) Passage of a general examination.

(iv) Passage of an oral interview.

(C) Enroll and complete an orientation program that focuses on the following:

(i) Practical issues in pharmacology that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(ii) Practical issues and diagnosis in oral pathology that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iii) Clinical applications that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iv) Biomedical sciences that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(v) Clinical history management that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(vi) Special patient care that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(vii) Sedation techniques that shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(viii) Infection control guidelines which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(ix) Introduction to health care systems in California.

(x) Introduction to community clinic operations.

(2) (A) Graduate within the three-year period prior to enrollment in the program, from a foreign dental school that has received provisional approval or certification by November of 2003 from the Dental Board of California under the Foreign Dental School Approval Program.

(B) Enroll and satisfactorily complete an orientation program that focuses on the health care system and community clinic operations in California.

(C) Enroll and satisfactorily complete a course taught by an approved foreign dental school on infection control approved by the Dental Board of California.

(3) Upon satisfactory completion to a competency level of the requirements in paragraph (1) or (2), dentists participating in the program shall be eligible to obtain employment in a nonprofit community health center pursuant to subdivision (f) within the structure of an extramural dental program for a period not to exceed three years.

(4) Dentists participating in the program shall be required to complete the necessary continuing education units required by the Dental Practice Act (Chapter 4 (commencing with Section 1600)).

(5) The program shall accept 30 participating dentists. The program shall also maintain an alternate list of program applicants. If an active program participant leaves the program for any reason, a participating dentist from the alternate list shall be chosen to fill the vacancy. Only active program participants shall be required to complete the orientation program specified in subparagraph (C) of paragraph (1).

(6) (A) Additionally, an extramural dental facility may be identified, qualified, and approved by the board as an adjunct to, and an extension of, the clinical and laboratory departments of an approved dental school.

(B) As used in this subdivision, "extramural dental facility" includes, but is not limited to, any clinical facility linked to an approved dental school for the purposes of monitoring or overseeing the work of a dentist licensed in Mexico participating in this program and that is employed by an approved dental school for instruction in dentistry that exists outside or beyond the walls, boundaries, or precincts of the primary campus of the approved dental school, and in which dental services are rendered. These facilities shall include nonprofit community health centers.

(C) Dental services provided to the public in these facilities shall constitute a part of the dental education program.

(D) Approved dental schools shall register extramural dental facilities with the board. This registration shall be accompanied by information supplied by the dental school pertaining to faculty supervision, scope of treatment to be rendered, arrangements for postoperative care, the name and location of the facility, the date operations shall commence at the facility, and a description of the equipment and facilities available. This information shall be supplemented with a copy of the agreement between the approved dental school and the affiliated institution establishing the contractual relationship. Any change in the information initially provided to the board shall be communicated to the board.

(7) The program shall also include issues dealing with program operations, and shall be developed in consultation by representatives of community clinics, approved dental schools, or the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontología).

(8) The Dental Board of California shall provide oversight review of the implementation of this program and the evaluation required pursuant to subdivision (j). The board shall consult with dental schools in California that have applied for funding to implement and evaluate this program and executive and dental directors of nonprofit community

health centers wanting to employ program participants, as it conducts its oversight responsibilities of this program and evaluation. Implementation of this program may not proceed unless appropriate funding is secured from nonprofit philanthropic entities. The board shall report to the Legislature every January during which the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions. Notwithstanding Section 11005 of the Government Code, the board may accept funds from nonprofit philanthropic entities.

(e) Nonprofit community health centers that employ participants shall be responsible for ensuring that participants are enrolled in local English-language instruction programs and that the participants attain English-language fluency at a level that would allow the participants to serve the English-speaking patient population when necessary and have the literacy level to communicate with appropriate hospital staff when necessary.

(f) Physicians and dentists from Mexico having met the applicable requirements set forth in subdivisions (c) and (d) shall be placed in a pool of candidates who are eligible to be recruited for employment by nonprofit community health centers in California, including, but not limited to, those located in the Counties of Ventura, Los Angeles, San Bernardino, Imperial, Monterey, San Benito, Sacramento, San Joaquin, Santa Cruz, Yuba, Orange, Colusa, Glenn, Sutter, Kern, Tulare, Fresno, Stanislaus, San Luis Obispo, and San Diego. The Medical Board of California shall ensure that all Mexican physicians participating in this program have satisfactorily met the requirements set forth in subdivision (c) prior to placement at a nonprofit community health center.

(g) Nonprofit community health centers in the counties listed in subdivision (f) shall apply to the Medical Board of California and the Dental Board of California to hire eligible applicants who shall then be required to complete a six-month externship that includes working in the nonprofit community health center and a corresponding hospital. Once enrolled in this externship, and upon payment of the required fees, the Medical Board of California shall issue a three-year nonrenewable license to practice medicine and the Dental Board of California shall issue a three-year nonrenewable dental special permit to practice dentistry. For purposes of this program, the fee for a three-year nonrenewable license to practice medicine shall be nine hundred dollars ($900) and the fee for a three-year nonrenewable dental permit shall be five hundred forty-eight dollars ($548). A licensee or permitholder shall practice only in the nonprofit community health center that offered him or her employment and the corresponding hospital. This three-year nonrenewable license or permit shall be deemed to be a license or permit

in good standing pursuant to the provisions of this chapter for the purpose of participation and reimbursement in all federal, state, and local health programs, including managed care organizations and health maintenance organizations.

(h) The three-year nonrenewable license or permit shall terminate upon notice by certified mail, return receipt requested, to the licensee's or permitholder's address of record, if, in the Medical Board of California or Dental Board of California's sole discretion, it has determined that either:

(1) The license or permit was issued by mistake.

(2) A complaint has been received by either board against the licensee or permitholder that warrants terminating the license or permit pending an investigation and resolution of the complaint.

(i) All applicable employment benefits, salary, and policies provided by nonprofit community health centers to their current employees shall be provided to medical and dental practitioners from Mexico participating in this pilot program. This shall include nonprofit community health centers providing malpractice insurance coverage.

(j) Beginning 12 months after this pilot program has commenced, an evaluation of the program shall be undertaken with funds provided from philanthropic foundations. The evaluation shall be conducted jointly by one medical school and one dental school in California and either UNAM or a foreign dental school approved by the Dental Board of California, in consultation with the Medical Board of California. If the evaluation required pursuant to this section does not begin within 15 months after the pilot project has commenced, the evaluation may be performed by an independent consultant selected by the Director of the Department of Consumer Affairs. This evaluation shall include, but not be limited to, the following issues and concerns:

(1) Quality of care provided by doctors and dentists licensed under this pilot program.

(2) Adaptability of these licensed practitioners to California medical and dental standards.

(3) Impact on working and administrative environment in nonprofit community health centers and impact on interpersonal relations with medical licensed counterparts in health centers.

(4) Response and approval by patients.

(5) Impact on cultural and linguistic services.

(6) Increases in medical encounters provided by participating practitioners to limited-English-speaking patient populations and increases in the number of limited-English-speaking patients seeking health care services from nonprofit community health centers.

(7) Recommendations on whether the program should be continued, expanded, altered, or terminated.

(8) Progress reports on available data listed shall be provided to the Legislature on achievable time intervals beginning the second year of implementation of this pilot program. An interim final report shall be issued three months before termination of this pilot program. A final report shall be submitted to the Legislature at the time of termination of this pilot program on all of the above data. The final report shall reflect and include how other initiatives concerning the development of culturally and linguistically competent medical and dental providers within California and the United States are impacting communities in need of these health care providers.

(k) Costs for administering this pilot program shall be secured from philanthropic entities.

(*l*) Program applicants shall be responsible for working with the governments of Mexico and the United States in order to obtain the necessary three-year visa required for program participation.

SEC. 5. Section 2435.1 of the Business and Professions Code is amended to read:

2435.1. (a) In addition to the fees charged for the initial issuance or biennial renewal of a physician and surgeon's certificate pursuant to Section 2435, and at the time those fees are charged, the board shall charge each applicant or renewing licensee an additional twenty-five dollar ($25) fee for the purposes of this section.

(b) Payment of this twenty-five dollar ($25) fee shall be voluntary, paid at the time of application for initial licensure or biennial renewal, and due and payable along with the fee for the initial certificate or biennial renewal.

(c) The board shall transfer all funds collected pursuant to this section, on a monthly basis, to the Office of Statewide Health Planning and Development to augment the local assistance line item of the annual Budget Act in support of the Song-Brown Family Physician Training Act (Article 1 (commencing with Section 128200) of Chapter 4 of Part 3 of Division 107 of the Health and Safety Code).

SEC. 6. Section 2571 of the Business and Professions Code is amended to read:

2571. (a) An occupational therapist licensed pursuant to this chapter and certified by the board in the use of physical agent modalities may apply topical medications prescribed by the patient's physician and surgeon, certified nurse-midwife pursuant to Section 2746.51, nurse practitioner pursuant to Section 2836.1, or physician assistant pursuant to Section 3502.1, if the licensee complies with regulations adopted by the board pursuant to this section.

(b) The board shall adopt regulations implementing this section, after meeting and conferring with the Medical Board of California, the California State Board of Pharmacy, and the Physical Therapy Board of California, specifying those topical medications applicable to the practice of occupational therapy and protocols for their use.

(c) Nothing in this section shall be construed to authorize an occupational therapist to prescribe medications.

SEC. 7. Section 3078 of the Business and Professions Code is amended to read:

3078. (a) It is unlawful to practice optometry under a false or assumed name, or to use a false or assumed name in connection with the practice of optometry, or to make use of any false or assumed name in connection with the name of a person licensed pursuant to this chapter. However, the board may issue written permits authorizing an individual optometrist or an optometric group or optometric corporation to use a name specified in the permit in connection with its practice if, and only if, the board finds to its satisfaction all of the following:

(1) The place or establishment, or the portion thereof, in which the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at that place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants. However, if the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply.

(2) The name under which the applicant or applicants propose to operate is in the judgment of the board not deceptive or inimical to enabling a rational choice for the consumer public and contains at least one of the following designations: "optometry" or "optometric." However, if the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply. In no case shall the name under which the applicant or applicants propose to operate contain the name or names of any of the optometrists practicing in the community clinic.

(3) The names of all optometrists practicing at the location designated in the application are displayed in a conspicuous place for the public to see, not only at the location, but also in any advertising permitted by law.

(4) No charges that could result in revocation or suspension of an optometrist's license to practice optometry are pending against any optometrist practicing at the location.

(b) Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided

in Article 7 (commencing with Section 3145) for the renewal of licenses issued under this chapter. The board may charge an annual fee, not to exceed ten dollars ($10) for the issuance or renewal of each permit.

(c) A permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit, other than under paragraph (4) of subdivision (a), is no longer being fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

(d) If the board revokes or suspends the license to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

SEC. 8. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may do any of the following:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order. The administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility.

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care

or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy-related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order. The administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility.

(iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the individual patient's treating prescriber, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by the protocol. The pharmacist shall provide written notification to the patient's treating prescriber, or enter the appropriate information in an electronic patient record system shared by the prescriber, of any drug regimen initiated pursuant to this clause within 24 hours.

(B) A patient's treating prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's treating prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising

physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) (A) Furnish emergency contraception drug therapy in accordance with either of the following:

(i) Standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice.

(ii) Standardized procedures or protocols developed and approved by both the board and the Medical Board of California in consultation with the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other appropriate entities. Both the board and the Medical Board of California shall have authority to ensure compliance with this clause, and both boards are specifically charged with the enforcement of this provision with respect to their respective licensees. Nothing in this clause shall be construed to expand the authority of a pharmacist to prescribe any prescription medication.

(B) Prior to performing a procedure authorized under this paragraph, a pharmacist shall complete a training program on emergency contraception that consists of at least one hour of approved continuing education on emergency contraception drug therapy.

(C) A pharmacist, pharmacist's employer, or pharmacist's agent may not directly charge a patient a separate consultation fee for emergency contraception drug therapy services initiated pursuant to this paragraph, but may charge an administrative fee not to exceed ten dollars ($10) above the retail cost of the drug. Upon an oral, telephonic, electronic, or written request from a patient or customer, a pharmacist or pharmacist's employee shall disclose the total retail price that a consumer would pay for emergency contraception drug therapy. As used in this subparagraph, total retail price includes providing the consumer with specific information regarding the price of the emergency contraception drugs and the price of the administrative fee charged. This limitation is not intended to interfere with other contractually agreed-upon terms between a pharmacist, a pharmacist's employer, or a pharmacist's agent, and a health care service plan or insurer. Patients who are insured or covered and receive a pharmacy benefit that covers the cost of emergency contraception shall not be required to pay an administrative fee. These

patients shall be required to pay copayments pursuant to the terms and conditions of their coverage. This subparagraph shall cease to be operative for dedicated emergency contraception drugs when these drugs are reclassified as over-the-counter products by the federal Food and Drug Administration.

(D) A pharmacist may not require a patient to provide individually identifiable medical information that is not specified in Section 1707.1 of Title 16 of the California Code of Regulations before initiating emergency contraception drug therapy pursuant to this paragraph.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (A) successfully completed clinical residency training or (B) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized factsheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of Health Services, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. This section does not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) A pharmacist who is authorized to issue an order to initiate or adjust a controlled substance therapy pursuant to this section shall personally register with the federal Drug Enforcement Administration.

(d) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(e) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 9. Section 4507 of the Business and Professions Code is amended to read:

4507. This chapter shall not apply to the following:

(a) Physicians and surgeons licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2.

(b) Psychologists licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2.

(c) Registered nurses licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2.

(d) Vocational nurses licensed pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2.

(e) Social workers or clinical social workers licensed pursuant to Chapter 17 (commencing with Section 9000) of Division 3.

(f) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2.

(g) Teachers credentialed pursuant to Article 1 (commencing with Section 44200) of Chapter 2 of Part 25 of the Education Code.

(h) Occupational therapists as specified in Chapter 5.6 (commencing with Section 2570) of Division 2.

(i) Art therapists, dance therapists, music therapists, and recreation therapists, as defined in Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations, who are personnel of health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(j) Any other categories of persons the board determines are entitled to exemption from this chapter because they have complied with other licensing provisions of this code or because they are deemed by statute or by regulations contained in the California Code of Regulations to be adequately trained in their respective occupations. The exemptions shall apply only to a given specialized area of training within the specific discipline for which the exemption is granted.

SEC. 10. Section 6126.3 of the Business and Professions Code is amended to read:

6126.3. (a) In addition to any criminal penalties pursuant to Section 6126 or to any contempt proceedings pursuant to Section 6127, the courts of the state shall have the jurisdiction provided in this section when a person advertises or holds himself or herself out as practicing or entitled to practice law, or otherwise practices law, without being an active member of the State Bar or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so.

(b) The State Bar, or the superior court on its own motion, may make application to the superior court for the county where the person described in subdivision (a) maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for assumption by the court of jurisdiction over the practice to the extent provided in this section. In any proceeding under this section, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

(c) An application made pursuant to subdivision (b) shall be verified, and shall state facts showing all of the following:

(1) Probable cause to believe that the facts set forth in subdivision (a) of Section 6126 have occurred.

(2) The interest of the applicant.

(3) Probable cause to believe that the interests of a client or of an interested person or entity will be prejudiced if the proceeding is not maintained.

(d) The application shall be set for hearing, and an order to show cause shall be issued directing the person to show cause why the court should not assume jurisdiction over the practice as provided in this section. A copy of the application and order to show cause shall be served upon the person by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the person either at the address at which he or she maintains, or more recently has maintained, his or her principal office or at the address where he or she resides. Service is complete at the time of mailing, but any prescribed period of notice and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the State Bar is not the applicant, copies shall also be served upon the Office of the Chief Trial Counsel of the State Bar in similar manner at the time of service on the person who is the subject of the application. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided herein.

(e) If the court finds that the facts set forth in subdivision (a) of Section 6126 have occurred and that the interests of a client or an interested person or entity will be prejudiced if the proceeding provided herein is not maintained, the court may make an order assuming jurisdiction over the person's practice pursuant to this section. If the person to whom the order to show cause is directed does not appear, the court may make its order upon the verified application or upon such proof as it may require. Thereupon, the court shall appoint one or more active members of the State Bar to act under its direction to mail a notice of cessation of practice, pursuant to subdivision (g), and may order those appointed attorneys to do one or more of the following:

(1) Examine the files and records of the practice and obtain information as to any pending matters that may require attention.

(2) Notify persons and entities who appear to be clients of the person of the occurrence of the event or events stated in subdivision (a) of

Section 6126, and inform them that it may be in their best interest to obtain other legal counsel.

(3) Apply for an extension of time pending employment of legal counsel by the client.

(4) With the consent of the client, file notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.

(5) Give notice to the depositor and appropriate persons and entities who may be affected, other than clients, of the occurrence of the event or events.

(6) Arrange for the surrender or delivery of clients' papers or property.

(7) Arrange for the appointment of a receiver, where applicable, to take possession and control of any and all bank accounts relating to the affected person's practice.

(8) Do any other acts that the court may direct to carry out the purposes of this section.

The court shall have jurisdiction over the files and records and over the practice of the affected person for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction. The court shall provide a copy of any order issued pursuant to this section to the Office of the Chief Trial Counsel of the State Bar.

(f) Anyone examining the files and records of the practice of the person described in subdivision (a) shall observe any lawyer-client privilege under Sections 950 and 952 of the Evidence Code and shall make disclosure only to the extent necessary to carry out the purposes of this section. That disclosure shall be a disclosure that is reasonably necessary for the accomplishment of the purpose for which the person described in subdivision (a) was consulted. The appointment of a member of the State Bar pursuant to this section shall not affect the lawyer-client privilege, which privilege shall apply to communications by or to the appointed members to the same extent as it would have applied to communications by or to the person described in subdivision (a).

(g) The notice of cessation of law practice shall contain any information that may be required by the court, including, but not limited to, the finding by the court that the facts set forth in subdivision (a) of Section 6126 have occurred and that the court has assumed jurisdiction of the practice. The notice shall be mailed to all clients, to opposing counsel, to courts and agencies in which the person has pending matters with an identification of the matter, to the Office of the Chief Trial Counsel of the State Bar, and to any other person or entity having reason to be informed of the court's assumption of the practice.

(h) Nothing in this section shall authorize the court or an attorney appointed by it pursuant to this section to approve or disapprove of the

employment of legal counsel, to fix terms of legal employment, or to supervise or in any way undertake the conduct of the practice, except to the limited extent provided by paragraphs (3) and (4) of subdivision (e).

(i) Unless court approval is first obtained, neither the attorney appointed pursuant to this section, nor his or her corporation, nor any partner or associate of the attorney shall accept employment as an attorney by any client of the affected person on any matter pending at the time of the appointment. Action taken pursuant to paragraphs (3) and (4) of subdivision (e) shall not be deemed employment for purposes of this subdivision.

(j) Upon a finding by the court that it is more likely than not that the application will be granted and that delay in making the orders described in subdivision (e) will result in substantial injury to clients or to others, the court, without notice or upon notice as it shall prescribe, may make interim orders containing any provisions that the court deems appropriate under the circumstances. Such an interim order shall be served in the manner provided in subdivision (d) and, if the application and order to show cause have not yet been served, the application and order to show cause shall be served at the time of serving the interim order.

(k) No person or entity shall incur any liability by reason of the institution or maintenance of a proceeding brought under this section. No person or entity shall incur any liability for an act done or omitted to be done pursuant to order of the court under this section. No person or entity shall be liable for failure to apply for court jurisdiction under this section. Nothing in this section shall affect any obligation otherwise existing between the affected person and any other person or entity.

(*l*) An order pursuant to this section is not appealable and shall not be stayed by petition for a writ, except as ordered by the superior court or by the appellate court.

(m) A member of the State Bar appointed pursuant to this section shall serve without compensation. However, the member may be paid reasonable compensation by the State Bar in cases where the State Bar has determined that the member has devoted extraordinary time and services that were necessary to the performance of the member's duties under this article. All payments of compensation for time and services shall be at the discretion of the State Bar. Any member shall be entitled to reimbursement from the State Bar for necessary expenses incurred in the performance of the member's duties under this article. Upon court approval of expenses or compensation for time and services, the State Bar shall be entitled to reimbursement therefor from the person described in subdivision (a) or his or her estate.

SEC. 11. Section 6156 of the Business and Professions Code is amended to read:

6156. (a) Any individual, partnership, association, corporation, or other entity, including, but not limited to, any person or entity having an ownership interest in a lawyer referral service, that engages, has engaged, or proposes to engage in violations of Section 6155, shall be liable for a civil penalty as defined in Sections 17206, 17206.1, and 17536, respectively, which shall be assessed and recovered in a civil action brought:

(1) In the manner specified in subdivision (a) of Section 17206 or Section 17536.

(2) By the State Bar of California.

(b) If the action is brought pursuant to subdivision (a), the court shall determine the reasonable expenses, if any, incurred by the State Bar in its investigation and prosecution of the action. In these cases, before any penalty collected is paid out pursuant to subdivision (b) of Section 17206 or Section 17536, the amount of the reasonable expenses incurred by the State Bar shall be paid to the State Bar and shall be deposited and used as provided in subdivision (c).

(c) If the action is brought pursuant to paragraph (2) of subdivision (a), the civil penalty shall be paid to the State Bar and shall be deposited into a special fund to be used first for the investigation and prosecution of other such cases by the State Bar, with any excess to be used for the investigation and prosecution of attorney discipline cases.

SEC. 12. Section 6157 of the Business and Professions Code is amended to read:

6157. As used in this article, the following definitions apply:

(a) "Member" means a member in good standing of the State Bar and includes any agent of the member and any law firm or law corporation doing business in the State of California.

(b) "Lawyer" means a member of the State Bar or a person who is admitted in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof, and includes any agent of the lawyer, law firm, or law corporation doing business in the state.

(c) "Advertise" or "advertisement" means any communication, disseminated by television or radio, by any print medium, including, but not limited to, newspapers and billboards, or by means of a mailing directed generally to members of the public and not to a specific person, that solicits employment of legal services provided by a member, and is directed to the general public and is paid for by, or on the behalf of, an attorney.

(d) "Electronic medium" means television, radio, or computer networks.

SEC. 13. Section 7161 of the Business and Professions Code is amended to read:

7161. It is a misdemeanor for any person to engage in any of the following acts, the commission of which shall be cause for disciplinary action against any licensee or applicant:

(a) Using false, misleading, or deceptive advertising as an inducement to enter into any contract for a work of improvement, including, but not limited to, any home improvement contract, whereby any member of the public may be misled or injured.

(b) Making any substantial misrepresentation in the procurement of a contract for a home improvement or other work of improvement or making any false promise of a character likely to influence, persuade, or induce any person to enter into the contract.

(c) Any fraud in the execution of, or in the material alteration of, any contract, trust deed, mortgage, promissory note, or other document incident to a home improvement transaction or other transaction involving a work of improvement.

(d) Preparing or accepting any trust deed, mortgage, promissory note, or other evidence of indebtedness upon the obligations of a home improvement transaction or other transaction for a work of improvement with knowledge that it specifies a greater monetary obligation than the consideration for the improvement work, which consideration may be a time sale price.

(e) Directly or indirectly publishing any advertisement relating to home improvements or other works of improvement that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading, or by any means advertising or purporting to offer to the general public this improvement work with the intent not to accept contracts for the particular work or at the price that is advertised or offered to the public, except that any advertisement that is subject to and complies with the existing rules, regulations, or guides of the Federal Trade Commission shall not be deemed false, deceptive, or misleading.

(f) Any person who violates subdivision (b), (c), (d), or (e) as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution and imprisonment as authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more

than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

SEC. 14. Section 7302 of the Business and Professions Code is amended to read:

7302. The following definitions shall apply for purposes of this chapter:

(a) "Department" means the Department of Consumer Affairs.

(b) "Director" means the Director of Consumer Affairs.

(c) "Board" or "bureau" means the State Board of Barbering and Cosmetology.

(d) "Executive officer" means the executive officer of the State Board of Barbering and Cosmetology.

SEC. 15. Section 7582.20 of the Business and Professions Code is amended to read:

7582.20. (a) Every advertisement by a licensee soliciting or advertising business shall contain his or her name, address, and license number as they appear in the records of the bureau. For the purpose of this section, "advertisement" includes any business card, stationery, brochure, flyer, circular, newsletter, fax form, printed or published paid advertisement in any media form, or telephone book listing. Every advertisement by a licensee soliciting or advertising the licensee's business shall contain his or her business name, business address or business telephone number, and license number, as they appear in the records of the bureau.

(b) The director may assess a fine of two hundred fifty dollars ($250) per violation of subdivision (a).

SEC. 16. Section 7591.19 of the Business and Professions Code is amended to read:

7591.19. (a) (1) An alarm company operator, qualified manager, or alarm agent may request a review by the Alarm Company Operator Disciplinary Review Committee to contest the assessment of an administrative fine or to appeal a denial, revocation, or suspension unless the denial or suspension is ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code or in accordance with Section 7591.8 of this code.

(2) A request for a review shall be by written notice to the bureau within 30 days of the issuance of the citation and assessment, denial, or suspension.

(3) Following a review by the disciplinary review committee, the appellant shall be notified within 30 days, in writing, by regular mail, of the committee's decision.

(4) If the appellant disagrees with the decision made by the Alarm Company Operator Disciplinary Review Committee, he or she may request a hearing as outlined in subdivision (b). A request for a hearing following a decision by the disciplinary review committee shall be by written notice to the bureau within 30 days of the committee's decision.

(5) If the appellant does not request a hearing within 30 days, the review committee's decision shall become final.

(b) (1) An alarm company operator, qualified manager, or alarm agent may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if he or she contests an assessment of an administrative fine, or to appeal a denial, suspension, or revocation. A hearing may also be requested if the appellant disagrees with the decision made by the Alarm Company Operator Disciplinary Review Committee.

(2) A request for a hearing shall be by written notice to the bureau within 30 days of the issuance of the decision by the review committee. A hearing pursuant to this subdivision shall be available only after a review by the disciplinary review committee.

SEC. 17. Section 7830.1 of the Business and Professions Code is amended to read:

7830.1. After one year following the effective date of this section, it shall be unlawful for anyone other than a geophysicist registered under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a registered geophysicist, professional geophysicist, or registered certified specialty geophysicist, or to use in any manner the title "registered geophysicist," "professional geophysicist," or the title of any registered certified specialty geophysicist unless registered, or registered and certified, under this chapter.

SEC. 18. Section 9855.6 of the Business and Professions Code is amended to read:

9855.6. Where a service contractholder cancels a service contract in accordance with Section 1794.41 of the Civil Code and the refund due is not paid to the service contractholder or credited to his or her account within 30 days after the service contractor receives written notice of cancellation, the amount of the required refund or credit shall bear interest, payable to the service contractholder, at the rate of 10 percent per annum for each additional 30 days or fraction thereof.

SEC. 19. Section 11004.5 of the Business and Professions Code is amended to read:

11004.5. In addition to any provisions of Section 11000, the reference in this code to "subdivided lands" and "subdivision" shall include all of the following:

(a) Any planned development, as defined in Section 11003, containing five or more lots.

(b) Any community apartment project, as defined by Section 11004, containing five or more apartments.

(c) Any condominium project containing five or more condominiums, as defined in Section 783 of the Civil Code.

(d) Any stock cooperative as defined in Section 11003.2, including any legal or beneficial interests therein, having or intended to have five or more shareholders.

(e) Any limited-equity housing cooperative, as defined in Section 11003.4.

(f) In addition, the following interests shall be subject to this chapter and the regulations of the commissioner adopted pursuant thereto:

(1) Any accompanying memberships or other rights or privileges created in, or in connection with, any of the forms of development referred to in subdivision (a), (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments, declarations of restrictions, articles of incorporation, bylaws, or contracts applicable thereto.

(2) Any interests or memberships in any owners' association as defined in Section 1351 of the Civil Code, created in connection with any of the forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

(g) Notwithstanding this section, time-share plans, exchange programs, incidental benefits, and short-term product subject to Chapter 2 (commencing with Section 11210) are not "subdivisions" or "subdivided lands" subject to this chapter.

SEC. 20. Section 12606.2 of the Business and Professions Code is amended to read:

12606.2. (a) This section applies to food containers subject to Section 403 (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code of Federal Regulations. Section 12606 does not apply to food containers subject to this section.

(b) No food containers shall be made, formed, or filled as to be misleading.

(c) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein.

Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

(1) Protection of the contents of the package.

(2) The requirements of the machines used for enclosing the contents in the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need for the package to perform a specific function, such as where packaging plays a role in the preparation or consumption of a food, if that function is inherent to the nature of the food and is clearly communicated to consumers.

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value that is both significant in proportion to the value of the product and independent of its function to hold the food, such as a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed or durable commemorative or promotional packages.

(6) Inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required food labeling exclusive of any vignettes or other nonmandatory designs or label information, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(d) This section shall be interpreted consistent with the comments by the United States Food and Drug Administration on the regulations contained in Section 100.100 of Title 21 of the Code of Federal Regulations, interpreting Section 403(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), as those comments are reported on pages 64123 to 64137, inclusive, of Volume 58 of the Federal Register.

(e) If the requirements of this section do not impose the same requirements as are imposed by Section 403(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any regulation promulgated pursuant thereto, then this section is not operative to the extent that it is not identical to the federal requirements, and for this purpose those federal requirements are incorporated into this section and shall apply as if they were set forth in this section.

(f) Any sealer may seize any container that is in violation of this section and the contents of the container. By order of the superior court of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon any conditions that the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall

be returned to the owner thereof if the owner furnishes proper facilities for the return.

SEC. 21. Section 14492 of the Business and Professions Code is amended to read:

14492. As used in this article, the following terms have the meanings set forth in this section unless the context otherwise requires:

(a) "Organization" includes any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or veterans organization, labor union, or any other similar society, organization, or association or degree, branch, subordinate lodge, or auxiliary thereof.

(b) "Name and Ownership." Name is that name that has first been adopted and used by an organization within or beyond the limits of this state, which name has been registered in the Office of the Secretary of State, and the name of any organization that has complied with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7, unless the name conflicts with a name duly registered in the Office of the Secretary of State prior to the compliance with those provisions, and any organization that has so first adopted and used the name is its original owner.

SEC. 22. Section 17086 of the Business and Professions Code is amended to read:

17086. No information obtained under this article, or under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, may be used against any party, or any witness, as a basis for a misdemeanor or felony prosecution in any court of this state.

SEC. 23. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may 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 as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court

as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 24. Section 17508 of the Business and Professions Code is amended to read:

17508. (a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

(b) Upon written request of the Director of Consumer Affairs, the Attorney General, any city attorney, or any district attorney, any person doing business in California and in whose behalf advertising claims are made to consumers in California, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact, shall provide to the department or official making the request evidence of the facts on which the advertising claims are based. The request shall be made within one year of the last day on which the advertising claims were made.

Any city attorney or district attorney who makes a request pursuant to this subdivision shall give prior notice of the request to the Attorney General.

(c) The Director of Consumer Affairs, Attorney General, any city attorney, or any district attorney may, upon failure of an advertiser to respond by adequately substantiating the claim within a reasonable time, or if the Director of Consumer Affairs, Attorney General, city attorney, or district attorney shall have reason to believe that the advertising claim is false or misleading, do either or both of the following:

(1) Seek an immediate termination or modification of the claim by the person in accordance with Section 17535.

(2) Disseminate information, taking due care to protect legitimate trade secrets, concerning the veracity of the claims or why the claims are misleading to the consumers of this state.

(d) The relief provided for in subdivision (c) is in addition to any other relief that may be sought for a violation of this chapter. Section 17534 shall not apply to violations of this section.

(e) Nothing in this section shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertising claims referred to in subdivision (a), unless the publisher or broadcaster is the person making the claims.

(f) The plaintiff shall have the burden of proof in establishing any violation of this section.

(g) If an advertisement is in violation of subdivision (a) and Section 17500, the court shall not impose a separate civil penalty pursuant to Section 17536 for the violation of subdivision (a) and the violation of Section 17500 but shall impose a civil penalty for the violation of either subdivision (a) or Section 17500.

SEC. 25. Section 17539.3 of the Business and Professions Code is amended to read:

17539.3. (a) Sections 17539.1 and 17539.2 do not apply to a game conducted to promote the sale of an employer's product or service by his or her employees, when those employees are the sole eligible participants.

(b) As used in Sections 17539.1 and 17539.2, "person" includes a firm, corporation, or association, but does not include any charitable trust, corporation, or other organization exempted from taxation under Section 23701d of the Revenue and Taxation Code or Section 501(c) of the Internal Revenue Code.

(c) Nothing in Sections 17539 to 17539.2, inclusive, shall be construed to permit any contest or any series of contests or any act or omission in connection therewith that is prohibited by any other provision of law.

(d) Nothing in Section 17539.1 or 17539.2 shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertisement relating to a contest, unless that publisher or broadcaster is the person conducting or holding that contest.

(e) As used in Sections 17539 to 17539.2, inclusive, "contest" includes any game, contest, puzzle, scheme, or plan that holds out or offers to prospective participants the opportunity to receive or compete for gifts, prizes, or gratuities as determined by skill or any combination of chance and skill and that is, or in whole or in part may be, conditioned upon the payment of consideration.

(f) Sections 17539 to 17539.2, inclusive, do not apply to the mailing or otherwise sending of an application for admission, or a notification or token evidencing the right of admission, to a contest, performance, sporting event, or tournament of skill, speed, power, or endurance between, or the operation of the contest, performance, sporting event, or tournament by, participants physically present at that contest, performance, sporting event, or tournament.

SEC. 26. Section 18625 of the Business and Professions Code is amended to read:

18625. "Contest" and "match" are synonymous, may be used interchangeably, include boxing, kickboxing, and martial arts exhibitions, and mean a fight, prizefight, boxing contest, pugilistic contest, kickboxing contest, martial arts contest, or sparring match, between two or more persons, where full or partial contact is used or intended that may result or is intended to result in physical harm to the opponent. In any exhibition or sparring match, the opponents are not required to use their best efforts.

SEC. 27. Section 18720 of the Business and Professions Code is amended to read:

18720. (a) No boxing contest or match shall be more than 12 rounds of not more than three minutes each in length, except that championship contests may, if the written approval of the commission is first obtained, be 15 rounds of not more than three minutes each in length. The commission may limit the number of rounds in a contest within the maximum.

(b) There shall be one minute rest between consecutive rounds.

SEC. 28. Section 18830 of the Business and Professions Code is amended to read:

18830. As used in this article:

(a) "Person" includes a promoter, club, individual, corporation, partnership, limited liability company, association, or other organization.

(b) "Closed circuit telecast" includes any telecast or broadcast, transmitted by any means, including subscription where an extra or additional fee is charged or where an identifiable or particular fee is charged for the viewing within this state of a simultaneous telecast of any live, current, or spontaneous match or wrestling exhibition.

SEC. 29. Section 19613.2 of the Business and Professions Code is amended to read:

19613.2. (a) Any horsemen's, owners', or trainers' organization or organization representing horsemen, owners, or trainers shall be incorporated under the laws of the State of California in order to receive a distribution or deduction under this chapter. Each corporation shall represent a majority of the horsemen, owners, or trainers in the state with respect to the breed of horses the corporation represents. The board shall initially determine the organization that represents California horsemen with respect to each breed. Any distribution or deduction received by any of those organizations shall be used only for the benefit of California horsemen.

(b) No portion of the amount distributed pursuant to Section 19613 to an owners', trainers', or horsemen's organization shall be used for the purpose of making contributions to candidates for public office, or

to urge or oppose any measure on the ballot. The organizations representing owners, trainers, and horsemen may expend no more than the amount reasonably necessary to represent its members before the Legislature and the board with respect to issues that directly affect services rendered to owners, trainers, and horsemen. The board shall annually review the budgets of the organizations representing owners, trainers, and horsemen and shall determine the appropriate amount to be expended for providing the representation authorized by this subdivision.

(c) If an owners', trainers', or horsemen's organization is conducting itself contrary to statute, regulation, or order of the board, the board may take disciplinary action against the organization, including ordering an association to withhold any distribution authorized pursuant to Section 19613.

(d) Upon recognition by the board of a successor horsemen's, owners', or trainers' organization or organization representing horsemen, owners, or trainers, the board shall apportion those assets that were generated pursuant to Section 19613 for the benefit of the horsemen and the successor organization.

SEC. 30. Section 21669.1 of the Business and Professions Code is amended to read:

21669.1. In addition to the requirements specified in subdivision (a) of Section 21669, all swap meets conducted on the premises or property of a state or local governmental entity that has or expects to have an average daily attendance of 10,000 or more persons shall provide all of the following:

(a) A statement of ownership, including the identity of individuals holding a financial interest of 5 percent or more.

(b) A sworn statement that no individuals who have a financial interest of 5 percent or more in the swap meet have been convicted of any crime involving dishonesty or moral turpitude.

(c) A financial statement showing the operator's financial capability to operate a major swap meet and to meet any financial obligations to the lessor and subcontractors.

(d) A statement that the operator is not knowingly delinquent in any payments owed to a state or local governmental entity and that he or she is not knowingly in violation of any state or local law or ordinance related to public health or safety standards.

(e) Evidence that the operator has a minimum of five years of experience in the management and operation of a swap meet for profit with an average daily attendance of 5,000 or more.

(f) A plan for operations, including security, crowd control, sanitation, and emergency medical response.

SEC. 31. Section 22701 of the Business and Professions Code is amended to read:

22701. The Legislature finds and declares:

(a) Many physicians and scientists now warn that the risks associated with suntanning are greater when tanning with artificial ultraviolet light.

(b) These risks include, but are not limited to, sunburn, premature aging, skin cancer, retinal damage, formation of cataracts, suppression of the immune system, and damage to the vascular system.

(c) Certain medications, cosmetics, and foods are "photosensitizing," which means that in some people they react unfavorably with ultraviolet light to produce skin rashes or burns.

(d) Sunlamps and other artificial sources of ultraviolet light are known to intensify these effects.

(e) The creation of state law to protect and promote the public health, safety, and welfare is needed concerning tanning with artificial ultraviolet light.

SEC. 32. Section 22901 of the Business and Professions Code is amended to read:

22901. The following definitions apply for purposes of this chapter:

(a) "Act" means the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.

(b) "Bulk sales law" means the Uniform Commercial Code-Bulk Sales as contained in Division 6 (commencing with Section 6101) of the Commercial Code.

(c) "Claim" means a dealer's claim for reimbursement from a supplier for labor and materials expended by the dealer to meet the requirements of the supplier's warranty agreement with a consumer of the supplier's products if the dealer has complied with the supplier's then-existing written policies and procedures for warranties and warranty claims.

(d) "Current parts price" means, with respect to current parts, the price for repair parts listed in the supplier's price list or catalog in effect at the time the dealer contract is canceled or discontinued or, for purposes of Section 22905, the price list or catalog in effect at the time the repair parts were ordered. "Current parts price" also means, with respect to superseded repair parts, the price listed in the supplier's price list or catalog in effect at the time the dealer contract is canceled or discontinued for the part that performs the same function and purpose as the superseded part, but is simply listed under a different part number.

(e) "Current net parts cost" means the current parts price less any trade or cash discounts typically given to the dealer with respect to that dealer's normal, ordinary course of orders of repair parts. "Current net parts cost" also means, with respect to a warranty, the current parts price of the supplier for the equipment repaired less any trade or cash discounts

typically given to the dealer with respect to that dealer's normal, ordinary course of orders of repair parts.

(f) "Dealer" means any person primarily engaged in the retail sale of equipment as defined in subdivision (j). For the purposes of this act, "dealer" does not include a "franchisee" as defined in Section 331.1 of the Vehicle Code or a "new motor vehicle dealer" as defined in Section 426 of the Vehicle Code.

(g) "Dealer contract" means either an oral or written contract, agreement, or arrangement for a definite or indefinite period between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts.

(h) "Dealership" means the retail sale business engaged in by a dealer under a dealer contract.

(i) "Demonstrator" means equipment in a dealer's inventory that has not been sold, but has had its usage demonstrated to potential customers, either without charge or pursuant to a short-term rental agreement, with the intent of encouraging the potential customer to purchase the equipment.

(j) (1) "Equipment" means all-terrain vehicles and other machinery, equipment, implements, or attachments used for, or in connection with, any of the following purposes:

(A) Lawn, garden, golf course, landscaping, or grounds maintenance.

(B) Planting, cultivating, irrigating, harvesting, and producing agricultural or forestry products.

(C) Raising, feeding, or tending to, or harvesting products from, livestock and any other activity in connection with those activities.

(D) Industrial, construction, maintenance, mining, or utility activities or applications, including, but not limited to, material handling equipment.

(2) Self-propelled vehicles designed primarily for the transportation of persons or property on a street or highway are specifically excluded from the definition of equipment.

(k) "Family member" means a spouse, parent, sibling, child, son-in-law, daughter-in-law, and lineal descendant, including those by adoption.

(*l*) "Good cause" means failure by a dealer to comply with the requirements imposed on the dealer by the dealer contract, if those requirements are not different from those requirements imposed on other similarly situated dealers in this state.

(m) "Index" means the United States Department of Labor, Bureau of Labor Statistics purchase price index for construction machinery series identification number pcu333120333120, or any successor index measuring substantially similar information.

(n) "Inventory" means equipment, repair parts, data-processing hardware or software, and specialized service or repair parts.

(o) "Major shareholder" means a shareholder with 51-percent or greater interest in a dealership.

(p) "Manufacturer created incentive program" means a program in which the dealer's inventory has not been sold but has been used for specialized purposes, including, but not limited to, harvest rental programs, dealer purchase rentals, and short-term rentals. The warranty that is transferred to the consumer upon sale, which shall be disclosed prior to sale, is the manufacturer-provided base warranty, less hours and time used while in a manufacturer created incentive program.

(q) "Net equipment cost" means the price the dealer actually paid to the supplier for equipment, plus (1) freight, at truckload rates in effect as of the effective date of the termination of a dealer contract, if freight was paid by the dealer from the supplier's location to the dealer's location and (2) reimbursement for labor incurred in preparing the equipment for retail sale or rental, which labor will be reimbursed at the dealer's standard labor rate charged by the dealer to its customers for nonwarranty repair work; provided, however, if a supplier has established a reasonable setup time, that labor will be reimbursed at an amount equal to the reasonable setup time in effect as of the date of delivery multiplied by the dealer's standard labor rate.

(r) "Person" means an individual, corporation, partnership, limited liability company, trust, or any and all other forms of business entities, including any other entity in which a person has a majority interest or of which a person has control, as well as the individual officers, directors, and other persons in active control of the activities of each entity.

(s) "Repair parts" means all parts and products related to the service or repair of equipment, including superseded parts.

(t) "Single-line dealer" means a dealer that has (1) purchased construction, industrial, forestry, and mining equipment from a single supplier constituting 75 percent of the dealer's new equipment, calculated on the basis of net cost; and (2) a total annual average sales volume in excess of forty million dollars ($40,000,000) for the three calendar years immediately preceding the applicable determination date; provided, however, the sales threshold shall be increased each year by an amount equal to the current sales threshold multiplied by the percentage increase in the index from January 1 of the immediately preceding year to January 1 of the current year.

(u) "Single-line supplier" means the supplier that is selling the single-line dealer construction, industrial, forestry, and mining equipment constituting 75 percent of the dealer's new equipment.

(v) "Supplier" means any person engaged in the business of manufacturing, assembly, or wholesale distribution of equipment or repair parts. "Supplier" also includes any successor in interest to a supplier, including a purchaser of assets or stock, or a surviving corporation resulting from a merger, liquidation, or reorganization of a supplier.

(w) "Terminate" means to terminate, cancel, fail to renew, or materially change the competitive circumstances of a dealer contract.

SEC. 33. Section 22915 of the Business and Professions Code is amended to read:

22915. The lien created pursuant to this act shall be treated according to the following:

(a) Have priority in accordance with the time the notice of claim of lien is filed with the Secretary of State.

(b) Have the same priority as a security interest perfected by the filing of a financing statement as of the date of notice of claim of lien was filed with the Secretary of State.

(c) Not have priority over labor claims for wages and salaries for personal services that are provided by any employee to any lien debtor in connection with the equipment supplied, the proceeds of which are subject to the lien.

SEC. 34. Section 23426.5 of the Business and Professions Code is amended to read:

23426.5. (a) For purposes of this article, "club" also means any tennis club that maintains not less than four regulation tennis courts, together with the necessary facilities and clubhouse, has members paying regular monthly dues, has been in existence for not less than 45 years, and is not associated with a common interest development as defined in Section 1351 of the Civil Code, a community apartment project as defined in Section 11004 of this code, a project consisting of condominiums as defined in Section 783 of the Civil Code, or a mobilehome park as defined in Section 18214 of the Health and Safety Code.

(b) It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of the person's color, race, religion, ancestry, national origin, sex, or age.

SEC. 35. Section 25660 of the Business and Professions Code is amended to read:

25660. (a) Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member

of the Armed Forces, that contains the name, date of birth, description, and picture of the person.

(b) In the event an identification card issued to a member of the Armed Forces is provided as proof of majority and lacks a physical description, proof of majority may be further substantiated if a motor vehicle operator's license or other valid bona fide identification issued by any government jurisdiction is also provided.

(c) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission forbidden by Section 25658, 25663, or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

SEC. 36. Section 43.97 of the Civil Code is amended to read:

43.97. There shall be no monetary liability on the part of, and no cause of action for damages, other than economic or pecuniary damages, shall arise against, a hospital for any action taken upon the recommendation of its medical staff, or against any other person or organization for any action taken, or restriction imposed, which is required to be reported pursuant to Section 805 of the Business and Professions Code, if that action or restriction is reported in accordance with Section 805 of the Business and Professions Code. This section shall not apply to an action knowingly and intentionally taken for the purpose of injuring a person affected by the action or infringing upon a person's rights.

SEC. 37. Section 51.4 of the Civil Code is amended to read:

51.4. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments that were constructed before the decision in Marina Point, Ltd. v. Wolfson (1982) 30 Cal.3d 721. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Sections 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development that relied on the exemption to the special design requirement provided by this section

prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of Chapter 1004 of the Statutes of 2000.

(c) This section shall not apply to the County of Riverside.

SEC. 38. Section 54.6 of the Civil Code is amended to read:

54.6. As used in this part, "visually impaired" includes blindness and means having central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than 20 degrees.

SEC. 39. Section 56.21 of the Civil Code is amended to read:

56.21. An authorization for an employer to disclose medical information shall be valid if it complies with all of the following:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature that serves no purpose other than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient, except that a patient who is a minor may only sign an authorization for the disclosure of medical information obtained by a provider of health care in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(2) The legal representative of the patient, if the patient is a minor or incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information that pertains to a competent minor and that was created by a provider of health care in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(3) The beneficiary or personal representative of a deceased patient.

(d) States the limitations, if any, on the types of medical information to be disclosed.

(e) States the name or functions of the employer or person authorized to disclose the medical information.

(f) States the names or functions of the persons or entities authorized to receive the medical information.

(g) States the limitations, if any, on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the employer is no longer authorized to disclose the medical information.

(i) Advises the person who signed the authorization of the right to receive a copy of the authorization.

SEC. 40. Section 799.2.5 of the Civil Code is amended to read:

799.2.5. (a) Except as provided in subdivision (b), the ownership or management shall have no right of entry to a mobilehome without the prior written consent of the resident. The consent may be revoked in writing by the resident at any time. The ownership or management shall have a right of entry upon the land upon which a mobilehome is situated for maintenance of utilities, trees, and driveways, for maintenance of the premises in accordance with the rules and regulations of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park when the homeowner or resident fails to so maintain the premises, and protection of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park at any reasonable time, but not in a manner or at a time that would interfere with the resident's quiet enjoyment.

(b) The ownership or management may enter a mobilehome without the prior written consent of the resident in case of an emergency or when the resident has abandoned the mobilehome.

SEC. 41. Section 846.1 of the Civil Code is amended to read:

846.1. (a) Except as provided in subdivision (c), an owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner.

(3) The owner prevails in the civil action.

(b) Except as provided in subdivision (c), a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the public entity.

(3) The public entity prevails in the civil action.

(c) An owner of any estate or interest in real property, whether possessory or nonpossessory, or a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on, or use of, the real property for a recreational purpose, as defined in Section 846, pursuant to an agreement with a public or nonprofit agency, and is a defendant in a civil action brought by, or on behalf of, a person who seeks to restrict, prevent, or delay public use of that property, may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in the civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner or public entity.

(3) The owner or public entity prevails in the civil action.

(d) The California Victim Compensation and Government Claims Board shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorney's fees, for purposes of this section, may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made, and may not exceed an aggregate amount of twenty-five thousand dollars ($25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.

(e) The total of claims allowed by the board pursuant to this section shall not exceed two hundred thousand dollars ($200,000) per fiscal year.

SEC. 42. Section 1363.04 of the Civil Code is amended to read:

1363.04. (a) Association funds shall not be used for campaign purposes in connection with any association board election. Funds of the association shall not be used for campaign purposes in connection with any other association election except to the extent necessary to comply with duties of the association imposed by law.

(b) For the purposes of this section, "campaign purposes" includes, but is not limited to, the following:

(1) Expressly advocating the election or defeat of any candidate that is on the association election ballot.

(2) Including the photograph or prominently featuring the name of any candidate on a communication from the association or its board, excepting the ballot and ballot materials, within 30 days of an election. This is not a campaign purpose if the communication is one for which subdivision (a) of Section 1363.03 requires that equal access be provided to another candidate or advocate.

SEC. 43. Section 1363.07 of the Civil Code is amended to read:

1363.07. (a) After an association acquires fee title to, or any easement right over, a common area, unless the association's governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board of directors may grant exclusive use of any portion of that common area to any member, except for any of the following:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) Any grant in connection with an expressly zoned industrial or commercial development, or any grant within a subdivision of the type defined in Section 1373.

(b) Any measure placed before the members requesting that the board of directors grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

SEC. 44. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) "Services" means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) "Consumer" means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) "Transaction" means an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) "Senior citizen" means a person who is 65 years of age or older.

(g) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(1) As used in this subdivision, "physical or mental impairment" means any of the following:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing

impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(h) "Home solicitation" means any transaction made at the consumer's primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation.

SEC. 45. Section 1786.10 of the Civil Code is amended to read:

1786.10. (a) Every investigative consumer reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding the consumer at the time of the request.

(b) (1) All items of information shall be available for inspection, except that the sources of information, other than public records and records from databases available for sale, acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed. However, if an action is brought under this title, those sources shall be available to the consumer under appropriate discovery procedures in the court in which the action is brought.

(2) This title shall not be interpreted to mean that investigative consumer reporting agencies are required to divulge to consumers the sources of investigative consumer reports, except in appropriate discovery procedures as outlined in this title.

(c) The investigative consumer reporting agency shall also identify the recipients of any investigative consumer report on the consumer that the investigative consumer reporting agency has furnished for either of the following purposes:

(1) For employment or insurance purposes within the three-year period preceding the request.

(2) For any other purpose within the three-year period preceding the request.

(d) The identification of a recipient under subdivision (c) shall include the name of the recipient or, if applicable, the trade name (written in full) under which the recipient conducts business and, upon request of the consumer, the address and telephone number of the recipient.

(e) The investigative consumer reporting agency shall also disclose the dates, original payees, and amounts of any checks or charges upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

SEC. 46. Section 1788.2 of the Civil Code is amended to read:

1788.2. (a) Definitions and rules of construction set forth in this section are applicable for the purpose of this title.

(b) "Debt collection" means any act or practice in connection with the collection of consumer debts.

(c) "Debt collector" means any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection. The term includes any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection, but does not include an attorney or counselor at law.

(d) "Debt" means money, property, or their equivalent, which is due or owing or alleged to be due or owing from a natural person to another person.

(e) "Consumer credit transaction" means a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from another person primarily for personal, family, or household purposes.

(f) "Consumer debt" and "consumer credit" mean money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.

(g) "Person" means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association, or other similar entity.

(h) "Debtor" means a natural person from whom a debt collector seeks to collect a consumer debt which is due and owing or alleged to be due and owing from such person.

(i) "Creditor" means a person who extends consumer credit to a debtor.

(j) (1) "Consumer credit report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for any of the following:

(A) Credit or insurance to be used primarily for personal, family, or household purposes.

(B) Employment purposes.

(C) Other purposes authorized under any applicable federal or state law or regulation.

(2) "Consumer credit report" does not include any of the following:

(A) Any report containing information solely as to transactions or experiences between the consumer and the person making the report.

(B) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

(C) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to that request if the third party advises the consumer of the name and address of the person to whom the request was made and that person makes the disclosures to the consumer required under any applicable federal or state law or regulation.

(k) "Consumer reporting agency" means any person who, for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, and who uses any means or facility for the purpose of preparing or furnishing consumer credit reports.

SEC. 47. Section 1789.37 of the Civil Code is amended to read:

1789.37. (a) Every owner of a check casher's business shall obtain a permit from the Department of Justice to conduct a check casher's business.

(b) All applications for a permit to conduct a check casher's business shall be filed with the department in writing, signed by the applicant, if an individual, or by a member or officer authorized to sign, if the applicant is a corporation or other entity, and shall state the name of the business, the type of business engaged in, and the business address. Each applicant shall be fingerprinted.

(c) Each applicant for a permit to conduct a check casher's business shall pay a fee not to exceed the cost of processing the application, fingerprinting the applicant, and checking or obtaining the criminal record of the applicant, at the time of filing the application.

(d) Each applicant shall annually, beginning one year from the date of issuance of a check casher's permit, file an application for renewal of the permit with the department, along with payment of a renewal fee not to exceed the cost of processing the application for renewal and checking or obtaining the criminal record of the applicant.

(e) The department shall deny an application for a permit to conduct a check casher's business, or for renewal of a permit, if the applicant has a felony conviction involving dishonesty, fraud, or deceit, if the crime is substantially related to the qualifications, functions, or duties of a person engaged in the business of check cashing.

(f) The department shall adopt regulations to implement this section and shall determine the amount of the application fees required by this section. The department shall prescribe forms for the applications and

permit required by this section, which shall be uniform throughout the state.

(g) In any action brought by a city attorney or district attorney to enforce a violation of this section, an owner of a check casher's business who engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is subject to a civil penalty, as follows:

(1) For the first offense, not more than one thousand dollars ($1,000).

(2) For the second offense, not more than five thousand dollars ($5,000).

(h) Any person who has twice been found in violation of subdivision (g) and who, within 10 years of the date of the first offense, engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(i) All civil penalties, forfeited bail, or fines received by any court pursuant to this section shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which the court is situated. Fines and forfeitures deposited shall be disbursed pursuant to the Penal Code. Civil penalties deposited shall be paid at least once a month as follows:

(1) Fifty percent to the Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court, to be deposited in the State Treasury on order of the Controller.

(2) Fifty percent to the city treasurer of the city, if the offense occurred in a city, otherwise to the treasurer of the county in which the prosecution is conducted. Any money deposited in the State Treasury under this section that is determined by the Controller to have been erroneously deposited shall be refunded, subject to approval of the California Victim Compensation and Government Claims Board prior to the payment of the refund, out of any money in the State Treasury that is available by law for that purpose.

(j) This section shall become operative December 31, 2004.

SEC. 48. Section 1812.85 of the Civil Code is amended to read:

1812.85. (a) Every contract for health studio services shall provide that performance of the agreed upon services will begin within six months after the date the contract is entered into. The consumer may cancel the contract and receive a pro rata refund if the health studio fails to provide the specific facilities advertised or offered in writing by the time indicated. If no time is indicated in the contract, the consumer may cancel the contract within six months after the execution of the contract and

shall receive a pro rata refund. If a health studio fails to meet a timeline set forth in this section, the consumer may cancel the contract at any time after the expiration of the timeline, provided that if, following the expiration of the timeline, the health studio does provide the advertised or agreed upon services, the consumer may cancel the contract up to 10 days after those services are provided.

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

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

_____
(Name of health studio operator)

at_____
(Address of health studio operator)."

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

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

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

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

(c) If at any time during the term of the contract, including a transfer of the contractual obligation, the health studio eliminates or substantially reduces the scope of the facilities, such as swimming pools or tennis courts, that were described in the contract, in an advertisement relating

to the specific location, or in a written offer, and available to the consumer upon execution of the contract, the consumer may cancel the contract and receive a pro rata refund. The consumer may not cancel the contract pursuant to this subdivision if the health studio, after giving reasonable notice to its members, temporarily takes facilities out of operation for reasonable repairs, modifications, substitutions, or improvements. This subdivision shall not be interpreted to give the consumer the right to cancel a contract because of changes to the type or quantity of classes or equipment offered, provided the consumer is informed in the contract that the health studio reserves the right to make changes to the type or quantity of classes or equipment offered and the changes to the type or quantity of classes or equipment offered is reasonable under the circumstances.

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

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

(3) If a contract for health studio services requires payment of two thousand five hundred one dollars ($2,501) or more, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 45 days after the contract is executed.

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

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

(6) A health studio entering into a contract for health studio services that does not require payment in excess of one thousand dollars ($1,000), including initiation or initial membership fees and exclusive of interest or finance charges, by the person receiving the services or the use of the facilities, is not required to comply with the provisions of this subdivision that are added by Section 3 of Chapter 439 of the Statutes of 2005.

(e) Upon cancellation, the consumer shall be liable only for that portion of the total contract payment, including initiation fees and other charges however denominated, that has been available for use by the

consumer, based upon a pro rata calculation over the term of the contract. The remaining portion of the contract payment shall be returned to the consumer by the health studio.

SEC. 49. Section 1812.97 of the Civil Code, as added by Section 6 of Chapter 439 of the Statutes of 2005, is amended and renumbered to read:

1812.98. Nothing in this title is intended to prohibit month-to-month contracts. This section is declaratory of existing law.

SEC. 50. Section 1812.106 of the Civil Code is amended to read:

1812.106. Every discount buying organization, before obtaining the signature of a potential buyer on any application or contract for discount buying services, shall provide to the buyer, and shall allow the buyer to retain, the following written disclosures:

(a) The exact nature of the services it provides, specifying the general categories of goods that are available at the discount buying organization's place of business or warehouse, those categories of goods, if any, that must be ordered or obtained through stores to which the discount buying organization will refer the customer, and those categories of goods, if any, that must be ordered or obtained through the mail.

(b) A list, current within the previous 60 days, of at least 100 items that are sold by or through the organization or available to those who contract with the organization, identified by brand name, model, and total price including a reasonable estimate of freight charges, if any are to be imposed; a reasonable estimate of delivery charges, if any are to be imposed; a reasonable estimate of setup charges, if any are to be imposed; the discount buying organization's price markup; and a reasonable estimate of any other charges the discount buying organization imposes. These items shall be reasonably representative as to the type of goods available. In lieu of providing this list, the discount buying organization shall provide and allow the buyer to retain a list of at least 100 items that were purchased by its members through the discount buying organization during the preceding 60 days. This list shall identify the items by brand name, model, and total selling price including freight charges, if any; delivery charges, if any; setup charges, if any; the discount buying organization's price markup; and any other charges imposed by the discount buying organization, and shall be representative as to the type of goods sold and the prices charged for the listed goods sold during that period. If the maximum number of items available through a discount buying organization is fewer than 100 in number, it may comply with this section by furnishing a list of the total items available, identified as described above with a statement that those are the only goods presently available. Any list required by this subdivision shall state the date on which it was prepared.

(c) A statement of the discount buying organization's policy with respect to warranties or guarantees on goods ordered, and the policy with respect to the return of ordered goods, cancellation of orders by the buyer, and refunds for cancellation or return.

(d) A description of any charges, such as freight charges, delivery charges, setup charges, seller's markup, and any other charges that are incidental to the purchase of goods through the discount buying organization and are to be paid by the buyer. A disclosure of these costs in specific monetary amounts shall also be made on each order placed through the discount buying organization.

(e) If any stockholder, director, officer, or general or limited partner of the discount buying organization, as the case may be:

(1) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge, if the felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, misappropriation of property, or a violation of this title.

(2) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property, a violation of this title, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, an action affecting any vocational license, a statement so stating, and including the name of the court, the date of the conviction, judgment, order, or injunction and, if applicable, the name of the governmental agency that filed the action resulting in the conviction, judgment, order, or injunction.

SEC. 51. Section 1812.306 of the Civil Code is amended to read:

1812.306. (a) A purchaser's remedy for errors in or omissions from the membership camping contract of any of the disclosures or requirements of Sections 1812.302 to 1812.304, inclusive, shall be limited to a right of rescission and refund. Reasonable attorney's fees shall be awarded to the prevailing party in any action under this title. This limitation does not apply to errors or omissions from the contract, or disclosures or other requirements of this title, which are a part of a scheme to willfully misstate or omit the information required, or other requirements imposed by this title.

(b) Any failure, except a willful or material failure, to comply with any provision of Sections 1812.302 to 1812.304, inclusive, may be corrected within 30 days after receipt of written notice to the membership camping operator from the purchaser, and, if so corrected, there shall be

no right of rescission. The membership camping operator or the holder shall not be subject to any penalty under this title. However, there can be no correction that increases any monthly payment, the number of payments, or the total amount due, unless concurred to, in writing, by the purchaser. "Holder" includes the seller who acquires the contract, or if the contract is purchased, a financing agency or other assignee who purchases the contract.

SEC. 52. Section 1812.501 of the Civil Code is amended to read:

1812.501. (a) (1) "Employment agency" or "agency" means:

(A) Any person who, for a fee or other valuable consideration to be paid, directly or indirectly by a jobseeker, performs, offers to perform, or represents it can or will perform any of the following services:

(i) Procures, offers, promises, or attempts to procure employment or engagements for others or employees for employers.

(ii) Registers persons seeking to procure or retain employment or engagement.

(iii) Gives information as to where and from whom this help, employment, or engagement may be procured.

(iv) Provides employment or engagements.

(B) Any person who offers, as one of its main objects or purposes, to procure employment for any person who will pay for its services, or that collects dues, tuition, or membership or registration fees of any sort, if the main object of the person paying those fees is to secure employment.

(C) Any person who, for a fee or other valuable consideration, procures, offers, promises, provides, or attempts to procure babysitting or domestic employment for others or domestics or babysitters for others.

(2) "Employment agency" or "agency" shall not include any employment counseling service or any job listing service.

(b) (1) "Employment counseling service" means any person who offers, advertises, or represents it can or will provide any of the following services for a fee: career counseling, vocational guidance, aptitude testing, executive consulting, personnel consulting, career management, evaluation, or planning, or the development of résumés and other promotional materials relating to the preparation for employment. "Employment counseling service" shall not include persons who provide services strictly on an hourly basis with no financial obligation required of the consumer beyond the hourly fee for services rendered. An "employment counseling service" does not include the functions of an "employment agency" as defined in subdivision (a).

(2) "Employment counseling service" does not include:

(A) Businesses that are retained by, act solely on behalf of, and are compensated solely by prior or current employers that do not require

any "customer" to sign a contract and do not in any way hold any "customer" liable for fees.

(B) (i) Any provider of vocational rehabilitation in which the counseling services are paid for by insurance benefits, if the counseling is provided as a result of marital dissolution or separation proceedings to prepare one of the spouses for reentry into the job market and if the fees are paid by some party other than the person receiving the counseling services.

(ii) The exemption provided in this subparagraph does not apply to any vocational rehabilitation counselor who receives any payments directly from the individual customer receiving the counseling.

(C) Any person who engages solely in the preparation of résumés and cover letters, provided that the résumé writing service does not advertise or hold itself out as offering other job seeking or placement services and does not charge more than three hundred dollars ($300) for any résumé, cover letter, or combination of both to any single customer in any individual transaction.

(D) Any public educational institution.

(E) Any private educational institution established solely for educational purposes that, as a part of its curriculum, offers employment counseling to its student body and conforms to the requirements of Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code.

(F) A psychologist or psychological corporation licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, providing psychological assessment, career or occupational counseling, or consultation and related professional services within his, her, or its scope of practice.

(G) An educational psychologist licensed pursuant to Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code, providing counseling services within his or her scope of practice.

(c) "Job listing service" means any person who provides, offers, or represents it can or will provide any of the following services, for a fee or other valuable consideration to be paid, directly or indirectly, by the jobseeker in advance of, or contemporaneously with, performance of these services: matches jobseekers with employment opportunities, providing or offering to provide jobseekers lists of employers or lists of job openings or like publications, or preparing résumés or lists of jobseekers for distribution to potential employers.

(d) A "nurses' registry" as defined in subdivision (b) of Section 1812.524 is an employment agency. However, unless otherwise provided for in this title, a nurses' registry shall not be required to comply with

Chapter 2 (commencing with Section 1812.503) regulating employment agencies but, instead, shall be required to comply with Chapter 7 (commencing with Section 1812.524).

(e) "Jobseeker" means a person seeking employment.

(f) "Employer" means any individual, company, partnership, association, corporation, agent, employee, or representative for whom or for which an employment agency or job listing service attempts to obtain an employee or to place a jobseeker.

(g) "Job order" means any written or oral instruction, direction, or permission granted by an employer or its agent to an employment agency or job listing service to refer jobseekers for a specified job.

(h) "Domestic agency" means any agency that provides, or attempts to provide, employment by placement of domestic help in private homes.

(i) "Deposit" means any money or valuable consideration received by an employment agency or job listing service from a jobseeker for referring the jobseeker to a position of employment prior to the jobseeker's acceptance of a position.

(j) "Fee" means:

(1) Any money or other valuable consideration paid, or promised to be paid, for services rendered or to be rendered by any person conducting an employment agency, employment counseling service, or job listing service under this title.

(2) Any money received by any person in excess of that which has been paid out by him or her for transportation, transfer of baggage, or board and lodging for any applicant for employment.

(k) "Registration fee" means any charge made, or attempted to be made, by an employment agency for registering or listing an applicant for employment, for letter writing, or any charge of a like nature made, or attempted to be made without having a bona fide order for the placement of the applicant in a position.

(*l*) "Person" means any individual, corporation, partnership, limited liability company, trust, association, or other organization.

(m) This section shall become operative on January 1, 1997.

SEC. 53. Section 1834.8 of the Civil Code is amended to read:

1834.8. (a) At any public auction or sale where equines are sold, the management of the auction or sale shall post a sign (measuring a minimum of 15 x 9 inches with lettering of a minimum of 1 ¼ x ½ (91 point)) or shall insert into its consignment agreement with the seller in boldface type the notice stated in subdivision (b). If a sign is posted, it shall be posted in a conspicuous place so that it will be clearly visible to a majority of persons attending the sale. If the notice is inserted into the consignment agreement, space shall be provided adjacent to the notice for the seller to initial his or her acknowledgment of the notice.

(b) The notice required by subdivision (a) shall read as follows:

"WARNING
Horses sold on these premises may be purchased for slaughter.
As a possible safeguard, seller can set minimum bid above current slaughter prices."

(c) For the purposes of this section, the management of the auction or sale shall post current slaughter prices or make them available to sellers upon request.

SEC. 54. Section 2945.3 of the Civil Code is amended to read:

2945.3. (a) Every contract shall be in writing and shall fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subdivision (c):

"NOTICE REQUIRED BY CALIFORNIA LAW

_____ or anyone working
(Name)
for him or her CANNOT:

(1) Take any money from you or ask you for money until _____ has
(Name)
completely finished doing everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, deed of trust, or deed."

(c) The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract; shall be dated and signed by the owner; and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows: "You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(d) The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the foreclosure consultant to which the notice or cancellation is to be mailed.

(2) The date the owner signed the contract.

(e) The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation," which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

_____
(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____
(Name of foreclosure consultant)

at _____
(Address of foreclosure consultant's place of business)

NOT LATER THAN MIDNIGHT OF _____ .
(Date)

I hereby cancel this transaction

_____.
(Date)

_____"
(Owner's signature)

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

(g) Until the foreclosure consultant has complied with this section, the owner may cancel the contract.

(h) After the 65-day period following the foreclosure sale, the foreclosure consultant may enter into a contract to assist the owner in arranging, or arrange for the owner, the release of funds remaining after the foreclosure sale ("surplus funds") from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee. However, prior to entering into that contract, the foreclosure consultant shall do all of the following:

(1) Prepare and deliver to the owner a notice in 14-point boldface type and substantially in the form set forth below.

(2) Obtain a receipt executed by each owner and acknowledged before a notary public, acknowledging a copy of the notice set forth below.

"NOTICE TO OWNER

_____ _____
(Date of Contract) (Date signed by Owner)

_____
(Date of Foreclosure Sale)

You may be entitled to receive all or a portion of the surplus funds generated from the foreclosure sale of your real property located at: _____, California on _____without paying any fees or costs of any kind to a third party. You should check directly with the trustee or beneficiary who conducted the foreclosure sale of your property to determine the name, address, and telephone number of the party to whom you can direct inquiries regarding filing a claim for surplus funds without paying a fee to a third party. No person or entity may require you to enter into any agreement requiring the payment of a fee to that person or entity in order to receive the surplus funds from the foreclosure sale to which you may be entitled during the 65 days after the date of the trustee's sale."

SEC. 55. Section 2945.9 of the Civil Code is amended to read:

2945.9. (a) A foreclosure consultant is liable for all damages resulting from any statement made or act committed by the foreclosure consultant's representative in any manner connected with the foreclosure consultant's (1) performance, offer to perform, or contract to perform any of the services described in subdivision (a) of Section 2945.1, (2) receipt of any consideration or property from or on behalf of an owner, or (3) performance of any act prohibited by this article.

(b) "Representative" for the purposes of this section means a person who in any manner solicits, induces, or causes (1) any owner to contract with a foreclosure consultant, (2) any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant, or (3) any member of the owner's family or household to induce or cause any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant.

SEC. 56. Section 2954.7 of the Civil Code is amended to read:

2954.7. Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to notes or evidence of indebtedness secured by a deed of trust or mortgage purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of the indebtedness, if a borrower so requests and the conditions established by paragraphs (1) to (5), inclusive, of subdivision (a) are met, a borrower may terminate future payments for private mortgage insurance, or mortgage guaranty insurance as defined

in subdivision (a) of Section 12640.02 of the Insurance Code, issued as a condition to the extension of credit in the form of a loan evidenced by a note or other evidence of indebtedness that is secured by a deed of trust or mortgage on the subject real property.

(a) The following conditions shall be satisfied in order for a borrower to be entitled to terminate payments for private mortgage insurance or mortgage guaranty insurance:

(1) The request to terminate future payments for private mortgage insurance or mortgage guaranty insurance shall be in writing.

(2) The origination date of the note or evidence of indebtedness shall be at least two years prior to the date of the request.

(3) The note or evidence of indebtedness shall be for personal, family, household, or purchase money purposes, secured by a deed of trust or mortgage on owner-occupied, one- to four-unit, residential real property.

(4) The unpaid principal balance owed on the secured obligation that is the subject of the private mortgage insurance or mortgage guaranty insurance shall not be more than 75 percent, unless the borrower and lender or servicer of the loan agree in writing upon a higher loan-to-value ratio, of either of the following:

(A) The sale price of the property at the origination date of the note or evidence of indebtedness, provided that the current fair market value of the property is equal to or greater than the original appraised value used at the origination date.

(B) The current fair market value of the property as determined by an appraisal, the cost of which shall be paid for by the borrower. The appraisal shall be ordered and the appraiser shall be selected by the lender or servicer of the loan.

(5) The borrower's monthly installments of principal, interest, and escrow obligations on the encumbrance or encumbrances secured by the real property shall be current at the time the request is made and those installments shall not have been more than 30 days past due over the 24-month period immediately preceding the request, provided further, that no notice of default has been recorded against the security real property pursuant to Section 2924, as a result of a nonmonetary default by the borrower (trustor) during the 24-month period immediately preceding the request.

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

(1) A note or evidence of indebtedness secured by a deed of trust or mortgage, or mortgage insurance, executed under the authority of Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code.

(2) Any note or evidence of indebtedness secured by a deed of trust or mortgage that is funded in whole or in part pursuant to authority

granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for private mortgage insurance or mortgage guaranty insurance during the term of the indebtedness.

(3) Notes or evidence of indebtedness that require private mortgage insurance and were executed prior to January 1, 1991.

(c) If the note secured by the deed of trust or mortgage will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for private mortgage insurance or mortgage guaranty insurance shall be deemed in compliance with the requirements of this section.

(d) For the purposes of this section, "institutional third party" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of private mortgage insurance or mortgage guaranty insurance, which are the same or substantially the same as those utilized by the above-named institutions.

SEC. 57. Section 3052.5 of the Civil Code is amended to read:

3052.5. (a) Sections 3052 and 3052b shall not apply to any service dealer registered with the Bureau of Repair Services pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code if the dealer reasonably believes that the serviced product is of nominal value. For purposes of this section, nominal value shall be ascertained as follows: the product is not readily salable for more than the legitimate charges against it, and either the original retail value of the product was under two hundred dollars ($200) and the product is over three years old, or the original retail value is over two hundred dollars ($200) and the product is over six years old.

Service dealers may use any available materials or information, including, but not limited to, industry publications, code dates, sales records, or receipts to assist in determining value and age of the serviced product.

(b) A service dealer may select one of the following alternative methods for the disposal of unclaimed serviced products determined to have a value as specified in subdivision (a):

(1) The service dealer may provide the owner of the product with the following written notice to be mailed following completion of work on the serviced product:

DATE BROUGHT IN_____
DATE MAILED_____

DATE PRODUCT TO BE SOLD IF NOT CLAIMED

NOTICE: YOUR PRODUCT HAS BEEN DETERMINED BY THIS SERVICE DEALER TO BE ONE WHICH WAS EITHER ORIGINALLY SOLD FOR LESS THAN $200 AND IS NOW OVER THREE YEARS OLD OR ONE WHICH WAS ORIGINALLY SOLD FOR MORE THAN $200 AND WHICH IS NOW OVER SIX YEARS OLD AND THE CHARGES FOR SERVICING YOUR PRODUCT WILL EXCEED ITS CURRENT VALUE. UNDER CALIFORNIA CIVIL CODE SECTION 3052.5(a) IF YOU OR YOUR AGENT FAIL TO CLAIM YOUR PRODUCT WITHIN 90 DAYS AFTER THE DEALER MAILS A COPY OF THIS NOTICE TO YOU IT MAY BE SOLD OR OTHERWISE DISPOSED OF BY HIM OR HER.

The notice shall be sent by certified mail, return receipt requested. A serviced product may be disposed of 90 days after the date of deliverance evidenced by the signature in the returned receipt.

(2) The service dealer may publish public notice of the intended sale in a newspaper of general circulation. The notice shall contain a description of the serviced product, the name of the serviced product owner, and the time by which and place where the product may be redeemed. The notice shall be published for a minimum of five times. A serviced product may be disposed of 90 days after the last date of publication.

(3) A service dealer may, upon receipt of any product to be serviced by him or her, provide the owner of the product with the following notice, written in at least 10-point boldface type:

DATE BROUGHT IN_____
DATE MAILED_____
DATE PRODUCT TO BE SOLD IF NOT CLAIMED

NOTICE: YOUR PRODUCT HAS BEEN DETERMINED BY THIS SERVICE DEALER TO BE ONE WHICH WAS EITHER ORIGINALLY SOLD FOR LESS THAN $200 AND IS NOW OVER THREE YEARS OLD OR ONE WHICH WAS ORIGINALLY SOLD FOR MORE THAN $200 AND WHICH IS NOW OVER SIX YEARS OLD AND THE CHARGES FOR SERVICING YOUR PRODUCT WILL EXCEED ITS CURRENT VALUE. UNDER CALIFORNIA CIVIL CODE SECTION 3052.5(a) IF YOU OR YOUR AGENT FAIL TO CLAIM YOUR PRODUCT WITHIN 90 DAYS AFTER

THE DEALER MAILS A COPY OF THIS NOTICE TO YOU IT MAY BE SOLD OR OTHERWISE DISPOSED OF BY HIM OR HER.

PRINT YOUR NAME AND MAILING ADDRESS WHERE NOTICE MAY BE SENT TO YOU IN THE SPACE PROVIDED BELOW AND SIGN WHERE INDICATED TO SHOW THAT YOU HAVE READ THIS NOTICE.

_____
(Print Name)

_____
(Street Address)

_____
(City, State and ZIP Code)

IF YOU DO NOT AGREE WITH THE ABOVE DETERMINED VALUE OF YOUR ITEM, DO NOT SIGN THIS DOCUMENT.

Signature: _____
(Owner or Agent)

This notice shall be signed, addressed, and dated by the owner, with a copy to be retained by both the owner and the service dealer. At the completion of service, the service dealer shall by first-class mail, mail a completed copy of the notice to the owner of the serviced product at the address given on the notice form. A serviced product may be disposed of 90 days after the date of mailing.

(c) For purposes of this section, an owner is the person or agent who authorizes the original service or repair, or delivers the product to the service dealer.

SEC. 58. Section 3262 of the Civil Code is amended to read:

3262. (a) Neither the owner nor original contractor by any term of a contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this subdivision shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. That waiver and release shall be binding and effective to release the owner, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to

the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

(b) (1) No oral or written statement purporting to waive, release, impair, or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless either:

(A) It is pursuant to a waiver and release prescribed in this section.

(B) The claimant had actually received payment in full for the claim.

(2) Nothing in this section precludes a stop notice claimant from reducing the amount of, or releasing in its entirety, a stop notice that has been served upon an owner. The reduction or release of a stop notice, which shall be in writing, may be served in a form other than the forms of release set forth in this section. Any reduction or release of a stop notice:

(A) Shall not preclude the service of a subsequent stop notice that is timely and proper.

(B) Shall release the owner from any obligation to withhold money on account of the stop notice, to the extent of the reduction or release.

(C) Shall be effective to release the claimant's right to enforce the stop notice, to the extent of the reduction or release.

(D) Shall not operate as a release of any right that the claimant may have, other than the claimant's right to enforce the stop notice, to the extent of the reduction or release.

(c) This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the mechanic's lien, stop notice, or bond claims.

(d) The waiver and release given by any claimant pursuant to this section shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances:

(1) If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from _____ in the sum of $_____
(Maker of Check) (Amount of Check)
payable to _____
(Payee or Payees of Check)
and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____ located at _____
(Owner) (Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to _____ through _____
(Your Customer) (Date)
only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: _____ _____
(Company Name)
By _____
(Title)

(2) If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of $____ for labor, services, equipment, or material furnished to _____ on the job of _____
(Your Customer) (Owner)
located at _____ and does hereby
(Job Description)
release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to _____ through _____ only and
(Your Customer) (Date)
does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated:_____ _____
(Company Name)

By_____
(Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

(3) If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for

the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from_____in the sum of $____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____located at_____
(Owner) (Job Description)
This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of $____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated:_____ _____
(Company Name)
By_____
(Title)

(4) If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment, or material furnished to

_____ on the job of _____
(Your Customer) (Owner)

located at _____ and does
(Job Description)

hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of $ _____.

Dated: _____ _____
(Company Name)

By _____
(Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

SEC. 59. Section 3415 of the Civil Code is amended to read:

3415. (a) An action may be maintained by any person interested in any private document or instrument in writing, which has been lost or destroyed, to prove or establish the document or instrument or to compel the issuance, execution, and acknowledgment of a duplicate of the document or instrument.

(b) If the document or instrument is a negotiable instrument, the court shall compel the owner of the negotiable instrument to give an indemnity bond to the person reissuing, reexecuting, or reacknowledging the same, against loss, damage, expense, or other liability that may be suffered by the person by reason of the issuance of the duplicate instrument or by the original instrument still remaining outstanding.

SEC. 60. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted

by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the California Victim Compensation and Government Claims Board. In addition, a retired judge shall receive for the time so served, amounts equal to that which the judge would have received if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of, the appellate division.

(h) Notwithstanding subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court.

SEC. 61. Section 94 of the Code of Civil Procedure is amended to read:

94. Discovery is permitted only to the extent provided by this section and Section 95. This discovery shall comply with the notice and format requirements of the particular method of discovery, as provided in Title 4 (commencing with Section 2016.010) of Part 4. As to each adverse party, a party may use the following forms of discovery:

(a) Any combination of 35 of the following:

(1) Interrogatories (with no subparts) under Chapter 13 (commencing with Section 2030.010) of Title 4 of Part 4.

(2) Demands to produce documents or things under Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4.

(3) Requests for admission (with no subparts) under Chapter 16 (commencing with Section 2033.010) of Title 4 of Part 4.

(b) One oral or written deposition under Chapter 9 (commencing with Section 2025.010), Chapter 10 (commencing with Section 2026.010), or Chapter 11 (commencing with Section 2028.010) of Title 4 of Part 4. For purposes of this subdivision, a deposition of an organization shall be treated as a single deposition even though more than one person may be designated or required to testify pursuant to Section 2025.230.

(c) Any party may serve on any person a deposition subpoena duces tecum requiring the person served to mail copies of documents, books, or records to the party's counsel at a specified address, along with an affidavit complying with Section 1561 of the Evidence Code.

The party who issued the deposition subpoena shall mail a copy of the response to any other party who tenders the reasonable cost of copying it.

(d) Physical and mental examinations under Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4.

(e) The identity of expert witnesses under Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4.

SEC. 62. Section 338 of the Code of Civil Procedure is amended to read:

338. Within three years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for trespass upon or injury to real property.

(c) An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property. The cause of action in the case of theft, as defined in Section 484 of the Penal

Code, of any article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or the law enforcement agency that originally investigated the theft.

(d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

(e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not deemed to have accrued until the discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action upon the bond.

(f) (1) An action against a notary public on his or her bond or in his or her official capacity except that any cause of action based on malfeasance or misfeasance is not deemed to have accrued until discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action.

(2) Notwithstanding paragraph (1), an action based on malfeasance or misfeasance shall be commenced within one year from discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action or within three years from the performance of the notarial act giving rise to the action, whichever is later.

(3) Notwithstanding paragraph (1), an action against a notary public on his or her bond or in his or her official capacity shall be commenced within six years.

(g) An action for slander of title to real property.

(h) An action commenced under Section 17536 of the Business and Professions Code. The cause of action in that case shall not be deemed to have accrued until the discovery by the aggrieved party, the Attorney General, the district attorney, the county counsel, the city prosecutor, or the city attorney of the facts constituting grounds for commencing the action.

(i) An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under their jurisdiction.

(j) An action to recover for physical damage to private property under Section 19 of Article I of the California Constitution.

(k) An action commenced under Division 26 (commencing with Section 39000) of the Health and Safety Code. These causes of action shall not be deemed to have accrued until the discovery by the State Air Resources Board or by a district, as defined in Section 39025 of the

Health and Safety Code, of the facts constituting grounds for commencing the action under its jurisdiction.

(*l*) An action commenced under Section 1603.1, 1615, or 5650.1 of the Fish and Game Code. These causes of action shall not be deemed to have accrued until discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

(m) An action challenging the validity of the levy upon a parcel of a special tax levied by a local agency on a per parcel basis.

(n) An action commencing under Section 51.7 of the Civil Code.

SEC. 63. Section 417.10 of the Code of Civil Procedure is amended to read:

417.10. Proof that a summons was served on a person within this state shall be made:

(a) If served under Section 415.10, 415.20, or 415.30, by the affidavit of the person making the service showing the time, place, and manner of service and facts showing that the service was made in accordance with this chapter. The affidavit shall recite or in other manner show the name of the person to whom a copy of the summons and of the complaint were delivered, and, if appropriate, his or her title or the capacity in which he or she is served, and that the notice required by Section 412.30 appeared on the copy of the summons served, if in fact it did appear.

If service is made by mail pursuant to Section 415.30, proof of service shall include the acknowledgment of receipt of summons in the form provided by that section or other written acknowledgment of receipt of summons satisfactory to the court.

(b) If served by publication pursuant to Section 415.50, by the affidavit of the publisher or printer, or his or her foreperson or principal clerk, showing the time and place of publication, and an affidavit showing the time and place a copy of the summons and of the complaint were mailed to the party to be served, if in fact mailed.

(c) If served pursuant to another law of this state, in the manner prescribed by that law or, if no manner is prescribed, in the manner prescribed by this section for proof of a similar manner of service.

(d) By the written admission of the party.

(e) If served by posting pursuant to Section 415.45, by the affidavit of the person who posted the premises, showing the time and place of posting, and an affidavit showing the time and place copies of the summons and of the complaint were mailed to the party to be served, if in fact mailed.

(f) All proof of personal service shall be made on a form adopted by the Judicial Council.

SEC. 63.5. Section 425.11 of the Code of Civil Procedure is amended to read:

425.11. (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. In the event that a response is not served, the defendant, on notice to the plaintiff, may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(c) If no request is made for the statement referred to in subdivision (b), the plaintiff shall serve the statement on the defendant before a default may be taken.

(d) The statement referred to in subdivision (b) shall be served in the following manner:

(1) If a party has not appeared in the action, the statement shall be served in the same manner as a summons.

(2) If a party has appeared in the action, the statement shall be served upon the party's attorney, or upon the party if the party has appeared without an attorney, in the manner provided for service of a summons or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(e) The statement referred to in subdivision (b) may be combined with the statement described in Section 425.115.

SEC. 64. Section 460.7 of the Code of Civil Procedure is amended to read:

460.7. (a) In any action by a candidate or former candidate for elective public office against a holder of elective public office or an opposing candidate for libel or slander that is alleged to have occurred during the course of an election campaign, the court shall order that the time to respond to the complaint is 20 days after the service of summons on the defendant. The order shall direct the clerk to endorse the summons to show that the time to respond has been shortened pursuant to this section. A copy of the affidavit and order shall be served with the summons.

(b) In any action described in subdivision (a), unless otherwise ordered by the court for good cause shown, the time allowed the defendant to respond to the complaint or amend the answer under Section 586 shall not exceed 10 days.

(c) The court shall give any action described in subdivision (a) precedence over all other civil actions, except actions to which special

precedence is given by law, in the matter of the setting of the case of hearing or trial, and in hearing the case, to the end that all actions described in subdivision (a) shall be quickly heard and determined. Except for good cause shown, the court shall not grant a continuance in excess of 10 days without the consent of the adverse party.

SEC. 65. Section 1021.8 of the Code of Civil Procedure is amended to read:

1021.8. (a) Whenever the Attorney General prevails in a civil action to enforce Section 17537.3, 22445, 22446.5, 22958, 22962, or 22963 of the Business and Professions Code, Section 52, 52.1, 55.1, or 3494 of the Civil Code, the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code or the California Commodity Law of 1990 (Division 4.5 (commencing with Section 29500) of Title 4 of the Corporations Code), Section 1615, 2014, or 5650.1 of the Fish and Game Code, Section 4458, 12598, 12606, 12607, 12989.3, 16147, 66640, 66641, or 66641.7 of the Government Code, Section 13009, 13009.1, 19958.5, 25299, 39674, 41513, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 43016, 43017, 43154, 104557, or 118950 of the Health and Safety Code, Section 308.1 or 308.3 of the Penal Code, Section 2774.1, 4601.1, 4603, 4605, 30820, 30821.6, 30822, 42847, or 48023 of the Public Resources Code, Section 30101.7 of the Revenue and Taxation Code, or Section 275, 1052, 1845, 13261, 13262, 13264, 13265, 13268, 13304, 13331, 13350, or 13385 of the Water Code, the court shall award to the Attorney General all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs. Awards under this section shall be paid to the Public Rights Law Enforcement Special Fund established by Section 12530 of the Government Code.

(b) This section applies to any action pending on the effective date of this section and to any action filed thereafter.

(c) The amendments made to this section by Chapter 227 of the Statutes of 2004 shall apply to any action pending on the effective date of these amendments and to any action filed thereafter.

SEC. 66. Section 1141.21 of the Code of Civil Procedure is amended to read:

1141.21. (a) (1) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of these costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(A) To the court, the compensation actually paid to the arbitrator, less any amount paid pursuant to subparagraph (D).

(B) To the other party or parties, all costs specified in Section 1033.5, and the party electing the trial de novo shall not recover his or her costs.

(C) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case.

(D) To the other party or parties, the compensation paid by the other party or parties to the arbitrator, pursuant to subdivision (b) of Section 1141.28.

(2) Those costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial de novo.

(b) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs and fees under subparagraphs (B) and (C) of paragraph (1) of subdivision (a) shall be imposed only as an offset against any damages awarded in favor of that party.

(c) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs under subparagraph (A) of paragraph (1) of subdivision (a) shall be imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under subdivision (b) has been deducted from the judgment.

SEC. 67. Section 1245.320 of the Code of Civil Procedure is amended to read:

1245.320. As used in this article, "quasi-public entity" means:

(a) An educational institution of collegiate grade not conducted for profit that seeks to take property by eminent domain under Section 94500 of the Education Code.

(b) A nonprofit hospital that seeks to take property by eminent domain under Section 1260 of the Health and Safety Code.

(c) A cemetery authority that seeks to take property by eminent domain under Section 8501 of the Health and Safety Code.

(d) A limited-dividend housing corporation that seeks to take property by eminent domain under Section 34874 of the Health and Safety Code.

(e) A land-chest corporation that seeks to take property by eminent domain under former Section 35167 of the Health and Safety Code.

(f) A mutual water company that seeks to take property by eminent domain under Section 2729 of the Public Utilities Code.

SEC. 68. Section 1345 of the Code of Civil Procedure is amended to read:

1345. If any person has erroneously delivered any unclaimed moneys or other unclaimed property to the state or any officer or employee thereof, and the moneys or other property is deposited in the Unclaimed Property Fund or is held by the Controller or Treasurer in the name of any account in that fund pursuant to this title, the moneys or other property delivered in error may be refunded or returned to that person on order of the Controller, with the approval of the California Victim Compensation and Government Claims Board.

SEC. 69. Section 1346 of the Code of Civil Procedure is amended to read:

1346. If any person has erroneously delivered any unclaimed moneys or other unclaimed property to the state or any officer or employee thereof, and the moneys or other property is deposited in, or transferred to, the General Fund, or is held by the Controller or Treasurer in the name of that fund, pursuant to this title, the moneys or other property delivered in error, if cash, shall on order of the Controller, be transferred from the General Fund to the Unclaimed Property Fund, and, if other than cash, the records of the Controller and Treasurer shall be adjusted to show that it is held in the name of the proper account in the Unclaimed Property Fund; and the moneys or other property may be refunded or returned to that person on order of the Controller, with the approval of the California Victim Compensation and Government Claims Board.

SEC. 70. Section 1370 of the Code of Civil Procedure is amended to read:

1370. The Controller, with the prior approval of the California Victim Compensation and Government Claims Board, may sell or lease personal property at any time, and in any manner, and may execute those leases on behalf and in the name of the State of California.

SEC. 71. Section 1371 of the Code of Civil Procedure is amended to read:

1371. The Controller, with the prior approval of the California Victim Compensation and Government Claims Board, may sell, cash, redeem, exchange, or otherwise dispose of any securities and all other classes of personal property, and may sell, cash, redeem, exchange, compromise, adjust, settle, or otherwise dispose of any accounts, debts, contractual rights, or other choses in action if, in his or her opinion, that action on his or her part is necessary or will tend to safeguard and conserve the interests of all parties, including the state, having any vested or expectant interest in the property.

SEC. 72. Section 1375 of the Code of Civil Procedure is amended to read:

1375. With the approval of the California Victim Compensation and Government Claims Board, any real property may be sold or leased by the Controller at private sale without published notice.

SEC. 73. Section 1379 of the Code of Civil Procedure is amended to read:

1379. With the prior approval of the California Victim Compensation and Government Claims Board, the Controller may destroy or otherwise dispose of any personal property other than cash deposited in the State Treasury under this title, if that property is determined by him or her to be valueless or of such little value that the costs of conducting a sale would probably exceed the amount that would be realized from the sale, and neither the Treasurer nor Controller shall be held to respond in damages at the suit of any person claiming loss by reason of that destruction or disposition.

SEC. 74. Section 1775.14 of the Code of Civil Procedure is amended to read:

1775.14. (a) On or before January 1, 1998, the Judicial Council shall submit a report to the Legislature concerning court alternative dispute resolution programs. This report shall include, but not be limited to, a review of programs operated in Los Angeles County and other courts that have elected to apply this title, and shall examine, among other things, the effect of this title on the judicial arbitration programs of courts that have participated in that program.

(b) The Judicial Council shall, by rule, require that each court applying this title file with the Judicial Council data that will enable the Judicial Council to submit the report required by subdivision (a).

SEC. 75. Section 1800 of the Code of Civil Procedure is amended to read:

1800. (a) As used in this section, the following terms have the following meanings:

(1) "Insolvent" means:

(A) With reference to a person other than a partnership, a financial condition such that the sum of the person's debts is greater than all of the person's property, at a fair valuation, exclusive of both of the following:

(i) Property transferred, concealed, or removed with intent to hinder, delay, or defraud the person's creditors.

(ii) Property that is exempt from property of the estate pursuant to the election of the person made pursuant to Section 1801.

(B) With reference to a partnership, financial condition such that the sum of the partnership's debts are greater than the aggregate of, at a fair valuation, both of the following:

(i) All of the partnership's property, exclusive of property of the kind specified in clause (i) of subparagraph (A).

(ii) The sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in clause (ii) of subparagraph (A), over the partner's separate debts.

(2) "Inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease.

(3) "Insider" means:

(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.

(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:

(i) A director of the assignor.

(ii) An officer of the assignor.

(iii) A person in control of the assignor.

(iv) A partnership in which the assignor is a general partner.

(v) A general partner of the assignor.

(vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:

(i) A general partner in the assignor.

(ii) A relative of a general partner in, general partner of, or person in control of the assignor.

(iii) A partnership in which the assignor is a general partner.

(iv) A general partner of the assignor.

(v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, the following terms have the following meanings:

"Relative" means an individual related by affinity or consanguinity within the third degree as determined by the common law, or an individual in a step or adoptive relationship within the third degree.

An "affiliate" means a person that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the assignor, or 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held

with power to vote by the assignor, excluding securities held in a fiduciary or agency capacity without sole discretionary power to vote, or held solely to secure a debt if the holder has not in fact exercised the power to vote, or a person who operates the business of the assignor under a lease or operating agreement or whose business is operated by the assignor under a lease or operating agreement.

(4) "Judicial lien" means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(5) "New value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the assignor or the assignee under any applicable law, but does not include an obligation substituted for an existing obligation.

(6) "Receivable" means a right to payment, whether or not the right has been earned by performance.

(7) "Security agreement" means an agreement that creates or provides for a security interest.

(8) "Security interest" means a lien created by an agreement.

(9) "Statutory lien" means a lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include a security interest or judicial lien, whether or not the interest or lien is provided by or is dependent on a statute and whether or not the interest or lien is made fully effective by statute.

(10) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(b) Except as provided in subdivision (c), the assignee of any general assignment for the benefit of creditors, as defined in Section 493.010, may recover any transfer of property of the assignor that is all of the following:

(1) To or for the benefit of a creditor.

(2) For or on account of an antecedent debt owed by the assignor before the transfer was made.

(3) Made while the assignor was insolvent.

(4) Made on or within 90 days before the date of the making of the assignment or made between 90 days and one year before the date of making the assignment if the creditor, at the time of the transfer, was an insider and had reasonable cause to believe the debtor was insolvent at the time of the transfer.

(5) Enables the creditor to receive more than another creditor of the same class.

(c) The assignee may not recover under this section a transfer as follows:

(1) To the extent that the transfer was both of the following:

(A) Intended by the assignor and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the assignor.

(B) In fact a substantially contemporaneous exchange.

(2) To the extent that the transfer was all of the following:

(A) In payment of a debt incurred in the ordinary course of business or financial affairs of the assignor and the transferee.

(B) Made in the ordinary course of business or financial affairs of the assignor and the transferee.

(C) Made according to ordinary business terms.

(3) Of a security interest in property acquired by the assignor that meets both of the following:

(A) To the extent the security interest secures new value that was all of the following:

(i) Given at or after the signing of a security agreement that contains a description of the property as collateral.

(ii) Given by or on behalf of the secured party under the agreement.

(iii) Given to enable the assignor to acquire the property.

(iv) In fact used by the assignor to acquire the property.

(B) That is perfected within 20 days after the security interest attaches.

(4) To or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the assignor that meets both of the following:

(A) Not secured by an otherwise unavoidable security interest.

(B) On account of which new value the assignor did not make an otherwise unavoidable transfer to or for the benefit of the creditor.

(5) Of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all the transfers to the transferee caused a reduction, as of the date of the making of the assignment and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by the security interest exceeded the value of all security interest for the debt on the later of the following:

(A) Ninety days before the date of the making of the assignment.

(B) The date on which new value was first given under the security agreement creating the security interest.

(6) That is the fixing of a statutory lien.

(7) That is payment to a claimant, as defined in Section 3085 of the Civil Code, in exchange for the claimant's waiver or release of any

potential or asserted claim of lien, stop notice, or right to recover on a payment bond, or any combination thereof.

(8) To the extent that the transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of, the spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or a determination made in accordance with state or territorial law by a governmental unit, or property settlement agreement; but not to the extent that either of the following occurs:

(A) The debt is assigned to another entity voluntarily, by operation of law or otherwise, in which case the assignee may not recover that portion of the transfer that is assigned to the state or any political subdivision of the state pursuant to Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 601 et seq.) and passed on to the spouse, former spouse, or child of the debtor.

(B) The debt includes a liability designated as alimony, maintenance, or support, unless the liability is actually in the nature of alimony, maintenance, or support.

(d) An assignee of any general assignment for the benefit of creditors, as defined in Section 493.010, may avoid a transfer of property of the assignor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the assignee under subdivision (b). The liability of the surety under the bond or obligation shall be discharged to the extent of the value of the property recovered by the assignee or the amount paid to the assignee.

(e) (1) For the purposes of this section:

(A) A transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of the property from the debtor, against whom applicable law permits the transfer to be perfected, cannot acquire an interest that is superior to the interest of the transferee.

(B) A transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3), a transfer is made at any of the following times:

(A) At the time the transfer takes effect between the transferor and the transferee, if the transfer is perfected at, or within 10 days after, the time, except as provided in subparagraph (B) of paragraph (3) of subdivision (c).

(B) At the time the transfer is perfected, if the transfer is perfected after the 10 days.

(C) Immediately before the date of making the assignment if the transfer is not perfected at the later of:

(i) The making of the assignment.

(ii) Ten days after the transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the assignor has acquired rights in the property transferred.

(f) For the purposes of this section, the assignor is presumed to have been insolvent on and during the 90 days immediately preceding the date of making the assignment.

(g) An action by an assignee under this section must be commenced within one year after making the assignment.

SEC. 76. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following terms have the following meanings:

(1) "Deposition officer" means a person who meets the qualifications specified in Section 2020.420.

(2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum. "Employee" also means any individual who is or has been represented by a labor organization that is a witness subject to a subpoena duces tecum.

(3) "Employment records" means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee, or by any labor organization that has represented or currently represents the employee.

(4) "Labor organization" has the meaning set forth in Section 1117 of the Labor Code.

(5) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but does not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance

of the subpoena, if any; the notice described in subdivision (e); and proof of service as provided in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 2, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee, and that any objection to the release of records is waived.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records, the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of taking of

deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) (1) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer does not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

(2) Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, the deposition officer, and the witness a written objection that cites the specific grounds on which production of the employment records should be prohibited.

(3) No witness or deposition officer shall be required to produce employment records after receipt of notice that the motion has been brought by an employee, or after receipt of a written objection from a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected.

(4) The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witnesses and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) if due diligence by the subpoenaing party has been shown.

(h) This section may not be construed to apply to any subpoena duces tecum that does not request the records of any particular employee or employees and that requires a custodian of records to delete all information that would in any way identify any employee whose records are to be produced.

(i) This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200), of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

(k) If the subpoenaing party is the employee, and the employee is the only subject of the subpoenaed records, notice to the employee, and delivery of the other documents specified in subdivision (b) to the employee, are not required under this section.

SEC. 77. Section 16101 of the Commercial Code is amended to read:

16101. The repeal and addition of Division 3 (commencing with Section 3101) and the repeal and addition, the amendment, and the addition of provisions of Division 4 (commencing with Section 4101), and the amendment of related sections, adopted by the Legislature in Chapter 914 of the Statutes of 1992, shall become effective on January 1, 1993. The Legislature intends that this action be construed as an amendment of Division 3 (commencing with Section 3101) and Division 4 (commencing with Section 4101), notwithstanding that the action took the form of a repeal and addition of Division 3 (commencing with Section 3101), and a repeal and addition to, and amendment of, or an addition to the provisions of Division 4 (commencing with Section 4101).

SEC. 78. Section 118 of the Corporations Code is amended to read:

118. Any reference in this division to the time a notice is given or sent means, unless otherwise expressly provided, any of the following:

(a) The time a written notice by mail is deposited in the United States mails, postage prepaid.

(b) The time any other written notice, including facsimile, telegram, or electronic mail message, is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient.

(c) The time any oral notice is communicated, in person or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, or wireless, to the recipient, including the recipient's designated voice mailbox or address on the system, or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

SEC. 79. Section 7312 of the Corporations Code is amended to read:

7312. No person may hold more than one membership, and no fractional memberships may be held, except as follows:

(a) Two or more persons may have an indivisible interest in a single membership when authorized by, and in a manner or under the circumstances prescribed by, the articles or bylaws subject to Section 7612.

(b) If the articles or bylaws provide for classes of membership and if the articles or bylaws permit a person to be a member of more than one class, a person may hold a membership in one or more classes.

(c) Any branch, division, or office of any person, which is not formed primarily to be a member, may hold a separate membership.

(d) In the case of membership in an owners' association, created in connection with any of the forms of development referred to in Section 11004.5 of the Business and Professions Code, the articles or bylaws may permit a person who owns an interest, or who has a right of exclusive occupancy, in more than one lot, parcel, area, apartment, or unit to hold a separate membership in the owners' association for each lot, parcel, area, apartment, or unit.

(e) In the case of membership in a mutual water company, as defined in Section 14300, the articles or bylaws may permit a person entitled to membership by reason of the ownership, lease, or right of occupancy of more than one lot, parcel, or other service unit to hold a separate membership in the mutual water company for each lot, parcel, or other service unit.

(f) In the case of membership in a mobilehome park acquisition corporation, as described in Section 11010.8 of the Business and Professions Code, a bona fide secured party who has, pursuant to a security interest in a membership, taken title to the membership by way of foreclosure, repossession, or voluntary repossession, and who is actively attempting to resell the membership to a prospective homeowner or resident of the mobilehome park, may own more than one membership.

SEC. 80. Section 8724 of the Corporations Code is amended to read:

8724. Without the approval of 100 percent of the members, any contrary provision in this part or the articles or bylaws notwithstanding, so long as there is any lot, parcel, area, apartment, or unit for which an owners' association, created in connection with any of the forms of development referred to in Section 11004.5 of the Business and Professions Code, is obligated to provide management, maintenance, preservation, or control, the following shall apply:

(a) The owners' association or any person acting on its behalf shall not do either of the following:

(1) Transfer all or substantially all of its assets.

(2) File a certificate of dissolution.

(b) No court shall enter an order declaring the owners' association duly wound up and dissolved.

SEC. 81. Section 12663 of the Corporations Code is amended to read:

12663. Without the approval of 100 percent of the members, any contrary provision in this part or the articles or bylaws notwithstanding,

so long as there is any lot, parcel, area, apartment or unit for which an owners' association, created in connection with any of the forms of development referred to in Section 11004.5 of the Business and Professions Code, is obligated to provide management, maintenance, preservation, or control, the following shall apply:

(a) The owners' association or any person acting on its behalf shall not do either of the following:

(1) Transfer all or substantially all of its assets.

(2) File a certificate of dissolution.

(b) No court shall enter an order declaring the owners' association duly wound up and dissolved.

SEC. 82. Section 17104 of the Corporations Code is amended to read:

17104. (a) Meetings of members may be held at any place, by electronic video screen communication or by electronic transmission by and to the limited liability company pursuant to paragraphs (1) and (2) of subdivision (o) of Section 17001, either within or without this state, selected by the person or persons calling the meeting or as may be stated in or fixed in accordance with the articles of organization or a written operating agreement. If no other place is stated or so fixed, all meetings shall be held at the principal executive office of the limited liability company. Unless prohibited by the articles of organization of the limited liability company, if authorized by the operating agreement, members not physically present in person or by proxy at a meeting of members may, by electronic transmission by and to the limited liability company pursuant to paragraphs (1) and (2) of subdivision (o) of Section 17001 or by electronic video screen communication, participate in a meeting of members, be deemed present in person or by proxy, and vote at a meeting of members whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the limited liability company or by electronic video screen communication, in accordance with subdivision (*l*).

(b) A meeting of the members may be called by any manager or by any member or members representing more than 10 percent of the interests of members for the purpose of addressing any matters on which the members may vote.

(c) (1) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 days nor more than 60 days before the date of the meeting to each member entitled to vote at the meeting. The notice shall state the place, date, and hour of the meeting, the means of electronic transmission by and to the limited liability company or electronic video

screen communication, if any, and the general nature of the business to be transacted. No other business may be transacted at this meeting.

(2) Any report or any notice of a members' meeting shall be given personally, by electronic transmission by the limited liability company, or by mail or other means of written communication, addressed to the member at the address of the member appearing on the books of the limited liability company or given by the member to the limited liability company for the purpose of notice, or, if no address appears or is given, at the place where the principal executive office of the limited liability company is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally, delivered by electronic transmission by the limited liability company, deposited in the mail, or sent by other means of written communication. An affidavit of mailing or delivered by electronic transmission by the limited liability company of any notice or report in accordance with this article, executed by a manager, shall be prima facie evidence of the giving of the notice or report.

(3) If any notice or report addressed to the member at the address of the member appearing on the books of the limited liability company is returned to the limited liability company by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if they are available for the member at the principal executive office of the limited liability company for a period of one year from the date of the giving of the notice or report to all other members.

(4) Notice given by electronic transmission by the limited liability company under this subdivision shall be valid only if it complies with paragraph (1) of subdivision (o) of Section 17001. Notwithstanding this condition, notice shall not be given by electronic transmission by the limited liability company under this subdivision after either of the following:

(A) The limited liability company is unable to deliver two consecutive notices to the member by that means.

(B) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or any other person responsible for the giving of the notice.

(5) Upon written request to a manager by any person entitled to call a meeting of members, the manager shall immediately cause notice to be given to the members entitled to vote that a meeting will be held at a time requested by the person calling the meeting, not less than 10 days nor more than 60 days after the receipt of the request. If the notice is not

given within 20 days after receipt of the request, the person entitled to call the meeting may give the notice or, upon the application of that person, the superior court of the county in which the principal executive office of the limited liability company is located, or if the principal executive office is not in this state, the county in which the limited liability company's address in this state is located, shall summarily order the giving of the notice, after notice to the limited liability company affording it an opportunity to be heard. The procedure provided in subdivision (c) of Section 305 shall apply to the application. The court may issue any order as may be appropriate, including, without limitation, an order designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the articles of organization or a written operating agreement otherwise require and, except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof or the means of electronic transmission by and to the limited liability company or electronic video screen communication, if any, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the limited liability company may transact any business that may have been transacted at the original meeting. If the adjournment is for more than 45 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

(e) The actions taken at any meeting of members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, provides a waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting in writing. All waivers, consents, and approvals shall be filed with the limited liability company records or made a part of the minutes of the meeting after conversion to the form in which those records or minutes are kept. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this title to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted nor the purpose of any meeting of members need be specified in any written waiver of notice, unless

otherwise provided in the articles of organization or operating agreement, except as provided in subdivision (g).

(f) Members may participate in a meeting of the limited liability company through the use of conference telephones or electronic video screen communication, as long as all members participating in the meeting can hear one another, or by electronic transmission by and to the limited liability company pursuant to paragraphs (1) and (2) of subdivision (o) of Section 17001. Participation in a meeting pursuant to this provision constitutes presence in person at that meeting.

(g) Any action approved at a meeting, other than by unanimous approval of those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(h) (1) A majority in interest of the members represented in person or by proxy shall constitute a quorum at a meeting of members.

(2) The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum, other than adjournment, is approved by the requisite percentage of interests of members specified in this title or in the articles of organization or a written operating agreement.

(3) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the interests represented either in person or by proxy, but no other business may be transacted, except as provided in paragraph (2).

(i) (1) Any action that may be taken at any meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed and delivered to the limited liability company within 60 days of the record date for that action by members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all members entitled to vote thereon were present and voted.

(2) Unless the consents of all members entitled to vote have been solicited in writing, (A) notice of any member approval of an amendment to the articles of organization or operating agreement, a dissolution of the limited liability company as provided in Section 17350, or a merger of the limited liability company as provided in Section 17551, without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by the approval, and (B) prompt notice shall be given of the taking of any other action approved by members without a meeting by less than unanimous written consent, to those members entitled to vote who have not consented in writing.

(3) Any member giving a written consent, or the member's proxyholder, may revoke the consent personally or by proxy by a writing received by the limited liability company prior to the time that written consents of members having the minimum number of votes that would be required to authorize the proposed action have been filed with the limited liability company, but may not do so thereafter. This revocation is effective upon its receipt at the office of the limited liability company required to be maintained pursuant to Section 17057.

(j) The use of proxies in connection with this section will be governed in the same manner as in the case of corporations formed under the General Corporation Law.

(k) In order that the limited liability company may determine the members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights in respect of any other lawful action, a manager, or members representing more than 10 percent of the interests of members, may fix, in advance, a record date, that is not more than 60 days nor less than 10 days prior to the date of the meeting and not more than 60 days prior to any other action. If no record date is fixed the following shall apply:

(1) The record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining members entitled to give consent to limited liability company action in writing without a meeting shall be the day on which the first written consent is given.

(3) The record date for determining members for any other purpose shall be at the close of business on the day on which the managers adopt the resolution relating thereto, or the 60th day prior to the date of the other action, whichever is later.

(4) The determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting unless a manager or the members who called the meeting fix a new record date for the adjourned meeting, but the manager or the members who called the meeting shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

(*l*) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the limited liability company or by electronic video screen communication if both of the following requirements are met:

(1) The limited liability company implements reasonable measures to provide members, in person or by proxy, a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings.

(2) When any member votes or takes other action at the meeting by means of electronic transmission to the limited liability company or electronic video screen communication, a record of that vote or action is maintained by the limited liability company.

SEC. 83. Section 25100.1 of the Corporations Code is amended to read:

25100.1. The following securities are not subject to Sections 25110, 25120, and 25130:

(a) A security defined as a "covered security" pursuant to Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Sec. 77r).

(b) A security issued by an investment company that is registered or that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1) and that is defined as a "covered security" pursuant to Section 18(b)(2) of the Securities Act of 1933, and all the following requirements are met:

(1) Prior to any offer or sale in this state, there is filed with or paid to the commissioner each of the following:

(A) A notice consisting of all documents that are part of a federal registration statement filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or, in lieu thereof, a form prescribed by the commissioner, and that a consent to service of process is either on file with the commissioner or is attached to the notice.

(B) As necessary to compute fees, a report of the value of securities covered under this subdivision that are offered or sold in this state.

(C) The notice filing fee provided for in subdivision (a) of Section 25608.1.

(2) If any offer or sale is to be made pursuant to Section 18(b)(2) of the Securities Act of 1933 and this subdivision more than 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice and pay the fee specified in subparagraph (C) of paragraph (1).

SEC. 84. Section 1753 of the Education Code is amended to read:

1753. The services described in Sections 1750, 1751, and 1752 shall be performed by persons who hold a valid health and development credential, or life diploma based thereon, or a services credential with a specialization in health issued by the state board or Commission for Teacher Preparation and Licensing; provided, however, that a psychologist may be employed to perform psychological services or

may perform psychological services under contract if he or she is the holder of a valid school psychologist credential issued by the state board.

SEC. 85. Section 1762 of the Education Code is amended to read:

1762. The services described in Sections 1760 and 1761 shall be performed by persons who hold a valid credential issued by the state board or Commission for Teacher Preparation and Licensing authorizing performance of the services.

SEC. 86. Section 7002.5 of the Education Code is amended to read:

7002.5. (a) This article does not create a vested retirement right in health and dental care benefits.

(b) The individual districts, the county office, a health plan, an entity providing or arranging a health plan, and the State Teachers' Retirement System do not have any legal duty to contact retired teachers or surviving spouses of certificated employees with regard to this article.

SEC. 87. Section 8275 of the Education Code is amended to read:

8275. (a) The Superintendent may reimburse approvable startup costs of child development agencies or facilities in an amount not to exceed 15 percent of the expansion or increase of each agency's total contract amount. Under no circumstances shall reimbursement for startup costs result in an increase in the agency's total contract amount. These funds shall be available for all of the following:

(1) The employment and orientation of necessary staff.

(2) The setting up of the program and facility.

(3) The finalization of rental agreements and the making of necessary deposits.

(4) The purchase of a reasonable inventory of materials and supplies.

(5) The purchase of an initial premium for insurance.

(b) Agencies shall submit claims for startup costs with their first quarterly reports.

(c) The Legislature recognizes that allowances for startup costs are necessary for the establishment and stability of new child development programs. Programs initially funded in the 1978–79 fiscal year and 1979–80 fiscal year are included in this section.

SEC. 88. Section 8363.5 of the Education Code is amended to read:

8363.5. (a) A special child development permit shall be issued to any person employed as a supervisor, head teacher, or teacher by an agency conducting a child care and development program under contract with a county who did not meet the requirements for an emergency instructional permit authorizing service in children's centers or a supervisor's permit with postponement of requirements authorizing service in a children's center in effect on October 15, 1974. A special child development permit issued pursuant to this section shall be valid

for 36 months after its date of issuance. Within the 36-month period following the date of issuance of the permit, the following shall apply:

(1) A person employed as a head teacher or teacher who has completed 30 semester hours of coursework taken in an approved institution, including 12 semester hours of coursework in subject fields related to early childhood education, shall be issued an emergency instructional permit authorizing service in a children's center and be subject to the term and renewal regulations in effect on October 15, 1974.

(2) A person employed as a supervisor who has obtained a bachelor's degree from an approved institution and completed at least 12 semester hours of coursework in subject fields related to early childhood education shall be issued a supervision permit with postponement of requirements authorizing service in children's centers and be subject to the term and renewal regulations in effect on October 15, 1974.

(b) It is the intention of the Legislature that this section be liberally interpreted to ensure that those experienced and qualified persons employed in county contract day care centers prior to July 1, 1974, maintain their positions and be given ample opportunity to upgrade their skills to meet revised educational standards.

SEC. 89. Section 8484.75 of the Education Code is amended to read:

8484.75. The requirements of the After School Education and Safety Program described in Article 22.5 (commencing with Section 8482) apply to the program established by this article, with the following exceptions as applicable:

(a) Sections 8482.5, 8482.55, 8483.5, 8483.55, 8483.6, 8483.7, 8483.75, and 8484.5 do not apply to this article.

(b) Any provision of Article 22.5 (commencing with Section 8482) that is in conflict with, or duplicative of, any provision of this article.

(c) Any provision that is in conflict with applicable federal law or regulations.

SEC. 90. Section 8498 of the Education Code is amended to read:

8498. (a) The State Allocation Board may use up to 5 percent of any appropriation for the purposes of this article to provide loans to private nonsectarian child care and development programs not under contract with the department for renovation and repair of existing program facilities, in accordance with this section.

(b) The Superintendent shall establish qualifications to determine the eligibility of child care agencies for loans pursuant to this section.

(c) The board, with any necessary assistance from the Superintendent, may do any of the following:

(1) Establish procedures and policies in connection with the administration of this section it deems necessary.

(2) Adopt rules and regulations for the administration of this section requiring procedure, forms, and information it deems necessary.

(d) A recipient of a loan pursuant to this section shall do all of the following:

(1) Document that the renovated facility shall comply with all laws and regulations applicable to child care facilities provided for pursuant to Chapter 3.4 (commencing with Section 1596.70) and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code.

(2) Demonstrate to the satisfaction of the board that it will have sufficient revenues to pay the principal and interest on the loan and to maintain the operation of the child care facility.

(e) A recipient of a loan pursuant to this section shall assure the board that the renovated facility shall be used for purposes of the child care and development program for the following periods:

(1) For loans equal to or less than thirty thousand dollars ($30,000), not less than three years from the beginning of the loan period.

(2) For loans exceeding thirty thousand dollars ($30,000), the fixed period of time shall increase one year for each additional ten thousand dollars ($10,000) or part thereof, to a maximum of fifty thousand dollars ($50,000).

(f) The board shall set the period of the loan for each recipient, up to a maximum of 10 years, based upon the amount of the loan, the recipient's ability to repay the loan, and the length of time the recipient has committed to use the renovated facility for purposes of the child care and development program.

(g) Interest on the loan principal shall be charged at a rate equal to the average of the interest rate applied to the last three bond sales pursuant to Chapter 21.6 (commencing with Section 17695) of Part 10.

(h) In the event that a recipient ceases to use the renovated facility for purposes of the child care and development program prior to the expiration of the period specified pursuant to subdivision (e), the board shall collect the entire outstanding balance of the loan, plus interest, notwithstanding the loan period originally set pursuant to subdivision (f).

SEC. 91. Section 8669 of the Education Code, as amended by Section 1 of Chapter 676 of the Statutes of 2005, is amended to read:

8669. (a) It is the intent of the Legislature that at least 50 percent, but not more than 75 percent, of the actual costs of the California State Summer School for Mathematics and Science for each fiscal year would be financed by state funds beginning in the 1999–2000 fiscal year. The balance of the operating costs would be financed with fees and private support.

(b) Except as provided in subdivision (c), the Regents of the University of California shall set a tuition fee within a range that corresponds to actual program costs, up to but not exceeding two thousand two hundred dollars ($2,200) per session in the year 2006, and may increase this fee by an amount up to 5 percent each year thereafter. It is the intent of the Legislature that the University of California award full or partial scholarships on the basis of need and that pupils who are unable to pay all or part of the fee may petition the University of California for a fee reduction or waiver to ensure that a qualified applicant is not denied admission solely because of his or her inability to pay part or all of the fee. Any public announcement regarding the summer school program should include notification that need-based scholarships are available, and information regarding the procedure for applying for a scholarship award.

(c) For pupils who are not California residents, it is the intent of the Legislature that the Regents of the University of California set a tuition fee that is not less than the total actual costs to the summer school of services per pupil.

(d) The foundation authorized to be established pursuant to subdivision (f) of Section 8664 may raise funds from the private sector that may be used by the summer school for general program operating costs, scholarships, program augmentation, public relations, recruitment activity, or special projects. Private support may include, but not necessarily be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

(e) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 92. Section 8669 of the Education Code, as added by Section 2 of Chapter 676 of the Statutes of 2005, is amended to read:

8669. (a) It is the intent of the Legislature that at least 50 percent, but not more than 75 percent, of the actual costs of the California State Summer School for Mathematics and Science for each fiscal year would be financed by state funds beginning in the 1999–2000 fiscal year. The balance of the operating costs would be financed with fees and private support.

(b) Except as provided in subdivision (c), the Regents of the University of California shall set a tuition fee within a range that corresponds to actual program costs, up to but not exceeding one thousand dollars ($1,000) per session in the year 2000, and may increase this fee by an amount up to 5 percent each year thereafter. It is the intent of the Legislature that the University of California award full or partial

scholarships on the basis of need and that pupils who are unable to pay all or part of the fee may petition the University of California for a fee reduction or waiver to ensure that a qualified applicant is not denied admission solely because of his or her inability to pay part or all of the fee. Any public announcement regarding the summer school program should include notification that need-based scholarships are available, and information regarding the procedure for applying for a scholarship award.

(c) For pupils who are not California residents, it is the intent of the Legislature that the Regents of the University of California set a tuition fee that is not less than the total actual costs to the summer school of services per pupil.

(d) The foundation authorized to be established pursuant to subdivision (f) of Section 8664 may raise funds from the private sector that may be used by the summer school for general program operating costs, scholarships, program augmentation, public relations, recruitment activity, or special projects. Private support may include, but not necessarily be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

(e) This section shall become operative on January 1, 2008.

SEC. 93. Section 8825 of the Education Code is amended to read:

8825. An eligible applicant may submit a project proposal that addresses one or more of the following areas:

(a) Arts education programs that are aligned to the state adopted visual and performing arts content standards and framework.

(b) Pupil assessment in the arts.

(c) Participation in local and state networks to create comprehensive standards based arts education programs.

(d) Expanding the capacity to assist pupils in achieving the state adopted visual and performing arts content standards.

(e) Developing an online statewide digital visual and performing arts resource center.

(f) Expanding arts education programs developed through participation in the Local Arts Education Partnership Program as set forth in Chapter 5 (commencing with Section 8810).

SEC. 94. Section 12117 of the Education Code is amended to read:

12117. (a) The State Agency for Donated Food Distribution may, without at the time furnishing vouchers or itemized statements, draw from the Donated Food Revolving Fund for use as a departmental revolving fund either of the following:

(1) A sum not to exceed thirty thousand dollars ($30,000).

(2) With the approval of the Department of Finance, a sum in excess of thirty thousand dollars ($30,000).

(b) Any moneys withdrawn pursuant to subdivision (a) may only be used, in accordance with law and the California Victim Compensation and Government Claims Board rules, for payment of compensation earned, traveling expense, traveling expense advances, or where immediate payment is otherwise necessary. All disbursements from the revolving fund shall be substantiated by vouchers filed with and audited by the Controller. From time to time, disbursements, supported by vouchers, may be reported to the Controller in connection with claims for reimbursement of the departmental revolving fund. At any time upon the demand of the Department of Finance or the Controller, the revolving fund shall be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the Controller.

SEC. 95. Section 17625 of the Education Code is amended to read:

17625. (a) Notwithstanding any other law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 17620 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, if the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) A fee or other requirement levied under Section 17620 shall not be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of, or addition to, a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) If any fee or other requirement levied under Section 17620 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 17620 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before January 1, 1998.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply if a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2 of the Government Code.

SEC. 96. Section 19980 of the Education Code is amended to read:

19980. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 97. Section 22121 of the Education Code is amended to read:

22121. (a) "Credited service" means service for which the required contributions have been paid.

(b) "Credited service" for the limited purpose of determining eligibility for benefits pursuant to Section 22134.5, 24203.5, or 24203.6 also includes up to two-tenths of one year of service granted pursuant to Section 22717.

SEC. 98. Section 24618 of the Education Code is amended to read:

24618. Losses or gains resulting from overpayment or underpayment of contributions or other amounts under this part within the limits set by the California Victim Compensation and Government Claims Board for automatic writeoff, and losses or gains in greater amounts specifically approved for writeoffs by the California Victim Compensation and Government Claims Board, shall be debited or credited, as the case may be, to the appropriate reserve in the retirement fund.

SEC. 99. Section 32255 of the Education Code is amended to read:

32255. As used in this chapter:

(a) "Animal" means any living organism of the kingdom animalia, beings that typically differ from plants in capacity for spontaneous movement and rapid motor response to stimulation by a usually greater mobility with some degree of voluntary locomotor ability and by greater irritability commonly mediated through a more or less centralized nervous system, beings that are characterized by a requirement for complex organic nutrients including proteins or their constituents that are usually digested in an internal cavity before assimilation into the body proper, and beings that are distinguished from typical plants by lack of chlorophyll, by an inability to perform photosynthesis, by cells that lack cellulose walls, and by the frequent presence of discrete complex sense organs.

(b) "Alternative education project" includes, but is not limited to, the use of video tapes, models, films, books, and computers, which would provide an alternate avenue for obtaining the knowledge, information, or experience required by the course of study in question. "Alternative education project" also includes "alternative test."

(c) "Pupil" means a person under 18 years of age who is matriculated in a course of instruction in an educational institution within the scope of Section 32255.5. For the purpose of asserting the pupil's rights and receiving any notice or response pursuant to this chapter, "pupil" also includes the parents of the matriculated minor.

SEC. 100. Section 32255.1 of the Education Code is amended to read:

32255.1. (a) Except as otherwise provided in Section 32255.6, any pupil with a moral objection to dissecting or otherwise harming or destroying animals, or any parts thereof, shall notify his or her teacher regarding this objection, upon notification by the school of his or her rights pursuant to Section 32255.4.

(b) If the pupil chooses to refrain from participation in an education project involving the harmful or destructive use of animals, and if the teacher believes that an adequate alternative education project is possible, the teacher may work with the pupil to develop and agree upon an alternate education project for the purpose of providing the pupil an

alternate avenue for obtaining the knowledge, information, or experience required by the course of study in question.

(c) The alternative education project shall require a comparable time and effort investment by the pupil. It shall not, as a means of penalizing the pupil, be more arduous than the original education project.

(d) The pupil shall not be discriminated against based upon his or her decision to exercise his or her rights pursuant to this chapter.

(e) Pupils choosing an alternative educational project shall pass all examinations of the respective course of study in order to receive credit for that course of study. However, if tests require the harmful or destructive use of animals, a pupil may, similarly, seek alternative tests pursuant to this chapter.

(f) A pupil's objection to participating in an educational project pursuant to this section shall be substantiated by a note from his or her parent or guardian.

SEC. 101. Section 33551 of the Education Code is amended to read:

33551. The Members of the Legislature appointed to the commission pursuant to Section 33550 shall have the powers and duties of a joint legislative committee on the subject of educational management and evaluation and shall meet with, and participate in, the work of the commission to the extent that this participation is not incompatible with their positions as Members of the Legislature.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power.

SEC. 102. Section 35105 of the Education Code is amended to read:

35105. Subject to the procedures prescribed by Section 1302.2 of the Elections Code with respect to newly formed unified school districts, the majority of members of the first elected board of any newly formed school district, the members of which majority received the highest number of votes, shall serve until the first Friday in December of the second succeeding odd-numbered year. The other members' terms shall expire on the first Friday in December of the first succeeding odd-numbered year. All of these members shall continue in office until their successors are elected and qualified.

SEC. 103. Section 41500 of the Education Code is amended to read:

41500. (a) Notwithstanding any other provision of law, a school district and county office of education may expend in a fiscal year up to 15 percent of the amount apportioned for the block grants set forth in Article 3 (commencing with Section 41510), Article 5 (commencing with Section 41530), Article 6 (commencing with Section 41540), or Article 7 (commencing with Section 41570) for any other programs for which the school district or county office is eligible for funding, including any program the funding of which is not included in any of the block

grants established pursuant to this chapter. The total amount of funding a school district or county office of education may expend for a program to which funds are transferred pursuant to this section may not exceed 120 percent of the amount of state funding allocated to the school district or county office for purposes of that program in a fiscal year. For purposes of this subdivision, "total amount" means the amount of state funding allocated to a school district or county office for purposes of a particular program in a fiscal year plus the amount transferred in that fiscal year to that program pursuant to this section.

(b) A school district and county office of education shall not, pursuant to this section, transfer funds from Article 2 (commencing with Section 41505) and Article 4 (commencing with Section 41520).

(c) Before a school district or county office of education may expend funds pursuant to this section, the governing board of the school district or the county board of education, as applicable, shall discuss the matter at a noticed public meeting.

(d) A school district shall track transfers made pursuant to this section.

SEC. 104. Section 42238.4 of the Education Code is amended to read:

42238.4. (a) For the 1995–96 fiscal year, the county superintendent of schools shall compute an equalization adjustment for each school district in the county, so that no district's base revenue limit per unit of average daily attendance is less than the prior fiscal year statewide average base revenue limit for the appropriate size and type of district listed in subdivision (b) plus the inflation adjustment specified in Section 42238.1 for the current fiscal year for the appropriate type of district.

For purposes of this section, the district base revenue limit and the statewide average base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(b) Subdivision (a) shall apply to the following school districts, which shall be grouped according to size and type as follows:

District	ADA
Elementary	less than 101
Elementary	more than 100
High School	less than 301
High School	more than 300
Unified	less than 1,501
Unified	more than 1,500

(c) The Superintendent shall compute a revenue limit equalization adjustment for each school district's base revenue limit per unit of average daily attendance as follows:

(1) Add the products of the amount computed for each school district by the county superintendent pursuant to subdivision (a) and the average daily attendance used to calculate the district's revenue limit for the current fiscal year as adjusted for the deficit factor in Section 42238.145.

(2) Divide the amount appropriated for purposes of this section for the current fiscal year by the amount computed pursuant to paragraph (1).

(3) Multiply the amount computed for the school district pursuant to subdivision (a) by the amount computed pursuant to paragraph (2).

(d) For the purposes of this section, the 1994–95 statewide average base revenue limits determined for the purposes of subdivision (a) and the fraction computed pursuant to paragraph (2) of subdivision (c) by the Superintendent for the 1995–96 second principal apportionment shall be final, and shall not be calculated as subsequent apportionments. In no event shall the fraction computed pursuant to paragraph (2) of subdivision (c) exceed 1.00. For the purposes of determining the size of a district used in subdivision (b), the Superintendent shall use a school district's revenue limit average daily attendance for the 1994–95 fiscal year determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280).

(e) This section shall only be operative if the Director of Finance certifies that a settlement agreement in California Teachers Association v. Gould (Sacramento County Superior Court Case CV 373415) is effective. No funds shall be disbursed under this section for this purpose before August 1, 1996, and any apportionment or allocation of funds appropriated for purposes of this section shall be accounted for in the 1995–96 fiscal year.

(f) Appropriations for the 1995–96 fiscal year as a result of the implementation of this section shall be deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202, for the 1995–96 fiscal year and "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year, for purposes of Section 8 of Article XVI of the California Constitution.

SEC. 105. Section 44210 of the Education Code is amended to read:

44210. (a) There is hereby established in the state government the Commission on Teacher Credentialing, to consist of 15 voting members, 14 of whom shall be appointed by the Governor with the advice and

consent of the Senate, as specified in paragraphs (2) to (7), inclusive. The commission shall consist of the following members:

(1) The Superintendent or his or her designee.

(2) Six practicing teachers from public elementary and secondary schools in California.

(3) One person who is employed on the basis of a services credential other than an administrative services credential.

(4) One member of a school district governing board.

(5) Four representatives of the public. None of these persons shall have been employed by an elementary or secondary school district in a position requiring certification, or shall have served as a school district governing board member in the five-year period immediately prior to his or her appointment to the commission.

(6) One school administrator in a public elementary or secondary school in California.

(7) One faculty member from a college or university that grants baccalaureate degrees.

(b) With the exception of the four representatives of the public and the Superintendent, the appointment of a member shall terminate if he or she is no longer a practicing teacher in a public elementary or secondary school, a person who is employed on the basis of a valid services credential, a school administrator, a faculty member of a college or university that grants baccalaureate degrees, or a school district governing board member, as may be the case, in California.

(c) Not more than one member of the commission is to be appointed from the same school district or college or university campus.

(d) The term of each member appointed to the commission on or prior to June 30, 1989, shall expire on July 1, 1989. It is the intent of the Legislature that as of July 1, 1989, the Governor first appoint to the commission, as feasible, members of the Commission on Teacher Credentialing whose terms, notwithstanding this section, would not have expired, to facilitate the transition to a commission with a reduced membership. Commencing July 1, 1989, four members shall be appointed to the commission for terms of two years, five members for terms of three years, and five members for terms of four years.

(e) Each appointment pursuant to this section shall expire on November 20 of the year of expiration of the applicable term. All appointments made pursuant to this section are subject to Section 44213.

SEC. 106. Section 44929.23 of the Education Code is amended to read:

44929.23. (a) The governing board of a school district of any type or class having an average daily attendance of less than 250 pupils may classify as a permanent employee of the district any employee who, after

having been employed by the school district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications. If that classification is not made, the employee shall not attain permanent status and may be reelected from year to year thereafter without becoming a permanent employee until a change in classification is made.

(b) Notwithstanding subdivision (a), Section 44929.21 shall apply to certificated employees employed by a school district, if the governing board of the school district elects to dismiss probationary employees pursuant to Section 44948.2. If that election is made, the governing board thereafter shall classify as a permanent employee of the district any probationary employee who, after being employed for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications as required by Section 44929.21. Any probationary employee who has been employed by the district for two or more consecutive years on the date of that election in a position or positions requiring certification qualifications shall be classified as a permanent employee of the district.

(c) If the classification is not made pursuant to subdivision (a) or (b), the employee shall not attain permanent status and may be reelected from year to year thereafter without becoming a permanent employee until the classification is made.

SEC. 107. Section 44944 of the Education Code is amended to read:

44944. (a) (1) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all of the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government

Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to the continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

(2) If the right of discovery granted under paragraph (1) is denied by either the employee or the governing board, all of the remedies in Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

(3) The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

(4) The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

(5) No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b) (1) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. If the county board of education is also the governing board of the school district or has by

statute been granted the powers of a governing board, the selection shall be made by the Superintendent, who shall be reimbursed by the school district for all costs incident to the selection.

(2) The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c) (1) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition that shall be, solely, one of the following:

(A) That the employee should be dismissed.

(B) That the employee should be suspended for a specific period of time without pay.

(C) That the employee should not be dismissed or suspended.

(2) The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

(3) The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to subparagraph (B) of paragraph (1) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

(4) The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

(5) The board may adopt from time to time rules and procedures not inconsistent with this section as may be necessary to effectuate this section.

(6) The governing board and the employee shall have the right to be represented by counsel.

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state, the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or

immediately preceding contract period from the member's employing district, whichever amount is greater.

(e) (1) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney's fees.

(2) If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney's fees incurred by the employee.

(3) As used in this section, "reasonable expenses" shall not be deemed "compensation" within the meaning of subdivision (d).

(4) If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

(5) (A) If the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

(B) Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, or the governing board, having paid its portion and the

employee's portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge.

SEC. 108. Section 45127 of the Education Code is amended to read:

45127. (a) The workweek of a classified employee, as defined in Section 45103 or 45256, shall be 40 hours. The workday shall be eight hours. These provisions do not restrict the extension of a regular workday or workweek on an overtime basis if it is necessary to carry on the business of the district. This section does not bar the district from establishing a workday of less than eight hours or a workweek of less than 40 hours for all or any of its classified positions.

(b) Notwithstanding this section and Section 45128, a governing board may, with the approval of the personnel commission, where applicable, exempt specific classes of positions from compensation for overtime in excess of eight hours in one day, provided that hours worked in excess of 40 in a calendar week shall be compensated on an overtime basis. This exemption applies only to those classes that the governing board and personnel commission, where applicable, specifically find to be subject to fluctuations in daily working hours not susceptible to administrative control, such as security patrol and recreation classes, but shall not include food service and transportation classes.

(c) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

SEC. 109. Section 45168.5 of the Education Code is amended to read:

45168.5. (a) (1) Notwithstanding any other law, the governing board of a school district that collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of a classified employee for the purpose of transmitting the money to an employee organization shall transmit the money to the employee organization within 15 days of issuing the paycheck containing the deduction to the employee.

(2) Notwithstanding paragraph (1), if the governing board of a school district with a pupil population exceeding 400,000, collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of a classified employee for the purpose of transmitting the money to an employee organization, the governing board shall

transmit the money to the employee organization within 15 working days of issuing the paycheck containing the deduction to the employee.

(b) (1) This section does not limit the right of an employee organization or affected employee to sue for a failure of the employer to transmit dues or fees pursuant to this section.

(2) In an action brought for a violation of subdivision (a), the court may award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs.

(c) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

(d) A school district or county office of education may not request, and the state board may not grant, a waiver of compliance with this section.

SEC. 110. Section 47610 of the Education Code is amended to read:

47610. A charter school shall comply with this part and all of the provisions set forth in its charter, but is otherwise exempt from the laws governing school districts, except all of the following:

(a) As specified in Section 47611.

(b) As specified in Section 41365.

(c) All laws establishing minimum age for public school attendance.

(d) The California Building Standards Code (Part 2 (commencing with Section 101) of Title 24 of the California Code of Regulations), as adopted and enforced by the local building enforcement agency with jurisdiction over the area in which the charter school is located.

(e) Charter school facilities shall comply with subdivision (d) by January 1, 2007.

SEC. 111. Section 47610.5 of the Education Code is amended to read:

47610.5. A charter school facility is exempt from the requirements of subdivision (d) of Section 47610 if either of the following conditions apply:

(a) The charter school facility complies with Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365) of Chapter 3 of Part 10.5.

(b) The charter school facility is exclusively owned or controlled by an entity that is not subject to the California Building Standards Code, including, but not limited to, the federal government.

SEC. 112. Section 47660 of the Education Code is amended to read:

47660. (a) For purposes of computing eligibility for, and entitlements to, general purpose funding and operational funding for categorical programs, the enrollment and average daily attendance reported by a

sponsoring local educational agency shall exclude the enrollment and attendance of pupils in its charter schools funded pursuant to this chapter.

(b) (1) Notwithstanding subdivision (a), and commencing with the 2005–06 fiscal year, for purposes of computing eligibility for, and entitlements to, revenue limit funding, the average daily attendance of a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, shall include all attendance of pupils who reside in the unified school district and who would otherwise have been eligible to attend a noncharter school of the school district, if the school district was a basic aid school district in the prior fiscal year, or if the pupils reside in the unified school district and attended a charter school of a school district that converted to charter status on or after to July 1, 2005. Only the attendance of the pupils described by this paragraph shall be included in the calculation made pursuant to paragraph (7) of subdivision (h) of Section 42238.

(2) Notwithstanding subdivision (a), for the 2005–06 fiscal year only, for purposes of computing eligibility for, and entitlements to, revenue limit funding, the average daily attendance of a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606 and is operating them as charter schools, shall include all attendance of pupils who reside in the unified school district and who would otherwise have been eligible to attend a noncharter school of the unified school district if the pupils attended a charter school established in the unified school district prior to July 1, 2005. Only the attendance of pupils described by this paragraph shall be included in the calculation made pursuant to Section 42241.3.

(c) Commencing with the 2005–06 fiscal year, for the attendance of pupils specified in subdivision (b), the general-purpose entitlement for a charter school that is established through the conversion of an existing public school within a unified school district on or after July 1, 2005, shall be determined using the following amount of general-purpose funding per unit of average daily attendance, in lieu of the amount calculated pursuant to subdivision (a) of Section 47633:

(1) The amount of the actual unrestricted revenues expended per unit of average daily attendance for that school in the year prior to its conversion to, and operation as, a charter school, adjusted for the base revenue limit per pupil inflation increase adjustment set forth in Section 42238.1, if this adjustment is provided, and also adjusted for equalization, deficit reduction, and other state general-purpose increases, if any, provided for unified school districts in the year of conversion to and operation as a charter school.

(2) For a subsequent fiscal year, the general-purpose entitlement shall be determined based on the amount per unit of average daily attendance allocated in the prior fiscal year adjusted for the base revenue limit per pupil inflation increase adjustment set forth in Section 42238.1, if this adjustment is provided, and also adjusted for equalization, deficit reduction, and other state general-purpose increases, if any, provided for unified school districts in that fiscal year.

(d) Commencing with the 2005–06 fiscal year, the general-purpose funding per unit of average daily attendance specified for a unified school district for purposes of paragraph (7) of subdivision (h) of Section 42238 shall be deemed to be the amount computed pursuant to subdivision (c).

(e) A unified school district that is the chartering authority of a charter school that is subject to subdivision (c) shall certify to the Superintendent the amount specified in paragraph (1) of subdivision (c) prior to the approval of the charter petition by the governing board of the school district. This amount may be based on estimates of the unrestricted revenues expended in the fiscal year prior to the school's conversion to charter status and the school's operation as a charter school, provided that the amount is recertified when the actual data becomes available.

(f) For the purposes of this section, "basic aid school district" means a school district that does not receive from the state an apportionment of state funds pursuant to subdivision (h) of Section 42238.

(g) A school district may use the existing Standardized Account Code Structure and cost allocation methods, if appropriate, for an accounting of the actual unrestricted revenues expended in support of a school pursuant to subdivision (c).

SEC. 113. Section 49030 of the Education Code is amended to read:

49030. (a) Sixty days after the posting of the United States Anti-Doping Agency Guide to Prohibited Substances and Prohibited Methods of Doping on the Internet Web site of the department pursuant to subdivision (b), dietary supplements, as defined by subsection (ff) of Section 321 of Title 21 of the United States Code, that include any of the following substances, are prohibited from being used by a pupil participating in interscholastic high school sports:

(1) Synephrine.

(2) A prohibited substance enumerated by the United States Anti-Doping Agency Guide to Prohibited Substances and Prohibited Methods of Doping.

(b) The State Department of Health Services shall provide the State Department of Education with the United States Anti-Doping Agency Guide to Prohibited Substances and Prohibited Methods of Doping, on or before March 30, 2006. Upon receipt of the guide, the State Department of Education shall notify each school district that serves

pupils in grades 9 to 12, inclusive, that the guide has been completed and shall post the guide on its Internet Web site. The State Department of Health Services shall annually notify the State Department of Education of any amendments to the guide for the following school year. For an amendment to be applicable for the ensuing school year, the State Department of Health Services shall notify the State Department of Education as to that amendment no later than the March 30 immediately preceding the school year to which the amendment is to be applicable. Upon receipt of this notice, the State Department of Education shall notify each school district that serves pupils in grades 9 to 12, inclusive, that the guide has been amended and shall post the amended guide on its Internet Web site. The amendment becomes effective 60 days after the department posts the amended guide on its Internet Web site.

SEC. 114. Section 49434 of the Education Code is amended to read:

49434. (a) The Superintendent may monitor school districts for compliance with this article as set forth in subdivision (b).

(b) Each school district monitored pursuant to subdivision (a) shall report to the Superintendent in the coordinated review effort regarding the extent to which it has complied with this article.

(c) A school district that the Superintendent finds to be noncompliant with the mandatory provisions of this article shall adopt, and provide to the Superintendent, a corrective action plan that sets forth the actions to be taken by the school district to ensure that the school district will be in full compliance, within a time agreed upon between the Superintendent and the school district that does not exceed one year.

SEC. 115. Section 49561 of the Education Code is amended to read:

49561. (a) The department shall create a computerized data-matching system using existing databases from the department and the State Department of Health Services to directly certify recipients of the Food Stamp Program, the California Work Opportunity and Responsibility to Kids program (the CalWORKs program (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code)), and other programs authorized for direct certification under federal law, for enrollment in the National School Lunch and School Breakfast Programs. This subdivision does not include Medi-Cal benefits within the criteria for direct certification specified in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265).

(b) The department shall design a process using an existing agency database that will conform with data from the State Department of Health Services to meet the direct certification requirements of the National School Lunch Act, as amended, pursuant to Chapter 13 (commencing with Section 1751) of Title 42 of the United States Code, and the Child

Nutrition Act of 1966, as amended, pursuant to Chapter 13A (commencing with Section 1771) of Title 42 of the United States Code.

(c) The department shall design a process using computerized data pursuant to subdivision (a) that will maximize enrollment in school meal programs and improve program integrity while ensuring that pupil privacy safeguards remain in place.

(d) Each state agency identified in subdivision (a) is responsible for the maintenance and protection of data received by their respective agency. The state agency that possesses the data shall follow privacy and confidentiality procedures consistent with all applicable state and federal law.

(e) The department shall determine the availability of and request or apply for, as appropriate, federal funds to assist the state in implementing new direct certification requirements mandated by federal law.

(f) This section shall become operative upon receipt of federal funds to assist the state in implementing new direct certification requirements mandated by federal law.

SEC. 116. Section 49565.2 of the Education Code is amended to read:

49565.2. The funds described in subdivision (a) of Section 49565.1 may be combined with other funding sources to ensure that at least one serving per day of nutritious fruits or vegetables, or both, is provided pursuant to the pilot program.

SEC. 117. Section 49565.4 of the Education Code is amended to read:

49565.4. School districts and charter schools that do not operate school breakfast programs are encouraged to apply for funding to establish breakfast programs using funds appropriated for this purpose in the annual Budget Act.

SEC. 118. Section 52052 of the Education Code is amended to read:

52052. (a) (1) The Superintendent, with approval of the state board, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils.

(2) A school shall demonstrate comparable improvement in academic achievement as measured by the API by all numerically significant pupil subgroups at the school, including:

(A) Ethnic subgroups.

(B) Socioeconomically disadvantaged pupils.

(C) English language learners.

(D) Pupils with disabilities.

(3) (A) For purposes of this section, a numerically significant pupil subgroup is one that meets both of the following criteria:

(i) The subgroup consists of at least 50 pupils each of whom has a valid test score.

(ii) The subgroup constitutes at least 15 percent of a school's total population of pupils who have valid test scores.

(B) If a subgroup does not constitute 15 percent of the school's total population of pupils with valid test scores, the subgroup may constitute a numerically significant pupil subgroup if it has at least 100 valid test scores.

(C) For a school with an API score that is based on no fewer than 11 and no more than 99 pupils with valid test scores, numerically significant subgroups shall be defined by the Superintendent, with approval by the state board.

(4) The API shall consist of a variety of indicators currently reported to the department, including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils in elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender, and ethnic group. Only the test scores of pupils who were counted as part of the enrollment in the annual California Basic Education Data System's data collection for the current fiscal year and who were continuously enrolled during that year may be included in the test result reports in the school's API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test designated pursuant to Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(4) The high school exit examination.

(c) Based on the API, the Superintendent shall develop, and the state board shall adopt, expected annual percentage growth targets for all

schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the state board pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the state board may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant pupil subgroups, as defined in subdivision (a), are making comparable improvement.

(d) Upon adoption of state performance standards by the state board, the Superintendent shall recommend, and the state board shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The state board may establish additional criteria that schools must meet to be eligible for the Governor's Performance Award Program.

(e) The API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) (1) A school with 11 to 99 pupils with valid test scores shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school shall annually receive an API score, unless the Superintendent determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the pupil population render year-to-year comparisons of pupil performance invalid.

(D) The department discovers or receives information indicating that the integrity of the API score has been compromised.

(E) Insufficient pupil participation in the assessments included in the API.

(3) If a school has less than 100 pupils with valid test scores, the calculation of the API or adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and federal regulations may be calculated over more than one annual administration of the tests administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, consistent with regulations adopted by the state board.

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(h) The Superintendent, with the approval of the state board, shall develop an alternative accountability system for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, nonpublic, nonsectarian schools pursuant to Section 56366, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools. Schools in the alternative accountability system may receive an API score, but shall not be included in the API rankings.

SEC. 119. Section 52055.57 of the Education Code is amended to read:

52055.57. (a) (1) Any provisions that are applicable to local educational agencies under this section are for the purpose of implementing federal requirements under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.). The satisfaction of these criteria by local educational agencies that choose to participate under this article shall be a condition of receiving funds pursuant to this section.

(2) The department shall identify local educational agencies that are in danger of being identified within two years as program improvement local educational agencies under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and shall notify those local educational agencies, in writing, of this status and provide those local educational agencies with research-based criteria to conduct a voluntary self-assessment.

(3) The self-assessment shall identify deficiencies within the operations of the local educational agency, and the programs and services of the local educational agency.

(4) A local educational agency identified pursuant to paragraph (2) is encouraged to revise its local educational agency plan based on the results of the self-assessment.

(5) The program described in this subdivision shall be referred to as the "Early Warning Program."

(b) (1) A local educational agency identified as a program improvement local educational agency under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) shall do all of the following:

(A) Conduct a self-assessment using materials and criteria based on current research and provided by the department.

(B) No later than 90 days after a local educational agency becomes identified for program improvement, contract with a county office of education or another external entity after working with the county superintendent of schools, for both of the following purposes:

(i) Verifying the fundamental teaching and learning needs in the schools of that local educational agency as determined by the local educational agency self-analysis, and identifying the specific academic problems of low-achieving pupils, including a determination of why the prior plan of the local educational agency failed to bring about increased pupil academic achievement.

(ii) Ensuring that the local educational agency receives intensive support and expertise to implement local educational agency reform initiatives in the revised local educational agency plan as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(C) Revise and expeditiously implement the local educational agency plan of the local educational agency to reflect the findings of the verified self-assessment.

(D) After working with the county superintendent of schools or an external verifier, contract with an external provider to provide support and implement recommendations to assist the local educational agency in resolving shortcomings identified in the verified self-assessment.

(2) (A) Subject to the availability of funds in the annual Budget Act for this purpose, a local educational agency described in paragraph (1) may annually receive fifty thousand dollars ($50,000), plus ten thousand dollars ($10,000) for each school that is supported by federal funds pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) within the local educational agency, for the purpose of fulfilling the requirements of this subdivision.

(B) Subject to the availability of funds appropriated in the annual Budget Act for this purpose, a local educational agency identified as a program improvement local educational agency during the 2005–06

fiscal year, shall receive priority for funding based upon the performance of the socioeconomically disadvantaged subgroup of the local educational agency on the Academic Performance Index. Priority for funding shall be provided to the lowest performing local educational agencies that are identified as program improvement local educational agencies. It is the intent of the Legislature that funds apportioned pursuant to this paragraph be used to support activities identified in paragraph (1).

(C) It is the intent of the Legislature that a local educational agency identified as a program improvement local educational agency receive no more than two years of funding pursuant to this paragraph.

(c) (1) A local educational agency that has been identified for corrective action under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), shall be subject to one or more of the following sanctions as recommended by the Superintendent and approved by the state board:

(A) Replacing local educational agency personnel who are relevant to the failure to make adequate yearly progress.

(B) Removing schools from the jurisdiction of the local educational agency and establishing alternative arrangements for the governance and supervision of those schools.

(C) Appointing, by the state board, a receiver or trustee, to administer the affairs of the local educational agency in place of the county superintendent of schools and the governing board.

(D) Abolishing or restructuring the local educational agency.

(E) Authorizing pupils to transfer from a school operated by the local educational agency to a higher performing school operated by another local educational agency, and providing those pupils with transportation to those schools, in conjunction with carrying out not less than one additional action described under this paragraph.

(F) Instituting and fully implementing a new curriculum that is based on state academic content and achievement standards, including providing appropriate professional development based on scientifically based research for all relevant staff, that offers substantial promise of improving educational achievement for high-priority pupils.

(G) Deferring programmatic funds or reducing administrative funds.

(2) In addition to the sanctions prescribed by paragraph (1), the Superintendent may recommend, and the state board may approve, the requirement that a local educational agency contract with a district assistance and intervention team to aid a local educational agency.

(3) Subject to the availability of funds in the annual Budget Act for this purpose, if the state board requires a local educational agency to contract with a district assistance and intervention team pursuant to paragraph (2), the local educational agency may annually receive fifty

thousand dollars ($50,000), plus ten thousand dollars ($10,000) for each school that is supported by federal funds pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) within the local educational agency, for no more than two years, for the purpose of contracting with and implementing the recommendations of the district assistance and intervention team.

(4) Not later than January 31, 2006, the Superintendent shall develop and the state board shall approve, standards and criteria to be applied by a district assistance and intervention team in carrying out their duties. The standards and criteria shall include all of the following areas:

(A) Governance.

(B) Alignment of curriculum, instruction, and assessments to state standards.

(C) Fiscal operations.

(D) Parent and community involvement.

(E) Human resources.

(F) Data systems and achievement monitoring.

(G) Professional development.

(d) A local educational agency that has received a sanction under subdivision (c) and has not exited program improvement under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) shall appear before the state board within three years to review the progress of the local educational agency. Upon hearing testimony and reviewing written data from the local educational agency and the district assistance and intervention team or county superintendent of schools, the Superintendent shall recommend, and the state board may approve, an alternative sanction under subdivision (c), or may take any appropriate action.

(e) Subject to the availability of funds in the annual Budget Act for this purpose, a local educational agency that is not identified as a program improvement local educational agency under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) may annually receive up to fifteen thousand dollars ($15,000) per school identified as a program improvement school for the purposes of supporting schools identified as program improvement schools in the local educational agency and determining barriers to improved pupil academic achievement. That local educational agency shall receive no less than forty thousand dollars ($40,000) and no more than one million five hundred thousand dollars ($1,500,000) for those purposes. The Superintendent shall compile a list that ranks each local educational agency based on the number of, and percentage of, schools identified as program improvement schools and shall provide this funding to local educational agencies equally from

each list until all funds appropriated for this purpose are depleted. These funds shall be provided for no more than three years.

(f) If there are more local educational agencies that qualify to receive funds under subdivisions (b), (c), and (e) than the amount appropriated for these purposes, the Superintendent may redirect funding for the purposes of subdivision (b).

(g) For purposes of this article, "local educational agency" means a school district, county office of education, or charter school that elects to receive its funding directly pursuant to Section 47651, and that provides public educational services to pupils in kindergarten or any of grades 1 to 12, inclusive.

(h) For purposes of this section, a "stakeholder" is, but is not necessarily limited to, any of the following:

(1) A parent of a child attending a school within the jurisdiction of the local educational agency.

(2) A community partner of the local educational agency.

(3) An employee of the local educational agency, as selected by the bargaining unit.

(i) A local educational agency shall not receive funds pursuant to subdivision (b), (c), or (e) if it is initially identified for program improvement or prevention after July 1, 2009.

SEC. 120. Section 52055.605 of the Education Code is amended to read:

52055.605. (a) The Superintendent, with the approval of the state board, shall identify schools ranked in deciles 1 to 5, inclusive, on the Academic Performance Index (API).

(b) The Superintendent shall invite schools identified pursuant to subdivision (a) to participate in the High Priority Schools Grant Program. Notwithstanding subdivision (h) of Section 52053, in order to be eligible for funding from the High Priority Schools Grant Program, a school shall also participate in the Immediate Intervention/Underperforming Schools Program. A school participating in both programs may elect to submit only one application and one plan for both programs. A school participating in the Immediate Intervention/Underperforming Schools Program before the date of the enactment of Chapter 749 of the Statutes of 2001 is also eligible for participation in the High Priority Schools Grant Program.

(c) Notwithstanding any other provision of law, and if funds are available for this purpose, the Superintendent shall invite a second cohort of schools identified pursuant to subdivision (a) to participate in the High Priority Schools Grant Program beginning in the 2005–06 fiscal year. In order to be eligible for funding pursuant to this section, these schools

shall not be required to also participate in the Immediate Intervention/Underperforming Schools Program.

(d) First priority for participation in the High Priority Schools Grant Program shall be given to schools ranked on the API in decile 1. Second priority shall be given to schools in decile 2. Third priority shall be given to schools in decile 3. Fourth priority shall be given to schools in decile 4. Fifth priority shall be given to schools in decile 5. Within each decile, priority shall be given to the lowest ranked schools. Schools that are receiving or have received funding pursuant to Section 52053, 52054.5, or 52055.600 are ineligible to participate in a second cohort of schools funded pursuant to subdivision (c).

(e) Notwithstanding any other provision of law, and if funds are available for this purpose, the number of schools within the designated cohorts of the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053 may exceed the maximum numbers specified in that section in order to participate in the program established pursuant to this article.

(f) If a school ranked in decile 1 of the API completes the action plan required as part of the application to participate in the federal Comprehensive School Reform Demonstration Program (P.L. 105-78), but there are insufficient funds to allow that school to participate in that program, so long as the action plan meets the requirements of subdivisions (d) and (e) of Section 52054, that school shall be automatically approved to the extent funding is available for participation in the Immediate Intervention/Underperforming Schools Program and shall be deemed to have complied with the requirements of Section 52054.

(g) The state board may allow continuation high schools to apply for and receive funding pursuant to this article if those continuation high schools report pupil performance that is equivalent to that of high schools ranked in deciles 1 and 2 on the API and the board determines that the state will be able to adequately determine growth in pupil performance in a valid and reliable manner for the purpose of accountability pursuant to this article. The state board may establish a limit on the number of continuation high schools that may be funded to reflect their proportion of high-priority pupils in grades 9 to 12, inclusive, and may adopt criteria limiting the eligibility for funding, pursuant to this article, of continuation high schools with a high level of per pupil funding from the continuation high school revenue limit add-on.

SEC. 121. Section 52055.625 of the Education Code is amended to read:

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be

considered options that may be considered by a school in the development of its school action plan and that a school not be required to adopt all of the listed options as a condition of funding under the terms of this section. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to address the needs of high-priority pupils.

(b) (1) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(A) Pupil literacy and achievement.

(B) Quality of staff.

(C) Parental involvement.

(D) Facilities, curriculum, instructional materials, and support services.

(2) As a condition of the receipt of funds, a school action plan for a school initially applying to participate in the program on or after the 2004–05 fiscal year, shall include each of the following essential components:

(A) Pupil literacy and achievement.

(B) Quality of staff, including highly qualified teachers, as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and appropriately credentialed teachers for English learners.

(C) Parental involvement.

(D) Facilities maintained in good repair as specified in Sections 17014, 17032.5, 17070.75, and 17089, curriculum, instructional materials that are, at a minimum, consistent with the requirements of Section 60119, and support services.

(c) (1) The pupil literacy and achievement component shall contain a strategy to focus on increasing pupil literacy and achievement, with necessary attention to the needs of English language learners. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) Each pupil at the school will be provided appropriate instructional materials aligned with the academic content and performance standards adopted by the state board as required by law.

(B) Each significant subgroup at the school will demonstrate increased achievement based on API results by the end of the implementation period.

(C) English language learners at the school will demonstrate increased performance based on the English language development test required by Section 60810 and the achievement tests required pursuant to Section 60640.

(2) To achieve the goals in paragraph (1), a school in its action plan may include, among other things, any of the following options:

(A) Selective class size reduction in key curricular areas provided this does not result in a decrease in the proportion of experienced credentialed teachers at the schoolsite.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) Targeted intensive reading instruction utilizing reading capacity-level materials that may include, but are not limited to, the following strategies:

(i) The development of a reading competency program for pupils in grades 5 to 8, inclusive, whose reading scores are at or below the 40th percentile or in the two lowest performance levels, as adopted by the state board, on the reading portion of the achievement test, authorized by Section 60640. This program may include direct instruction in reading at grade level utilizing the English language arts content standards adopted pursuant to Section 60605. Additionally, this program may offer specialized intervention that utilizes state approved instructional materials adopted pursuant to Section 60200. It is the intent of the Legislature, as a recommendation, that this curriculum consist of at least one class period during the regular schoolday taught by a teacher trained in the English language arts standards pursuant to Section 60605. It is also the intent of the Legislature, as a recommendation, that periodic assessments throughout the year be conducted to monitor the progress of the pupils involved.

(ii) The use of a library media teacher to work cooperatively with every teacher and principal at the schoolsite to develop and implement an independent and free reading program, help teachers determine a pupil's reading level, order books that have been determined to meet the needs of pupils, help choose books at pupils' independent reading levels, and assure that pupils read a variety of genres across all academic content areas. For purposes of this article, "library media teacher" means a classroom teacher who possesses or is in the process of obtaining a library media teacher services credential consistent with Section 44868.

(D) Mentoring programs for pupils.

(E) Community, business, or university partnerships with the school.

(d) (1) The quality of staff component shall contain a strategy to attract, retain, and fairly distribute the highest quality staff at the school, including teachers, administrators, and support staff. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) An increase in the number of credentialed teachers working at that schoolsite.

(B) An increase in or targeting of professional development opportunities for teachers related to the goals of the action plan and English language development standards adopted by the state board

aligned with the academic content and performance standards, including, but not limited to, participation in professional development institutes established pursuant to Article 2 (commencing with Section 92220) of Chapter 5 of Part 65.

(C) By the end of the implementation period, successful completion by the schoolsite administrators of a program designed to maximize leadership skills.

(2) To achieve the goals in paragraph (1) a school may include in its action plan, among others, any of the following options:

(A) Incentives to attract credentialed teachers and quality administrators to the schoolsite, including, but not limited to, additional compensation strategies similar to those authorized pursuant to Section 44735.

(B) A school district preintern or intern program within which eligible emergency permit teachers located at the schoolsite would be required to participate, unless those individuals are already participating in another teacher preparation program that leads to the attainment of a valid California teaching credential.

(C) Common planning time for teachers, administrators, and support staff focused on improving pupil achievement.

(D) Mentoring for site administrators, peer assistance for credentialed teachers, and support services for new teachers, including, but not limited to, the Beginning Teacher Support and Assessment System.

(E) Providing assistance and incentives to teachers for completion of professional certification programs and toward attaining BCLAD or CLAD certification.

(F) Increasing professional development in state academic content and performance standards, including English language development standards.

(e) (1) The parental involvement component shall contain a strategy to change the culture of the school community to recognize parents and guardians as partners in the education of their children and to prepare and educate parents and guardians in the learning and academic progress of their children. At a minimum, this strategy shall include a commitment to develop a school-parent compact as required by Section 51101 and a plan to achieve the goal of maintaining or increasing the number and frequency of personal parent and guardian contacts each year at the schoolsite and school-home communications designed to promote parent and guardian support for meeting state standards and core curriculum requirements.

(2) To achieve the goals in subdivision (a), a school may in its action plan include, among others, any of the following options:

(A) Parent and guardian homework support classes.

(B) A program of regular home visits.

(C) After school and evening opportunities for parents, guardians, and pupils to learn together.

(D) Training programs to educate parents and guardians about state standards and testing requirements, including the high school exit examination.

(E) Creation, maintenance, and support of parent centers located on schoolsites to educate parents and guardians regarding pupil expectations and provide support to parents and guardians in their efforts to help their children learn.

(F) Programs targeted at parents and guardians of special education pupils.

(G) Efforts to develop a culture at the schoolsite focused on college attendance, including programs to educate parents and guardians regarding college entrance requirements and options.

(H) Providing more bilingual personnel at the schoolsite and at school-related functions to communicate more effectively with parents and guardians who speak a language other than English.

(I) Providing an opportunity for parents to monitor online, if the technology is available, and in compliance with applicable state and federal privacy laws, the academic progress and attendance of their children.

(f) (1) The facilities, curriculum, instructional materials, and support services component shall contain a strategy to provide an environment that is conducive to teaching and learning and that includes the development of a high-quality curriculum and instruction aligned with the academic content and performance standards adopted pursuant to Section 60605 and the standards for English language development adopted pursuant to Section 60811 to measure progress made towards achieving English language proficiency. At a minimum, this strategy shall include the goal of providing adequate logistical support, including, but not limited to, curriculum, quality instruction, instructional materials, support services, and supplies for every pupil.

(2) To achieve the goal specified in paragraph (1), a school in its action plan may include, among others, any of the following options:

(A) State and locally developed valid and reliable assessments based on state academic content standards.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) The addition of more pupil support services staff, including, but not limited to, paraprofessionals, counselors, library media teachers, nurses, psychologists, social workers, speech therapists, audiologists, and speech pathologists.

(D) Pupil support centers for additional tutoring or homework assistance.

(E) Use of most current standards-aligned textbooks adopted by the state board, including materials for English language learners.

(F) For secondary schools, offering advanced placement courses and courses that meet the requirements for admission to the University of California or the California State University.

(g) A school action plan to improve pupil performance that is developed for participation in the program established pursuant to this article shall meet the requirements of subdivisions (d) and (e) of Section 52054 and this article.

SEC. 122. Section 52124 of the Education Code, as amended by Section 46 of Chapter 22 of the Statutes of 2005, 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, any school district that uses a combination class in any class for which funding is received pursuant to this chapter may 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 52141.5 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 be operative until July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute deletes or extends that date.

SEC. 123. Section 52165 of the Education Code is amended to read:

52165. Each pupil of limited English proficiency enrolled in the California public school system in kindergarten and grades 1 to 12, inclusive, shall receive instruction in a language understandable to the pupil that recognizes the pupil's primary language and teaches the pupil English.

(a) In kindergarten and grades 1 to 6, inclusive, the following shall apply:

(1) If the language census indicates that any school of a school district has 10 or more pupils of limited English proficiency with the same primary language in the same grade level or 10 or more pupils of limited English proficiency with the same primary language, in the same age group, and in a multigrade or ungraded instructional environment, the school district shall offer instruction pursuant to subdivision (a), (b), or (c) of Section 52163 for those pupils at the school. If there are pupils of limited English proficiency with different primary languages who do not otherwise satisfy the program requirements of subdivision (a), (b), or (c) of Section 52163 or of this subdivision, a language development specialist defined in subdivision (b) may be used.

(2) To the extent state or federal categorical funds are available, the services, as described in this paragraph, are required for pupils of limited English proficiency in concentrations of fewer than 10 per grade level. If there are fewer than 10 pupils of limited English proficiency in the same grade, but at least 20 pupils of limited English proficiency in the school with the same primary language, the school district shall provide at least one certified bilingual-crosscultural teacher or teachers on waiver as defined in Section 52178 or 52178.5 and an individualized instruction program as defined in subdivision (f) of Section 52163 for those pupils at the school. If the number of pupils of limited English proficiency in the school exceeds 45, the district shall provide two of those teachers. These teachers may be used as resource teachers or team teachers or to provide any other services to pupils of limited English proficiency as the district deems appropriate. These teachers shall be different teachers than those required pursuant to paragraph (1).

(b) The Legislature recognizes that in the past equal educational opportunities have not been fully available to secondary pupils of limited English proficiency. It is the intent of the Legislature to encourage school districts to offer a language learning program pursuant to subdivision (d) of Section 52163. Certified bilingual-crosscultural teachers or, if those teachers are not available, language development specialists assisted

by a bilingual aide shall be qualified to provide instruction for those programs. Language development specialists shall be formally trained and competent in the field of English language learning, including second language acquisition and development, structure of modern English, and basic principles of linguistics, and shall meet the culture and methodology competencies established by subdivisions (b) and (c) of Section 44253.5. The Commission for Teacher Preparation and Licensing shall provide for the assessment of language competencies specified in this section and shall modify existing culture and methodology competency for language development specialist to ensure that they meet the crosscultural and instructional methodologies for pupils being served by those teachers. A teacher of English to speakers of other languages certificate from a commission-approved teacher training institution of higher education that meets the criteria established by the commission pursuant to Section 44253.5 shall be accepted instead of the methodology requirement.

(c) In kindergarten and grades 1 to 12, inclusive, pupils of limited English proficiency who are not enrolled in a program described in subdivision (a), (b), (c), or (d) of Section 52163, shall be individually evaluated and shall receive educational services defined in subdivision (e) or (f), as appropriate, of Section 52163. These services shall be provided in consultation with the pupil and the parent, parents, or guardian of the pupil.

(d) As a part of its consolidated application for categorical program funds, each district receiving those funds shall include a specific plan indicating the ways in which the individual learning plans will meet the needs of pupils of limited English proficiency. The plan shall describe all of the following:

(1) Procedures used in making the individual evaluation.

(2) The pupils' levels of English and primary language proficiency and levels of educational performance.

(3) Instructional objectives and scope of educational services to be provided.

(4) Periodic evaluation procedures, using objective criteria, to determine whether the instructional objectives are being met.

SEC. 124. Section 52295.35 of the Education Code is amended to read:

52295.35. (a) Applicants within each of the 11 California Technology Assistance Project regions shall compete against other applicants from that region. The amount of funding for grants available to each region shall be determined based upon the proportionate enrollment of pupils in grades 4 to 8, inclusive, in eligible schools from that region, but a region shall not be allocated less than five hundred thousand dollars

($500,000) or 2 percent of available grant funds, whichever amount is greater.

(b) If a region is allocated more funding than is needed for its eligible applicants, the Superintendent may develop a policy to ensure that all funding is distributed to other regions for their eligible but unfunded applicants.

(c) Grants shall be awarded to an eligible school district for the eligible school or schools specified in the program application. All grant funds shall be spent in a manner consistent with the local educational agency technology plan, pursuant to subdivision (a) of Section 51871.5 and subdivision (a) of Section 2414 of Part D of Title II of the No Child Left Behind Act of 2001 (P.L. 107-110), and the program application and shall be used for the eligible school or schools specified in the approved application.

(d) The initial one-time implementation grant for a school selected to receive a grant shall be calculated based upon three hundred dollars ($300) per pupil for pupils in grades 4 to 8, inclusive. Upon recommendation from the department, the state board may adopt criteria that establish fixed minimum grant levels for a small school.

(e) Subject to availability of federal funding appropriated for competitive grants under Part D of Title II of the federal No Child Left Behind Act of 2001 (P.L. 107-110), any grant recipient that successfully completes the initial grant shall receive an additional one-time grant of forty-five dollars ($45) per pupil in grades 4 to 8, inclusive, at the school or schools selected for funding. The purpose of this funding shall be to continue implementation of the grant recipients' approved technology plan in a manner consistent with the requirements of Part D of Title II of the federal No Child Left Behind Act of 2001 (P.L. 107-110), including plans to sustain the use of technology as a tool in improving teaching and pupil academic achievement once the grant period ends.

SEC. 125. Section 52740 of the Education Code is amended to read:

52740. (a) It is the intent of the Legislature to provide accurate instructional materials to schools on all of the following topics:

(1) The internment in the United States of persons of Japanese origin and its impact on Japanese-American citizens.

(2) The Armenian genocide.

(3) The World War II internment, relocation, and restriction in the United States of persons of Italian origin and its impact on the Italian-American community.

(b) The Legislature finds and declares that there are few films or videotapes available on the subjects of the internment of persons of Japanese origin, the Armenian genocide, and the World War II internment, relocation, and restriction of persons of Italian origin, for

teachers to use when teaching pupils about these three devastating events. The shortage of available films or videotapes on these subjects is especially true for the Armenian genocide.

(c) The Legislature hereby finds and declares that films and videotapes giving a historically accurate depiction of the internment in the United States of persons of Japanese origin during World War II, the Armenian genocide, and the World War II internment, relocation, and restriction of persons of Italian origin, should be made in order that pupils will recognize these events for the horror they represented. The Legislature hereby encourages teachers to use these films and videotapes as a resource in teaching pupils about these three important historical events that are commonly overlooked in today's school curriculum.

SEC. 126. Section 56441 of the Education Code is amended to read:

56441. The Legislature hereby finds and declares that early education programs for individuals with exceptional needs between the ages of three and five years, inclusive, that provide special education and related services within the typical environment appropriate for young children, and include active parent involvement, may do the following:

(a) Significantly reduce the potential impact of any disabling conditions.

(b) Produce substantial gains in physical development, cognitive development, language and speech development, psychosocial development, and self-help skills development.

(c) Help prevent the development of secondary disabling conditions.

(d) Reduce family stresses.

(e) Reduce societal dependency and institutionalization.

(f) Reduce the need for special class placement in special education programs once a child reaches school age.

(g) Save substantial costs to society and our schools.

SEC. 127. Section 58407 of the Education Code is amended to read:

58407. The state board may waive any provision of this code, with the exception of Article 1 (commencing with Section 16500), and Article 3 (commencing with Section 39140) of Chapter 2 of Part 23, which it deems is necessary to waive to assure the success of the program authorized by this chapter.

SEC. 128. Section 58520 of the Education Code is amended to read:

58520. This chapter shall be known and may be cited as the Single Gender Academies Pilot Program Act of 1996.

SEC. 129. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading.

(2) Mathematics.

(3) Science.

(4) Social science.

(5) Bilingual or bicultural subjects.

(6) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six- and eight-year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the state board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:

(A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the state board.

(B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

(6) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of Chapter 1181 of the Statutes of 1989, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) This section does not limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than six years from the date of adoption for instructional materials pertaining to subject areas designated in paragraphs (1) to (5), inclusive, of subdivision (a), and not more than eight years from the date of adoption for instructional materials pertaining to subject areas designated in paragraph (6) of subdivision (a), or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(*l*) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(m) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(n) This section does not prohibit the publisher of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third-party sources of content.

(o) The state board may adopt regulations that provide for other exceptions to this section, as determined by the board.

(p) The Superintendent shall develop, and the state board shall adopt, guidelines to implement this section.

SEC. 130. Section 66070 of the Education Code is amended to read:

66070. The Legislature finds and declares both of the following:

(a) The primary goal of every higher educational institution should be to provide a collegiate experience that gives each student the skills of communication and problemsolving, the ideas and principles underlying the major areas of modern knowledge, the ability to consider critical issues thoughtfully, the understanding that learning is a continuous lifelong process, and the knowledge of democracy necessary for good citizenship.

(b) To improve performance, educational institutions are encouraged to use effective assessment mechanisms based on positive reinforcement, incentives, and cooperation.

SEC. 131. Section 66406 of the Education Code is amended to read:

66406. (a) The Legislature finds and declares that the production and pricing of college textbooks deserves a high level of attention from educators and lawmakers because they impact the quality and affordability of higher education.

(b) The State of California urges textbook publishers to do all of the following:

(1) "Unbundle" the instructional materials to give students the option of buying textbooks, CD-ROMs, and workbooks "à la carte" or without additional materials.

(2) Provide all of the following information to faculty and departments when they are considering what textbooks to order, and post both of the following types of information on publishers' Internet Web sites where it is easily accessible:

(A) A list of all of the different products they sell, including both bundled and unbundled options, and the net price of each product.

(B) An explanation of how the newest edition is different from previous editions.

(3) Give preference to paper or online supplements to current editions rather than producing entirely new editions.

(4) Disclose to faculty the length of time they intend to produce the current edition so that professors know how long they can use the same book.

(5) Provide to faculty a free copy of each textbook selected by faculty for use in the classroom for placement on reserve in the campus library.

(c) The Trustees of the California State University and the Board of Governors of the California Community Colleges shall, and the Regents of the University of California are requested to, accomplish all of the following:

(1) Work with the academic senates of each respective segment to do all of the following:

(A) Encourage faculty to give consideration to the least costly practices in assigning textbooks, varying by discipline, such as adopting the least expensive edition when the educational content is equal, and using a selected textbook as long as it is educationally sound, as determined by the appropriate faculty.

(B) Encourage faculty to disclose both of the following to students:

(i) How new editions of textbooks are different from the previous editions.

(ii) The cost to students for textbooks selected for use in each course.

(C) Review procedures for faculty to inform college and university bookstores of textbook selections.

(D) Encourage faculty to work closely with publishers and college and university bookstores in creating bundles and packages if they are economically sound and deliver cost savings to students, and if bundles and packages have been requested by faculty. Students should have the option of purchasing textbooks and other instructional materials that are "unbundled."

(2) Require college and university bookstores to work with the academic senates of each respective campus to do both of the following:

(A) Review issues relative to timelines and processes involved in ordering and stocking selected textbooks.

(B) Work closely with faculty or publishers, or both, to create bundles and packages that are economically sound and deliver cost savings to students.

(3) Encourage college and university bookstores to disclose retail textbook costs, on a per course basis, to faculty, and make this information otherwise publicly available.

(4) Encourage campuses to provide as many forums for students to have access to as many used books as possible, including, but not necessarily limited to, all of the following:

(A) Implementing campus-sponsored textbook rental programs.

(B) Encouraging students to consider on-campus and online book swaps so that students may buy and sell used books and set their own prices.

(C) Encouraging students to consider student book lending programs.

(D) Encouraging college and university bookstores that offer book buyback programs to actively promote and publicize these programs.

(E) Encouraging the establishment of textbook rental programs and any other appropriate approaches to providing high-quality materials that are affordable to students.

(d) It is the intent of the Legislature to encourage private colleges and universities to work with their respective academic senates and to encourage faculty to consider practices in selecting textbooks that will result in the lowest costs to students.

SEC. 132. Section 66609 of the Education Code is amended to read:

66609. (a) All state employees employed on June 30, 1961, in carrying out functions transferred to the Trustees of California State University by this chapter, except persons employed by the Director of Education in the Division of State Colleges and Teacher Education of the State Department of Education, are transferred to the California State University.

(b) Nonacademic employees transferred under this section shall retain their respective positions in the state service, together with the personnel benefits accumulated by them at the time of transfer, and shall retain the rights attached under the law to the positions that they held at the time of transfer. All nonacademic positions filled by the trustees on and after July 1, 1961, shall be by appointment made in accordance with Chapter 5 (commencing with Section 89500) of Part 55, and persons so appointed shall be subject to Chapter 5.

(c) (1) The trustees shall provide, or cooperate in providing, academic and administrative employees transferred by this section with personnel rights and benefits at least equal to those accumulated by them as employees of the state colleges, except that any administrative employee may be reassigned to an academic or other position commensurate with his or her qualifications at the salary fixed for that position. An administrative employee so reassigned shall have a right to appeal from that reassignment, but only as to whether the position to which he or she

is reassigned is commensurate with his or her qualifications. All academic and administrative positions filled by the trustees on and after July 1, 1961, shall be filled by appointment made solely at the discretion of the trustees.

(2) The trustees shall establish and adjust the salaries and classifications of all academic, nonacademic, and administrative positions and neither Section 19825 of the Government Code nor any other provision of law requiring approval by a state officer or agency for salaries or classifications shall be applicable thereto. In establishing and adjusting salaries, consideration shall be given to the maintenance of the state university in a competitive position in the recruitment and retention of qualified personnel in relation to other educational institutions, private industry, or public jurisdictions that are employing personnel with similar duties and responsibilities.

(3) The establishment and adjustment of salaries for nonacademic employees shall be in accordance with the standards prescribed in Section 19826 of the Government Code. The trustees, however, shall make no adjustments that require expenditures in excess of existing appropriations available for the payment of salaries. Chapter 5 (commencing with Section 89500) of Part 52, relating to appeals from dismissal, demotion, or suspension, shall be applicable to academic employees.

(d) Persons excluded from the transfer made by this section shall retain all the rights and privileges conferred upon civil service employees by law. Personnel of state agencies employed in state university work other than those transferred by this section, and who are employed by the trustees prior to July 1, 1962, shall be provided with personnel rights and benefits at least equal to those accumulated by them as employees of those state agencies.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that, if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 133. Section 69539 of the Education Code is amended to read:

69539. (a) A Cal Grant C award shall be utilized for occupational or technical training.

(b) "Occupational or technical training" means that phase of education coming after the completion of a secondary school program and leading toward recognized occupational goals approved by the commission.

(c) The commission may use criteria it deems appropriate in selecting students with occupational talents to receive grants for occupational or technical training.

(d) The Cal Grant C recipients shall be eligible for renewal of their grants until they have completed their occupational or technical training in conformance with terms prescribed by the commission. In no case shall the grants exceed two calendar years.

(e) Cal Grant C awards shall be for institutional fees, charges, and other costs, including tuition, plus training-related costs, such as special clothing, local transportation, required tools, equipment, supplies, and books. In determining the amount of grants and training-related costs, the commission shall take into account other state and federal programs available to the applicant.

(f) Cal Grant C awards shall be awarded in areas of occupational or technical training as determined by the commission after consultation with appropriate state and federal agencies.

SEC. 134. Section 69640 of the Education Code is amended to read:

69640. (a) It is the intent of the Legislature that the California Community Colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit from that education regardless of economic, social, and educational status. It is the intent and purpose of the Legislature in establishing the Community College Extended Opportunity Programs and Services (EOPS) to encourage local community colleges to establish and implement programs directed to identifying those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not necessarily limited to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions.

(b) The rules and regulations of the Board of Governors of the California Community Colleges shall be consistent with this article. The operation of EOPS, as well as these rules and regulations, shall be consistent with all of the following goals:

(1) To increase the number and percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with state and local matriculation policies.

(2) To increase the number and percentage of EOPS students who successfully complete their chosen educational objectives.

(3) To increase the number and percentage of EOPS students who are successfully placed into career employment.

(4) To increase the number and percentage of EOPS students who transfer to four-year institutions following completion of the related educational programs at community colleges.

(5) To strive to assist community colleges to meet student and employee affirmative action objectives.

(6) To improve the delivery of programs and services to the disadvantaged.

(c) The Legislature further intends that EOPS shall not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives.

(d) The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state.

SEC. 135. Section 76234 of the Education Code is amended to read:

76234. Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assault or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. The alleged victim shall keep the results of that disciplinary action and appeal confidential.

SEC. 136. Section 81383 of the Education Code is amended to read:

81383. Notwithstanding Section 81360, the sale by the governing board of any community college district of any real property belonging to the community college district, or the lease by that governing board, for a term not exceeding 99 years, of any real property, together with any personal property located on the real property, belonging to the community college district shall not be subject to Part 49 (commencing with Section 81000) or to Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, if all of the following conditions are met:

(a) The property is sold or leased to another local governmental agency, or to a nonprofit corporation that is organized for the purpose of assisting one or more local governmental agencies in obtaining financing for a qualified community college facility.

(b) (1) In the case of the sale of community college district property pursuant to this section, the community college district, as part of that

same sale transaction, simultaneously repurchases the same property that is the subject of the transaction.

(2) In the case of the lease of community college district property pursuant to this section, the community college district, as part of that same lease transaction, simultaneously leases back, for a term that is not substantially less than the term of that lease, the same property that is the subject of the transaction.

(c) The financing proceeds obtained by the community college district pursuant to any transaction described in this section are expended solely for capital outlay purposes relating to a qualified community college facility, including the acquisition of real property for intended use as a site for a qualified community college facility and the design, planning, acquisition, construction, reconstruction, and renovation of qualified community college facilities.

(d) For purposes of this section and Section 81384, "qualified community college facility" means real and personal property, improvements, and related facilities that are determined in a resolution of the governing board of the community college district to satisfy each of the following requirements:

(1) The facilities will do both of the following:

(A) Assist the community college district in reducing energy and resource consumption while creating a safer and healthier learning environment.

(B) Operate as energy and resource efficient buildings by taking cost-effective measures similar to those described in the Green Building Action Plan promulgated by the Governor for facilities owned, funded, or leased by the state.

(2) The facilities are affordable for the community college district as set forth in estimated annual summary budgets of the community college district that include the estimated costs of financing the facilities during the estimated duration of the financing demonstrating that the reasonably anticipated expenditures during each fiscal year shall not exceed the reasonably anticipated revenues for that fiscal year.

SEC. 137. Section 81450 of the Education Code is amended to read:

81450. (a) The governing board of any community college district may sell for cash any personal property belonging to the district if the property is not required for school purposes, or if it should be disposed of for the purpose of replacement, or if it is unsatisfactory or not suitable for school use. There shall be no sale until notice has been given by posting in at least three public places in the district for not less than two weeks, or by publication for at least once a week for a period of not less than two weeks in a newspaper published in the district and having a general circulation there; or if there is no such newspaper, then in a

newspaper having a general circulation in the district; or if there is no such newspaper, then in a newspaper having a general circulation in a county in which the district or any part thereof is situated. The board shall sell the property to the highest responsible bidder or reject all bids.

(b) The governing board may choose to conduct any sale of personal property authorized under this section by means of a public auction conducted by employees of the district or other public agencies, or by contract with a private auction firm. The board may delegate to the district employee responsible for conducting the auction the authority to transfer the personal property to the highest responsible bidder upon completion of the auction and after payment has been received by the district.

SEC. 138. Section 81645 of the Education Code is amended to read:

81645. The governing board of any community college district may contract with a party who has submitted one of the three lowest responsible competitive proposals or competitive bids for the acquisition, procurement, or maintenance of electronic data processing systems and equipment, electronic telecommunications equipment, supporting software, and related materials, goods, and services, in accordance with procedures and criteria established by the governing board.

SEC. 139. Section 88167.5 of the Education Code is amended to read:

88167.5. (a) Notwithstanding any other provision of law, the governing board of a community college district that collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of a classified employee for the purpose of transmitting the money to an employee organization shall transmit the money to the employee organization within 15 days of issuing the paycheck containing the deduction to the employee.

(b) (1) This section does not limit the right of an employee organization or affected employee to sue for a failure of the employer to transmit dues or fees pursuant to this section.

(2) In an action brought for a violation of subdivision (a), the court may award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs.

(c) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

SEC. 140. Section 89241 of the Education Code is amended to read:

89241. (a) This section shall be known and may be cited as the California Student Athlete Fair Opportunity Act of 2005.

(b) It is the intent of the Legislature to ensure that the Trustees of the California State University provide appropriate academic support services

for student athletes and that those athletes are given a fair opportunity to earn a baccalaureate degree.

(c) The trustees shall ensure, through executive order or regulation, that all California State University campuses that provide athletic scholarships for student athletes also provide summer athletic scholarships commencing with the 2006 summer term. The provision of these summer athletic scholarships shall be consistent with both of the following:

(1) The requirements of Title IX of the federal Education Amendments of 1972, as amended from time to time.

(2) The bylaws of the National Collegiate Athletic Association, as amended from time to time.

(d) Students who are otherwise ineligible for admission to the specific campus of the California State University, but who are admitted under policies that permit those students to be admitted if they have athletic ability that will contribute to the campus, shall be given first priority for summer athletic scholarship assistance.

(e) (1) Summer athletic scholarships awarded pursuant to this section shall, at a minimum, be sufficient to cover the cost of tuition, fees, books, and supplies as calculated for purposes of the summer cost of attendance under the provisions of Title IV of the federal Education Act of 1965, as it is amended from time to time.

(2) Nothing in this part shall be construed to limit a summer athletic scholarship awarded pursuant to this section to any amount less than that which is allowed under the bylaws of the National Collegiate Athletic Association.

(3) A summer athletic scholarship awarded pursuant to this section shall be of sufficient amount and duration with regard to the number of summer sessions and the number of units covered, to provide a student athlete a fair opportunity to correct academic progress problems through attendance in a summer session.

(f) A summer athletic scholarship awarded pursuant to this section may be funded through any revenue source available to, or procured by, the campuses of the California State University, including, but not necessarily limited to, gate receipts, donations from alumni and others, corporate sponsorships, associated student contributions, and campus-based student fees that may be legally used for this purpose. In accordance with subdivision (i), the California State University shall not use state General Fund moneys or state university fee revenue to fund summer athletic scholarships. The California State University shall not set aside, for the purposes of summer athletic scholarships, any institutional financial aid funds for which any financially needy students are eligible. A student athlete may only receive summer financial aid

assistance if that student athlete otherwise qualifies for that assistance irrespective of his or her status as a student athlete.

(g) (1) The trustees shall ensure, through executive order or regulation, that all California State University campuses that are members of the National Collegiate Athletic Association have a comprehensive plan for the academic support of student athletes.

(2) The plan adopted pursuant to this subdivision shall be consistent with the requirements of Title IX of the federal Education Amendments of 1972, as amended from time to time, and the bylaws of the National Collegiate Athletic Association, as amended from time to time. This plan shall include, but not necessarily be limited to, coordination with existing academic and financial support services at the campus, evaluation of the academic needs of student athletes, a set of academic support initiatives, a financing plan for these initiatives and a fund-raising strategy for the augmentation of these initiatives, and a regular evaluation mechanism to monitor the academic progress of athletes and the effectiveness of academic support programs.

(3) Services provided under this subdivision may include any of the following:

(A) Additional athletic financial assistance, which covers an amount up to the cost of attendance under the provisions of Title IV of the federal Education Act of 1965, as amended from time to time, for additional periods of attendance necessary for an athlete to complete the requirements for a baccalaureate degree after the student's period of athletic eligibility has ended.

(B) Employment assistance, including work study programs.

(C) Tutoring.

(D) Mentoring.

(E) Accommodations in the scheduling of class sections to provide a fair opportunity for student athletes to attend required courses in a manner that allows them to participate in the requirements of their sports.

(h) (1) The trustees shall report to the Legislature and the Governor on or before November 1, 2006, and subsequently on or before November 1 of each odd-numbered year, commencing on November 1, 2007, regarding the status of athletic academic progress and athletic academic support in the California State University system for all campuses that are members of the National Collegiate Athletic Association.

(2) If any data that are required to be reported pursuant to paragraph (3) could yield an individual identification of an athlete, or if any data or information required to be reported pursuant to paragraph (3) could be considered to be of a proprietary nature as related to the sports enterprise of the campus, those data may be forwarded under separate

cover to the Governor and to the relevant policy committees of the Legislature with a request for confidentiality.

(3) The report required by this subdivision shall include, but not necessarily be limited to, all of the following information:

(A) A five-year history of the graduation rate and Academic Progress Rate of each team on each campus as calculated by the National Collegiate Athletic Association, to the extent these rates are available.

(B) Annual admission category information for each team on each campus that indicates the number and percent of students admitted who were not eligible for regular admission to the campus or the university.

(C) A summary of the academic initiatives and support programs available to the athletes at each campus.

(D) If the campus participates in Division I, including any of its subparts, of the National Collegiate Athletic Association, and if any team or the athletic program overall has an Academic Progress Rate score of less than 925 for any year, a summary of the corrective action planned by the campus or athletic department as well as a report on sanctions, if any, imposed by the National Collegiate Athletic Association.

(E) The total budget for the athletic programs and each team, including an itemization of the amount spent on athletic scholarships and the amount spent on summer athletic scholarships.

(i) The California State University shall not encumber, for the purposes of this section, any moneys from the state General Fund or any state university fee revenue.

SEC. 141. Section 89503 of the Education Code is amended to read:

89503. (a) The trustees may authorize payments into a private fund to provide health and welfare benefits to nonpermanent employees of the class specified in Section 19830 of the Government Code employed by the trustees, upon a finding by the trustees as to any position that the criteria stated in subdivision (a) of Section 19831 of the Government Code are satisfied.

(b) Payments made by the state pursuant to this section to any fund on behalf of any employees shall be in lieu of benefits such as vacation allowance, sick leave, and retirement that may be granted directly by the state in accordance with law.

(c) The trustees may determine the equitable application of this section to ensure that the employees receive benefits comparable to, but not in excess of, those provided in comparable private employment.

(d) The payments authorized by this section shall be a proper charge against any funds available for the support of the California State University.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12

(commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that, if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 142. Section 89750.5 of the Education Code is amended to read:

89750.5. (a) Notwithstanding Sections 948 and 965.2 of the Government Code or any other provision of law, the trustees may settle, adjust, or compromise any pending action or final judgment, without the need for a recommendation, certification, or approval from any other state officer or entity. The Controller shall draw a warrant for the payment of any settlement, adjustment, or compromise, or final judgment against the trustees if the trustees certify that a sufficient appropriation for the payment of the settlement, adjustment, compromise, or final judgment exists.

(b) Notwithstanding subdivision (c) of Section 905.2 of the Government Code or any other provision of law, the trustees may pay any claim for money or damages on express contract or for an injury for which the trustees or their officers or employees are liable, without approval of the California Victim Compensation and Government Claims Board if the trustees determine that payment of the claim is in the best interests of the California State University and that funds are available to pay the claim. The authority of the trustees conferred by this subdivision does not alter any other requirements governing claims in the Tort Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code), except to grant the trustees authority to pay these claims.

(c) Notwithstanding Chapter 3 (commencing with Section 13940) of Part 4 of Division 3 of Title 2 of the Government Code, the trustees may discharge from accountability the sum of one thousand dollars ($1,000) or less, owing to the California State University if the trustees determine that the money is uncollectible or the amount does not justify the cost of collection. A discharge of accountability by the trustees does not release any person from the payment of any moneys due the California State University.

SEC. 143. Section 92300 of the Education Code is amended to read:

92300. (a) The Regents of the University of California and any other public or private nonprofit agency may contract with the State Department of Education to establish and maintain a child development center on or near each campus of the university pursuant to Chapter 2 (commencing with Section 8200) of Part 6.

(b) Operating agencies may accept student fees, parent fees, and private funds to operate campus child development centers, and may be reimbursed for costs that are eligible pursuant to Section 8208.

SEC. 144. Section 92611.7 of the Education Code is amended to read:

92611.7. (a) The regents are urged to offer, on at least a semiannual basis, to each of the university's filers, an orientation course on the relevant ethics statutes and regulations that govern the official conduct of university officials.

(b) As used in this section, "filer" means each member, officer, or designated employee of the University of California, including a regent, who, because of his or her affiliation with the university or any subdivision or campus thereof, is required to file a statement of economic interests in accordance with Chapter 7 (commencing with Section 87100) of Title 9 of the Government Code.

(c) The regents shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to this section. These records shall be maintained for a period of at least five years after each course is offered. These records shall be public records subject to inspection and copying in accordance with subdivision (a) of Section 81008 of the Government Code and any other public records disclosure laws that are applicable to the university.

(d) Except as provided in subdivision (e), each filer shall attend the orientation course established pursuant to subdivision (a) in accordance with both of the following:

(1) For a person who, as of January 1, 2005, is a filer, as defined in subdivision (b), not later than December 31, 2005, and thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2007.

(2) For a person who becomes a filer, as defined in subdivision (b), after January 1, 2005, within six months after he or she becomes a filer, and at least once during each consecutive period of two calendar years commencing on January 1 of the first odd-numbered year thereafter.

(e) The requirements of subdivision (d) shall not apply to a filer, as defined in subdivision (b), who has taken an ethics orientation course through another state agency or the Legislature within the periods set forth in paragraphs (1) and (2) of subdivision (d) if, in the determination of the regents, that course covered substantially the same material as the course the university would offer to the filer pursuant to this section.

SEC. 145. Section 94985 of the Education Code is amended to read:

94985. (a) Any institution that willfully violates any provision of Section 94800, 94810, 94814, or 94816, Sections 94820 to 94826,

inclusive, or Section 94829, 94831, or 94832 may not enforce any contract or agreement arising from the transaction in which the violation occurred, and any willful violation is a ground for revoking an approval to operate in this state or for denying a renewal application.

(b) (1) Any person who claims that an institution is operating in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, or Section 94915, or an institution is operating a branch or satellite campus in violation of subdivision (a) of Section 94857, may bring an action, in a court of competent jurisdiction, for the recovery of actual and or statutory damages as well as an equity proceeding to restrain and enjoin those violations, or both.

(2) At least 35 days prior to the commencement of an action pursuant to this subdivision, the plaintiff shall do all of the following:

(A) Notify the institution alleged to have violated subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, of the particular alleged violations.

(B) Demand that the institution apply for the bureau's approval to operate as required by subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(C) The notice shall be in writing, and shall be sent by regular mail and certified or registered mail, return receipt requested, to the location of the institution that is allegedly operating in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(D) The institution shall have 30 working days, from receipt of the notice, to file an application for approval to operate with the bureau.

(E) No action pursuant to this subdivision may be filed if the institution, within 30 working days after receipt of the notice, applies for the bureau's approval to operate as required by subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(F) If, within 35 days after receipt of the notice, the bureau has not received an application from the institution, the bureau shall mail the plaintiff a certification that the institution has not applied or been approved to operate pursuant to subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable.

(G) The plaintiff shall also notify the bureau by mail and by certified or registered mail, return receipt requested, that he or she intends to bring an action pursuant to this section against the institution. Upon receipt of this notice, the bureau shall immediately investigate the institution's compliance with subdivision (a) of Section 94831, subdivision (a) of

Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable, and, if the bureau determines that the institution has violated the applicable section, the bureau shall immediately order the institution to cease and desist operations. For each day that the institution continues to operate in violation of the bureau's cease and desist order, the institution shall be fined one thousand dollars ($1,000).

(3) If the court finds that the institution has violated subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, all of the following shall occur:

(A) The court shall order the institution to cease all operations and to comply with all procedures set forth in this code pertaining to the closure of institutions.

(B) The court shall order the institution to pay all students who enrolled while the school was in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857 a refund of all tuition and fees paid to the institution and a statutory penalty of one thousand dollars ($1,000).

(C) The court shall order the institution to pay the prevailing party's attorney's fees and costs.

(D) The court shall order the institution to pay to the bureau all fines incurred pursuant to subparagraph (G) of paragraph (2).

(E) Any instrument of indebtedness, enrollment agreement, or contract for educational services is unenforceable pursuant to Section 94838. The court shall order the institution to mail a notice to all students who were enrolled while the school was in violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, stating that instruments of indebtedness, enrollment agreements, and contracts for educational services are not enforceable. If the institution fails to provide adequate proof to the court and to the bureau that it has mailed this notice within 30 days of the court's order, the bureau shall mail the notice to the students and the court shall order the institution to pay the bureau's costs of generating and mailing the notices, in no case less than five thousand dollars ($5,000).

(4) Any violation of subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, and subdivision (a) of Section 94857 shall constitute an unfair business practice within the meaning of Section 17200 of the Business and Professions Code.

(5) A certification, issued by the bureau, that the institution has not applied for approval to operate and has not been approved to operate as required by subdivision (a) of Section 94831, subdivision (a) of Section 94900, Section 94915, or subdivision (a) of Section 94857, whichever is applicable, shall establish a conclusive presumption that the institution has violated this subdivision.

(6) All fines and other monetary amounts that an institution is ordered to pay pursuant to this subdivision may be collected from the institution itself and from the individuals who own the institution, whether or not the institution is organized as a corporation.

(7) Notwithstanding any provision of the contract or agreement, a student may bring an action for a violation of this article or for an institution's failure to perform its legal obligations and, upon prevailing thereon, is entitled to the recovery of damages, equitable relief, or any other relief authorized by this article, and reasonable attorney's fees and costs.

(c) If a court finds that a violation was willfully committed or that the institution failed to refund all consideration as required by subdivision (b) on the student's written demand, the court, in addition to the relief authorized under subdivision (b), shall award a civil penalty of up to two times the amount of the damages sustained by the student.

(d) The remedies provided in this article supplement, but do not supplant, the remedies provided under any other provision of law.

(e) An action brought under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the action.

(f) Any provision in any agreement that purports to require a student to invoke any grievance dispute procedure established by the institution before enforcing any right or remedy is void and unenforceable.

(g) A student may assign his or her cause of action for a violation of this article to the bureau, or to any state or federal agency that guaranteed or reinsured a loan for the student or that provided any grant or other financial aid.

(h) This section applies to any action pending on the effective date of this section.

(i) This section supplements, but does not supplant, the authority granted the Division of Labor Standards Enforcement under Chapter 4 (commencing with Section 79) of Division 1 of the Labor Code to the extent that placement activities of trade schools are subject to regulation by the division under the Labor Code.

(j) If a student commences an action or asserts any claim in an existing action for recovery on behalf of a class of persons, or on behalf of the general public, under Section 17200 of the Business and Professions Code, the student shall notify the bureau of the existence of the lawsuit, the court in which the action is pending, the case number of the action, and the date of the filing of the action or of the assertion of the claim. The student shall notify the bureau as required by this subdivision within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The student shall also notify the court that he or she

has notified the bureau pursuant to this subdivision. Notwithstanding any other provision of law, no judgment may be entered pursuant to this section until the student has notified the bureau of the suit and notified the court that the bureau has been notified. This subdivision only applies to a new action filed or to a new claim asserted on or after January 1, 2002.

SEC. 146. Section 94990 of the Education Code is amended to read:

94990. The bureau is subject to the sunset review process conducted by the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to Chapter 1 (commencing with Section 473) of Division 1.2 of the Business and Professions Code. Notwithstanding that this chapter does not specify that it will become inoperative on a specified date, the analyses, reports, public hearings, evaluations, and determinations required to be prepared, conducted, and made pursuant to Chapter 1 (commencing with Section 473) of Division 1.2 of the Business and Professions Code shall be prepared, conducted, and made in 2002 and every four years thereafter as long as this chapter is operative.

SEC. 147. Section 99156 of the Education Code is amended to read:

99156. A test agency shall prepare a clear, easily understandable written description of each standardized test it administers. A copy of the appropriate description shall be provided to the test subject or the test score recipient prior to the administration of the test or coinciding with the initial reporting of a test score. The description shall include all of the following information:

(a) The purposes for which the test is constructed and intended to be used.

(b) For those tests used to predict performance, the subject matter included on these tests and the knowledge and skills that the test purports to measure.

(c) Statements designed to provide information for interpreting the test scores, including the explanations of the test, the standard error of measurement, and for those tests used to predict performance, the correlation between test score and performance.

(d) Statements concerning the effects and uses of test scores, including both of the following:

(1) If the test score is used by itself or with other information to predict future grade point average, a summary of existing data on the extent to which the use of this test score will improve the accuracy of predicting future grade point average, over and above all other information used.

(2) A summary of existing data on the extent to which the improvement in test scores results from test preparation courses.

(e) A description of the form in which test scores will be reported, and whether the raw test scores will be altered in any way before being reported to the test subject.

(f) A complete description of any promises or covenants that the test agency makes to the test subject with regard to any of the following matters:

(1) The accuracy of scoring.

(2) The time period within which the test subject's score will be reported to the test subject and to the test score recipients.

(3) The privacy of information relating to the test subject, including his or her test scores.

(g) The property interest in the test score held by the test subject, if any.

(h) The period of time the test agency will retain the test score, and the test agency's policies regarding the storage, disposal, and future use of test scores.

(i) A description of all special services that will be provided at the location of the test administration to accommodate handicapped or disabled test subjects.

(j) The policies and procedures of the test agency when there is a delay in reporting the test scores pursuant to Section 99158.

(k) A representative set of sample test items.

(*l*) The fees to be charged by the test sponsor for various services made available to the test subject.

(m) Each test agency shall comply with the requirements of this section beginning with the start of its testing year that begins after January 1, 1985.

SEC. 148. Section 100603 of the Education Code is amended to read:

100603. (a) Bonds in the total amount of thirteen billion fifty million dollars ($13,050,000,000), not including the amount of any refunding bonds issued in accordance with Sections 100644 and 100755, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee

established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

SEC. 149. Section 7154 of the Elections Code is amended to read:

7154. (a) Each officer named in subdivision (a) of Section 7150 who was nominated and elected as a candidate of the party and whose term of office extends beyond the first Monday in December, in the case of Members of the Legislature, and the Monday after January 1, in the case of other officers, next following the direct primary election, or the appointee or successor appointed, elected, or otherwise designated by law to fill a vacancy in the office of that officer, shall be known as a "holdover member."

(b) Each candidate of the party in whose behalf nomination papers were filed and who was nominated at the direct primary election by that party shall be known as a "nominee member." Nominees for an office, the term of which extends beyond two years, are members of each succeeding state central committee until that following the direct primary election at which nominations for the office are again to be made. If a candidate is a "nominee member" in the year in which he or she is nominated, and is elected to the office at the succeeding general election, the candidate shall be considered a "holdover member" in the next odd-numbered year.

(c) One member shall be appointed pursuant to Section 7168 for each of the officers named in subdivision (a) of Section 7150 not represented by a "holdover member" nor by a "nominee member" of the party.

SEC. 150. Section 7854 of the Elections Code is amended to read:

7854. The removal of residence by an elected or appointed member of a county central committee from the county from which the member was elected shall constitute the member's automatic resignation from the committee.

SEC. 151. Section 9086 of the Elections Code is amended to read:

9086. The ballot pamphlet shall contain as to each state measure to be voted upon, the following, in the order set forth in this section:

(a) Upon the top portion of the first page, and not exceeding one-third of the page, shall appear:

(1) Identification of the measure by number and title.

(2) The official summary prepared by the Attorney General.

(3) The total number of votes cast for and against the measure in both the State Senate and Assembly, if the measure was passed by the Legislature.

(b) Beginning at the top of the right page shall appear the analysis prepared by the Legislative Analyst, provided that the analysis fits on a single page. If it does not fit on a single page, the analysis shall begin

on the lower portion of the first left page and shall continue on subsequent pages until it is completed.

(c) Arguments for and against the measure shall be placed on the next left and right pages, respectively, following the final page of the analysis of the Legislative Analyst. The rebuttals shall be placed immediately below the arguments.

(d) If no argument against the measure has been submitted, the argument for the measure shall appear on the right page facing the analysis.

(e) The complete text of each measure shall appear at the back of the pamphlet. The text of the measure shall contain the provisions of the proposed measure and the existing provisions of law repealed or revised by the measure. The provisions of the proposed measure differing from the existing provisions of law affected shall be distinguished in print, so as to facilitate comparison.

(f) The following statement shall be printed at the bottom of each page where arguments appear: "Arguments printed on this page are the opinions of the authors, and have not been checked for accuracy by any official agency."

SEC. 152. Section 9096 of the Elections Code is amended to read:

9096. (a) As soon as copies of the ballot pamphlet are available, the Secretary of State shall immediately mail the following number of copies to the listed persons and places:

(1) Five copies to each county elections official or registrar of voters.

(2) Six copies to each city elections official.

(3) Five copies to each Member of the Legislature.

(4) Five copies to the proponents of each ballot measure.

(b) The Secretary of State shall also mail:

(1) Two copies to each public library and branch thereof.

(2) Twelve copies to each public high school or other public school teaching at least the 11th and 12th grades, and 25 copies to each public institution of higher learning. Upon request, and in the discretion of the Secretary of State, additional copies may be furnished to these persons and institutions.

SEC. 153. Section 10225 of the Elections Code is amended to read:

10225. (a) Notwithstanding Sections 10220 and 10224, if nomination papers for an incumbent officer of the city are not filed by or on the 88th day before the election, during normal business hours, as posted, the voters shall have until the 83rd day before the election during normal business hours, as posted, to nominate candidates other than the person who was the incumbent on the 88th day, for that incumbent's elective office.

(b) This section is not applicable where there is no incumbent eligible to be elected. If this section is applicable, notwithstanding Section 10224, a candidate may withdraw his or her nomination paper until the 83rd day before the election during normal business hours, as posted.

SEC. 154. Section 15375 of the Elections Code is amended to read:

15375. The elections official shall send to the Secretary of State within 35 days of the election in the manner requested one complete copy of all results as to all of the following:

(a) All candidates voted for statewide office.

(b) All candidates voted for the following offices:

(1) Member of the Assembly.

(2) Member of the Senate.

(3) Member of the United States House of Representatives.

(4) Member of the State Board of Equalization.

(5) Justice of the Court of Appeal.

(6) Judge of the superior court.

(c) All persons voted for at the presidential primary. The results for all persons voted for at the presidential primary for delegates to national conventions shall be canvassed and shall be sent within 28 days after the election.

(d) The vote given for persons for electors of President and Vice President of the United States. The results for presidential electors shall be endorsed "Presidential Election Returns."

(e) All statewide measures.

SEC. 155. Section 1560 of the Evidence Code is amended to read:

1560. (a) As used in this article:

(1) "Business" includes every kind of business described in Section 1270.

(2) "Record" includes every kind of record maintained by a business.

(b) Except as provided in Section 1564, when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in an action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness delivers by mail or otherwise a true, legible, and durable copy of all of the records described in the subpoena to the clerk of the court or to another person described in subdivision (d) of Section 2026.010 of the Code of Civil Procedure, together with the affidavit described in Section 1561, within one of the following time periods:

(1) In any criminal action, five days after the receipt of the subpoena.

(2) In any civil action, within 15 days after the receipt of the subpoena.

(3) Within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of the court.

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records that are original documents and that are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records that are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party in a civil action may direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in Section 2020.420 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's representative, or deposition officer. It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena. Disobedience to the deposition subpoena issued pursuant to this subdivision is punishable as provided in Section 2020.240 of the Code of Civil Procedure.

SEC. 156. Section 274 of the Family Code is amended to read:

274. (a) Notwithstanding any other provision of law, if the injured spouse is entitled to a remedy authorized pursuant to Section 4324, the injured spouse shall be entitled to an award of reasonable attorney's fees and costs as a sanction pursuant to this section.

(b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.

(c) An award of attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.

SEC. 157. Section 3046 of the Family Code is amended to read:

3046. (a) If a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in determining custody or visitation in either of the following circumstances:

(1) The absence or relocation is of short duration and the court finds that, during the period of absence or relocation, the party has demonstrated an interest in maintaining custody or visitation, the party maintains, or makes reasonable efforts to maintain, regular contact with the child, and the party's behavior demonstrates no intent to abandon the child.

(2) The party is absent or relocates because of an act or acts of actual or threatened domestic or family violence by the other party.

(b) The court may consider attempts by one party to interfere with the other party's regular contact with the child in determining if the party has satisfied the requirements of subdivision (a).

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

(1) A party against whom a protective or restraining order has been issued excluding the party from the dwelling of the other party or the child, or otherwise enjoining the party from assault or harassment against the other party or the child, including, but not limited to, orders issued under Part 4 (commencing with Section 6300) of Division 10, orders preventing civil harassment or workplace violence issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, and criminal protective orders issued pursuant to Section 136.2 of the Penal Code.

(2) A party who abandons a child as provided in Section 7822.

SEC. 158. Section 3121 of the Family Code is amended to read:

3121. (a) In any proceeding pursuant to Section 3120, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in Section 3120, or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in subdivision (f), an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs, or both, shall be made by motion on notice or by an order to show cause during the pendency of any proceeding described in Section 3120.

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

SEC. 159. Section 4905 of the Family Code, as amended by Section 3 of Chapter 349 of the Statutes of 2002, is amended to read:

4905. (a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal

jurisdiction over a nonresident individual or the individual's guardian or conservator if any of the following apply:

(1) The individual is personally served with notice within this state.

(2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.

(3) The individual resided with the child in this state.

(4) The individual resided in this state and provided prenatal expenses or support for the child.

(5) The child resides in this state as a result of the acts or directives of the individual.

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.

(7) The individual has filed a declaration of paternity pursuant to Chapter 3 (commencing with Section 7570) of Part 2 of Division 12.

(8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subdivision (a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of Section 4960 or 4964 are met.

SEC. 160. Section 7605 of the Family Code is amended to read:

7605. (a) In any proceeding to establish physical or legal custody of a child or a visitation order under this part, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in subdivision (a), or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in subdivision (f), an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs, or both, shall be made by motion on notice or by an order to show cause during the pendency of any proceeding described in subdivision (a).

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

SEC. 161. Section 9201 of the Family Code is amended to read:

9201. (a) Except as otherwise permitted or required by statute, neither the department nor a licensed adoption agency shall release information that would identify persons who receive, or have received, adoption services.

(b) Employees of the department and licensed adoption agencies shall release to the department at Sacramento any requested information, including identifying information, for the purposes of recordkeeping and monitoring, evaluation, and regulation of the provision of adoption services.

(c) Prior to the placement of a child for adoption, the department or licensed adoption agency may, upon the written request of both a birth and a prospective adoptive parent, arrange for contact between these birth and prospective adoptive parents that may include the sharing of identifying information regarding these parents.

(d) The department and any licensed adoption agency may, upon written authorization for the release of specified information by the subject of that information, share information regarding a prospective adoptive parent or birth parent with other social service agencies, including the department and other licensed adoption agencies, or providers of health care as defined in Section 56.05 of the Civil Code.

(e) Notwithstanding any other law, the department and any licensed adoption agency may furnish information relating to an adoption petition or to a child in the custody of the department or any licensed adoption

agency to the juvenile court, county welfare department, public welfare agency, private welfare agency licensed by the department, provider of foster care services, potential adoptive parent, or provider of health care as defined in Section 56.05 of the Civil Code, if it is believed the child's welfare will be promoted thereby.

(f) The department and any licensed adoption agency may make adoption case records, including identifying information, available for research purposes, provided that the research will not result in the disclosure of the identity of the child or the parties to the adoption to anyone other than the entity conducting the research.

SEC. 162. Section 687 of the Financial Code is amended to read:

687. (a) For purposes of Section 316 of the Corporations Code, to the extent that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of the bank is contrary to any provision of Article 3 (commencing with Section 640), the making of the distribution shall, to that extent, be deemed to be contrary to the provisions of Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of the bank or of any majority-owned subsidiary of the bank on account of the making of a distribution to any shareholder of the bank contrary to any provision of Article 3 (commencing with Section 640) or any provision of Sections 501, 502, and 503 of the Corporations Code, to the same extent as a creditor of the bank who did not consent to the illegal distribution and who had a valid claim against the bank that arose prior to the time of the illegal distribution and exceeded the amount of the illegal distribution, may bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner may levy a civil penalty against the bank pursuant to Section 216.3.

SEC. 163. Section 1800 of the Financial Code is amended to read:

1800. (a) It is the intent of the Legislature in enacting this chapter to protect the people of this state from being victimized by unscrupulous practices by persons receiving money for transmission to foreign countries and to establish a minimum level of fiscal responsibility and corporate integrity for all entities engaging in the business of receiving money for transmission to foreign countries without regard to the method of transmission.

(b) The Legislature finds and declares that California has a large and diverse population, many of whom are concerned with the financial plight of people remaining in the countries that they left. Many of these people are not familiar with the varied and intricate financial systems

of this state and due to language barriers and other obstacles do not have access to entities offering legitimate money transmission services. In an effort to transmit money to their friends and relatives, these persons give their money to persons under the precept that the money or its equivalent will be immediately transmitted to the designated foreign country. The money is frequently misappropriated or never transmitted. The victims of these practices are generally not aware of the law enforcement services available to help them, thus this unlawful conduct goes unreported.

SEC. 164. Section 5303 of the Financial Code is amended to read:

5303. Any officer, director, employee, or agent of any association who (a) willfully makes or knowingly concurs in the making or publishing of a false or untrue material entry in any book, record, report, statement concerning the business or affairs of the association, or statement of condition or in connection with any transaction of the association, with intent to deceive any officer or director thereof, or with intent to deceive any agency or examiner, whether private or public, employed or lawfully appointed to examine into the association's condition or to examine into any of the association's affairs or transactions, or with intent to deceive any public officer, office, or board to which the association is required by law to report or that has authority by law to examine into the association's affairs or transactions, (b) with like intent, willfully omits to make a material new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of the association in any appropriate book, record, report, or statement of the association, which entry is required to be made by law or generally accepted accounting principles applicable to a savings institution, or (c) with like intent, willfully alters, abstracts, conceals, refuses to allow to be inspected by the commissioner or the commissioner's deputies or examiners, or destroys any books, records, reports, or statements of the association made, written, or kept, or required to be made, written, or kept by him or her or under his or her direction, shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in the state prison for two, three, or four years, or by both that fine and imprisonment.

SEC. 165. Section 6503 of the Financial Code is amended to read:

6503. (a) No association or subsidiary thereof, without the prior written consent of the commissioner, shall enter into either of the following:

(1) Any transaction or modification of any transaction with an affiliated person to buy, lease, or sell real or personal property, or take that property by gift.

(2) Any consulting contracts or contracts for services with an affiliated person.

(b) As a condition to approving a transaction specified in subdivision (a), the commissioner shall make both of the following findings:

(1) The terms of the transaction are fair to, and in the best interests of, the savings association or subsidiary. In the case of real or personal property transactions, this finding shall be supported by an appraisal not prepared by an affiliated person or employee of the association or subsidiary.

(2) The transaction was approved in advance by a resolution duly adopted with full disclosure by at least a majority, with no director having an interest in the transaction voting, of the entire board of directors of the association or subsidiary, or alternatively, by a majority of the total votes eligible to be cast by the voting members or stockholders of the association at a meeting called for that purpose, with no votes cast by proxies not solicited for that purpose. For purposes of this subdivision, "full disclosure" shall include, but not be limited to, (A) the affiliated person's source of financing for any real property involved in the transaction and (B) whether the association or any subsidiary thereof has a deposit relationship with any financial institution or holding company or affiliate thereof providing the financing.

SEC. 166. Section 7263 of the Financial Code is amended to read:

7263. Bonds of any other political subdivision, public corporation, or district of the State of California (herein referred to generally as public corporations) having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of those bonds upon all property within its boundaries subject to taxation by the public corporation, if the net direct debt of that public corporation together with its net overlapping debt does not exceed 25 percent of the assessed valuation of the taxable property within its boundaries according to the last official equalized county assessment roll.

SEC. 167. Section 7273 of the Financial Code is amended to read:

7273. Fixed interest railroad bonds meeting the requirements of subdivisions (a) and (b), bonds secured by a mortgage on jointly operated railroad facilities meeting the requirements of subdivision (c), and railroad equipment trust certificates meeting the requirements of subdivision (d), as follows:

(a) The railroad bonds are issued by or are assumed, guaranteed, or provision is made unconditionally for the payment of principal and interest on specified dates, by a solvent railroad company:

(1) That operates at least 500 miles of standard gauge road within the continental United States and that has had average annual operating revenues of at least ten million dollars ($10,000,000) during the five years next preceding the investment.

(2) Whose average annual balance of income available for fixed charges for the last 15 years for which the necessary statistical data are available, when divided by an amount equal to its fixed charges for the last fiscal year, shall produce a quotient that is at least 15 percent higher than the quotient obtained by dividing the average annual balance of income available for fixed charges of all class 1 railroads for the same 15-year period by an amount equal to the fixed charges of all class 1 railroads for the last year in the period.

(3) Whose average "balance of net income" (computed by deducting the sum of its fixed charges and contingent interest charges for the latest fiscal year from the average annual balance available for fixed charges for the latest 15 years for which the necessary statistical data are available) when divided by its average annual railroad operating income for the same 15-year period, shall produce a quotient at least 15 percent greater than the quotient obtained by dividing the average balance of income of all class 1 railroads, computed in the same manner, by the average annual railway operating income of all class 1 railroads for the same 15-year period.

(4) Whose average balance of income available for fixed charges for the last three fiscal years preceding the investment, or for the lesser number of fiscal years that may have elapsed since December 31, 1946, has not been less than one and one-half times its fixed charges for the last fiscal year.

(b) The railroad bonds are secured by any of the following:

(1) A mortgage, either direct or collateral, that shall be a first mortgage on not less than 75 percent of the mileage subject to the mortgage.

(2) A first mortgage on terminal properties comprising the company's principal freight or passenger terminal in a city of not less than 250,000 population according to the latest federal or state census.

(3) A refunding mortgage on not less than 75 percent of the railroad mileage owned or operated by the issuing company under which bonds may be issued for retirement or refunding of all debts secured by prior liens on all or any part of the property, other than liens on equipment, subject to the mortgage, if the amount of debt senior to the refunding mortgage is not more than 50 percent of the sum of all senior debt and the refunding mortgage or if underlying mortgage bonds in an amount equal to at least 50 percent of the debt outstanding under the refunding mortgage are pledged as security under that refunding mortgage.

(4) A first mortgage on railroad property leased to and operated by the company if the lease extends beyond the maturity date of the bonds and the company has guaranteed, assumed, or committed itself under the terms of the lease to pay principal and interest on the bonds.

(c) Bonds secured by a mortgage on jointly operated railroad facilities shall be secured by a first mortgage on a terminal, depot, tunnel, or bridge used by or leased to two or more railroads that have jointly and severally agreed unconditionally to pay the interest and principal payment, one of which railroads shall meet the requirements set forth in subdivision (a).

(d) Railroad equipment trust certificates shall be issued by a solvent class 1 railroad whose average balance of income available for fixed charges for the last three fiscal years preceding the investment, or for the lesser number of fiscal years that may have elapsed since December 31, 1946, shall be not less than one and one-half times its fixed charges for the last fiscal year. Those certificates shall be issued to provide funds for the construction or acquisition of new standard gauge railroad equipment made with the approval of the Interstate Commerce Commission and secured by an equipment trust, lease, conditional sales contract, or first lien on the equipment. The aggregate principal amount of the obligations shall not exceed 80 percent of the purchase price of the equipment and the certificates shall mature within 15 years of the date of issuance in equal annual, semiannual, or monthly installments, beginning not later than one year after the date of issuance.

(e) As used in this section, "balance of income available for fixed charges," "fixed charges," "contingent interest," and "railway operating income" shall have the same meaning as in the accounting reports filed by common carriers by rail pursuant to regulations of the Interstate Commerce Commission, except that "balance of income available for payment of fixed charges" shall be computed before deduction of federal income of excess profits taxes, and "fixed charges" and "contingent interest" of the railroad shall be those charges existing as of the time the computation is made, excluding charges with respect to debt that has been retired or will be retired within six months and for the payment of which funds have been or are contemporaneously being set aside in trust but including charges with respect to new debt issued or in the process of being issued.

SEC. 168. Section 7274 of the Financial Code is amended to read:

7274. Bonds and debentures of gas, electric, or gas and electric companies meeting the requirements of subdivision (a), bonds and debentures of telephone companies meeting the requirements of subdivision (b), and the bonds and debentures of water companies meeting the requirements of subdivision (c), as follows:

(a) Bonds or debentures of gas, electric, or gas and electric companies shall be of an issue that originally amounted to not less than one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of its physical property, and, if debentures, shall be

issued by a company substantially all of whose physical property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a public utility corporation, which does all of the following:

(1) Derives more than 50 percent of its gross operating revenue from the business of supplying electricity, artificial gas, or natural gas or all or any of these services, and at least 80 percent of its gross operating revenue from all or any of the public utility businesses enumerated in this section.

(2) Has a gross operating revenue of not less than seven million five hundred thousand dollars ($7,500,000) for its most recent fiscal year.

(3) Has a funded debt not exceeding two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves for depreciation, retirement, or amortization of the physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(4) Has had earnings, including earnings of subsidiaries mentioned in paragraph (3), available for interest payments, before deduction of state and federal taxes imposed on or measured by income or profits, during four of the five most recent fiscal years and during the most recent fiscal year equal to at least twice the existing annual interest charges on the corporation's total funded debt during those respective fiscal years.

(b) Bonds or debentures of telephone companies shall be of an issue originally amounting to at least one million dollars ($1,000,000) and, if bonds, secured by a mortgage on substantially all of the physical property of the company, and, if debentures, be issued by a company substantially all of whose physical property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company subject to the following:

(1) The company has during its last fiscal year had gross revenues of at least seven million five hundred thousand dollars ($7,500,000), more than 50 percent of which was derived from owned properties used in furnishing telephone and other communication services and at least 80 percent of its gross revenues from all or any of the public utility businesses enumerated in this section.

(2) The funded debt does not exceed two-thirds of the value of its physical property as shown by the books of the corporation or by a

statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves shown on the statement for depreciation, retirement, or amortization as the physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) For four of the five most recent fiscal years and for the last fiscal year has had earnings, including earnings of subsidiaries mentioned in paragraph (2), available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, at least equal to twice the interest charges on the company's total funded debt during those respective fiscal years.

(c) Water company bonds or debentures shall be of an issue originally amounting to at least one million dollars ($1,000,000) and, if bonds, secured by a first mortgage on the company's property, and, if debentures, issued by a company substantially all of whose property is free of mortgage and carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company subject to the following:

(1) The company is the supplier of substantially all water for domestic use in a community or communities having a population of not less than 25,000.

(2) The funded debt of the company does not exceed two-thirds of the value of its physical property as shown by the published statement of the company for its next preceding fiscal period, less the amount of any reserves shown for depreciation, retirement, or amortization of the physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) For four out of the five most recent fiscal years and for the most recent fiscal year has had earnings, including those of subsidiaries mentioned in paragraph (2), available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, of at least one and one-half times the interest charges on the company's total funded debt during those respective fiscal years.

SEC. 169. Section 7509 of the Financial Code is amended to read:

7509. (a) (1) At the time of origination, a real estate loan may not exceed 100 percent of the market value of security property. An association shall, by vote of its board of directors, establish maximum loan-to-value ratios for loans made on the security of real estate, and the

resolution adopting those ratios shall be included in the minutes of the directors' meeting. Home loans, as defined in Section 7504, made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios adopted pursuant to this subdivision with the excess secured by the savings account.

(2) However, for loans originated in excess of 90 percent of the initial appraised value of the security property, the savings account shall consist only of funds belonging to the borrower, the borrower's family, or the borrower's employer, and the loans shall not exceed the appraised value of the real estate.

(b) With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property value shall be insured or guaranteed by a mortgage insurance company that the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer."

(c) With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, an association's board of directors shall approve each of these loans prior to its origination and that approval shall be recorded in the minutes of its meeting.

(d) An association shall not make a loan secured by unimproved real property if the loan-to-value ratio would exceed 80 percent of the appraised value of the unimproved real property securing the loan.

(e) In determining compliance with maximum loan-to-value-ratio limitations for real estate loans, at the time of making a loan, an association shall add together the unpaid amount, or in the case of a line-of-credit loan, the approved credit limit, of all recorded loans secured by prior mortgages, liens, or other encumbrances on the security property that would have priority over the association's lien, and shall not make the loan unless the total amount of those loans, including the loan to be made but excluding loans that will be paid off out of the proceeds of the new loan, does not exceed the applicable maximum loan-to-value-ratio limitations prescribed in this subdivision. In determining the value of the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed.

(f) "Value" for a real estate loan means the market value of the real estate.

SEC. 170. Section 7600 of the Financial Code is amended to read:

7600. In the case of any investment made by an association in a real estate loan, in the event all or part of the ownership of the real estate security becomes vested in a person other than the party or parties

originally executing the security instruments and if there is not an agreement in writing to the contrary, an association may, without notice to the party or parties, deal with a successor in interest to the mortgage and debt in the same manner as with the original party or parties, and may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt, without discharging or in any way affecting the original liability of the party or parties or their debt.

SEC. 171. Section 12100 of the Financial Code is amended to read:

12100. This division does not apply to any of the following:

(a) Any person, or his or her authorized agent, doing business under license and authority of the Commissioner of Financial Institutions under Division 1 (commencing with Section 99) or under any law of this state or of the United States relating to banks, trust companies, building or savings associations, industrial loan companies, personal property brokers, credit unions, title insurance companies or underwritten title companies, as defined in Section 12402 of the Insurance Code, escrow agents subject to Division 6 (commencing with Section 17000), or finance lenders subject to Division 9 (commencing with Section 22000).

(b) (1) Any person licensed under Chapter 14A (commencing with Section 1851) of Division 1 or any agent of the person, when selling any traveler's check, as defined in Section 1852, which is issued by the person.

(2) Any person licensed under Division 16 (commencing with Section 33000) or any agent of the person, when selling any payment instrument, as defined in Section 33059, which is issued by the person.

(c) The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney-at-law, and the fees and disbursements of the person, whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter. These fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller.

(d) Any transaction in which money or other property is paid to a "joint control agent" for disbursal or use in payment of the cost of labor, materials, services, permits, fees, or other items of expense incurred in construction of improvements upon real property.

(e) A merchant-owned credit or creditors association, or a member-owned, member-controlled, or member-directed association whose principal function is that of servicing the community as a reporting agency.

(f) Any agency or service subject to Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code, when providing services under that title.

(g) Any person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, when acting in any capacity for which he or she is licensed under that part.

(h) A common law or statutory assignment for the benefit of creditors or the operation or liquidation of property or a business enterprise under supervision of a creditor's committee.

(i) The services of a person licensed as a certified public accountant or a public accountant in this state, when the person renders services in the course of his or her practice as a certified public accountant or a public accountant, and the fees and disbursements of the person, whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter. These fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller.

(j) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1 or any agent of the person, when selling any check or draft that is drawn by the person and is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(k) Any group of banks each of which is organized under the laws of a nation other than the United States and one or more of which are licensed by the Commissioner of Financial Institutions under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1, or any agent of the group, when selling any foreign currency traveler's check, as defined in Section 1852, issued by the group. Each bank that is a member of the group is jointly and severally liable to pay the foreign currency traveler's check.

(*l*) Any transaction of the type described in Section 1854.1.

SEC. 172. Section 14402 of the Financial Code is amended to read:

14402. Every credit union may purchase and hold, either individually or jointly with other credit unions or affiliated organizations, a lot and building to be employed principally for the transaction of business, and to provide for future expansion of the facilities of those organizations. Any excess space that is not occupied by the organizations purchasing and holding the building may be leased to the public. The lot and building may be sold if all the holders of the property join in its sale.

SEC. 173. Section 18062 of the Financial Code is amended to read:

18062. An industrial loan company shall not use any advertisement after its use has been disapproved by the commissioner and the industrial loan company has been notified in writing of the disapproval. Commencing July 1, 1990, the commissioner may require a company to obtain written or oral approval of any advertisement for investment or thrift certificates prior to publication thereof in order to avoid false, misleading, or deceptive advertising.

SEC. 174. Section 18415.3 of the Financial Code is amended to read:

18415.3. (a) Whenever the net worth of an industrial loan company, exclusive of its good will, is less than 90 percent of the aggregate sum of its outstanding investment certificates, exclusive of those hypothecated with the company issuing them, divided by the fraction that is its investment certificates ratio permitted by the commissioner, the commissioner shall by written order direct the company to make good the alleged deficiency of net worth. Pursuant to the commissioner's orders, the company's net worth shall be at least 100 percent of the aggregate sum of its outstanding investment certificates, exclusive of those hypothecated with the company issuing them, divided by the fraction that is its investment certificates ratio permitted by the commissioner.

(b) If the company fails to cure the alleged deficiency of net worth within the commissioner's specified time, not to exceed 120 days, the commissioner may take possession of the company's property and business. If the alleged deficiency is not cured within 120 days of the order, the commissioner shall take possession of the company's property and business.

SEC. 175. Section 21050 of the Financial Code is amended to read:

21050. This division does not apply to any of the following:

(a) Any corporation organized for the purpose of securing credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923."

(b) Any nonprofit cooperative corporation or association with or without capital stock, organized or existing pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(c) Any person, corporation, association, syndicate, joint stock company, or partnership, engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, and bee products on a cooperative nonprofit basis.

SEC. 176. Section 22304 of the Financial Code is amended to read:

22304. As an alternative to the charges authorized by Section 22303, a licensee may contract for and receive charges at the greater of the following:

(a) A rate not exceeding 1.6 percent per month on the unpaid principal balance.

(b) A rate not exceeding five-sixths of 1 percent per month plus a percentage per month equal to one-twelfth of the annual rate prevailing on the 25th day of the second month of the quarter preceding the quarter in which the loan is made, as established by the Federal Reserve Bank

of San Francisco, on advances to member banks under Sections 13 and 13a of the Federal Reserve Act, as now in effect or hereafter from time to time amended, or if there is no single determinable rate for advances, the closest counterpart of this rate as shall be determined by the Commissioner of Financial Institutions. Charges shall be calculated on the unpaid principal balance.

(c) This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars ($2,500) or more as determined in accordance with Section 22251.

SEC. 177. Section 854 of the Fish and Game Code is amended to read:

854. Notwithstanding Section 18932 of the Government Code, the minimum age limit for appointment to the position of fish and game warden of the Department of Fish and Game shall be 18 years. Any examination for the position of warden shall require a demonstration of the physical ability to effectively carry out the duties and responsibilities of the position in a manner that would not inordinately endanger the health or safety of any warden or the health and safety of others.

SEC. 178. Section 1122 of the Fish and Game Code is amended to read:

1122. Any claim for damages arising against the state under Section 1121 shall be presented to the California Victim Compensation and Government Claims Board in accordance with Section 905.2 of the Government Code, and if not covered by insurance provided pursuant to Section 1121, the claim shall be payable only out of funds appropriated by the Legislature for that purpose. If the state elects to insure its liability under Section 1121, the California Victim Compensation and Government Claims Board may automatically deny the claim.

SEC. 179. Section 2120 of the Fish and Game Code is amended to read:

2120. (a) The commission, in cooperation with the Department of Food and Agriculture, shall adopt regulations governing both (1) the entry, importation, possession, transportation, keeping, confinement, or release of any and all wild animals that will be or that have been imported into this state pursuant to this chapter, and (2) the possession of all other wild animals. The regulations shall be designed to prevent damage to the native wildlife or agricultural interests of this state resulting from the existence at large of these wild animals, and to provide for the welfare of wild animals.

(b) The regulations shall also include criteria for all of the following:

(1) The receiving, processing, and issuing of a permit and conducting inspections.

(2) Contracting out inspection activities.

(3) Responding to public reports and complaints.

(4) The notification of the revocation, termination, or denial of permits, and related appeals.

(5) The method by which the department determines that the breeding of wild animals pursuant to a single event breeding permit for exhibitor or a breeding permit is necessary and will not result in unneeded or uncared for animals, and the means by which the criteria will be implemented and enforced.

(6) How a responding agency will respond to an escape of a wild animal. This shall include, but not be limited to, the establishment of guidelines for the safe recapture of the wild animal and procedures outlining when lethal force would be used to recapture the wild animal.

(c) These regulations shall be developed and adopted by the commission on or before January 1, 2007.

SEC. 180. Section 2125 of the Fish and Game Code is amended to read:

2125. (a) In addition to any other penalty provided by law, any person who violates this chapter or any regulations implementing this chapter, is subject to a civil penalty of not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000) for each violation. Except as otherwise provided, any violation of this chapter or of any regulations implementing this chapter is a misdemeanor punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000).

(b) The Attorney General, or the city attorney of the city or the district attorney or county counsel of the county in which a violation of this article occurs, may bring a civil action to recover the civil penalty in subdivision (a) and the costs of seizing and holding the animal listed in Section 2118, except to the extent that those costs have already been collected as provided by subdivision (d). The civil action shall be brought in the county in which the violation occurs and any penalty imposed shall be transferred to the Controller for deposit in the Fish and Game Preservation Fund in accordance with Section 13001.

(c) In an action brought under this section, in addition to the penalty specified in subdivision (a), the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness' fees may also be recovered and those amounts shall be credited to the same operating funds as those from which the expenditures for those purposes were derived.

(d) (1) If an animal is confiscated because the animal was kept in contravention of this chapter or any implementing regulations, the person claiming the animal shall pay to the department or the new custodian of the animal an amount sufficient to cover all reasonable expenses expected

to be incurred in caring for and providing for the animal for at least 30 days, including, but not limited to, the estimated cost of food, medical care, and housing.

(2) If the person claiming the animal fails to comply with the terms of his or her permit and to regain possession of the animal by the expiration of the first 30-day period, the department may euthanize the animal or place the animal with an appropriate wild animal facility at the end of the 30 days, unless the person claiming the animal pays all reasonable costs of caring for the animal for a second 30-day period before the expiration of the first 30-day period. If the permittee is still not in compliance with the terms of the permit at the end of the second 30-day period, the department may euthanize the animal or place the animal in an appropriate wild animal facility.

(3) The amount of the payments described in paragraphs (1) and (2) shall be determined by the department, and shall be based on the current reasonable costs to feed, provide medical care for, and house the animal. If the person claiming the animal complies with the terms of his or her permit and regains possession of the animal, any unused portion of the payments required pursuant to paragraphs (1) and (2) shall be returned to the person claiming the animal no later than 90 days after the date on which the person regains possession of the animal.

SEC. 181. Section 2127 of the Fish and Game Code is amended to read:

2127. (a) The department may reimburse eligible local entities, pursuant to a memorandum of understanding entered into pursuant to this section, for costs incurred by the eligible local entities in the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal designated pursuant to Section 2118.

(b) The department may enter into memoranda of understanding with eligible local entities for the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal designated pursuant to Section 2118, or a cat specified in Section 3005.9.

(c) The Fish and Game Commission shall adopt regulations that establish specific criteria an eligible local entity shall meet in order to qualify as an eligible local entity.

(d) For the purposes of this division, "eligible local entity" means a county, local animal control officer, local humane society official, educational institution, or trained private individual that enters into a memorandum of understanding with the department pursuant to this section.

SEC. 182. Section 2150.4 of the Fish and Game Code is amended to read:

2150.4. (a) Consistent with Section 3005.91, the department or an eligible local entity shall inspect the wild animal facilities, as determined by the director's advisory committee, of each person holding a permit issued pursuant to Section 2150 authorizing the possession of a wild animal.

(b) In addition to the inspections specified in subdivision (a), the department or an eligible local entity, pursuant to the regulations of the commission, may inspect the facilities and care provided for the wild animal of any person holding a permit issued pursuant to Section 2150 for the purpose of determining whether the animal is being cared for in accordance with all applicable statutes and regulations. The department shall collect an inspection fee, in an amount determined by the department pursuant to Section 2150.2.

(c) No later than January 1, 2007, the department, in cooperation with the committee created pursuant to Section 2150.3, shall develop, implement, and enter into memorandums of understanding with eligible local entities if the department elects not to inspect every wild animal facility pursuant to subdivisions (a) and (b). Eligible local entities shall meet the criteria established in regulations adopted pursuant to subdivision (b) of Section 2157.

SEC. 183. Section 2765 of the Fish and Game Code is amended to read:

2765. The California Water Commission, in any recommendation it may make to the Congress of the United States on funding for water projects, shall include recommendations for studies, programs, and facilities necessary to correct fish and wildlife problems caused, fully or partially, by federal water facilities and operation, including, but not limited to, all of the following:

(a) The Red Bluff Dam.

(b) The Trinity and Lewiston Dams.

(c) The facilities necessary to protect wildlife areas in the Suisun Marsh and the Sacramento-San Joaquin Delta from adverse water quality effects caused by the federal Central Valley Project.

(d) The Kesterson Reservoir and the San Luis Drain.

SEC. 184. Section 4190 of the Fish and Game Code is amended to read:

4190. The department shall tag, brand, or otherwise identify in a persistent and distinctive manner any large depredatory mammal relocated by, or relocated with the approval of, the department for game management purposes.

SEC. 185. Section 5653 of the Fish and Game Code is amended to read:

5653. (a) The use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state is prohibited, except as authorized under a permit issued to that person by the department in compliance with the regulations adopted pursuant to Section 5653.9. Before any person uses any vacuum or suction dredge equipment in any river, stream, or lake of this state, that person shall submit an application for a permit for a vacuum or suction dredge to the department, specifying the type and size of equipment to be used and other information as the department may require.

(b) Under the regulations adopted pursuant to Section 5653.9, the department shall designate waters or areas wherein vacuum or suction dredges may be used pursuant to a permit, waters or areas closed to those dredges, the maximum size of those dredges that may be used, and the time of year when those dredges may be used. If the department determines, pursuant to the regulations adopted pursuant to Section 5653.9, that the operation will not be deleterious to fish, it shall issue a permit to the applicant. If any person operates any equipment other than that authorized by the permit or conducts the operation in any waters or area or at any time that is not authorized by the permit, or if any person conducts the operation without securing the permit, that person is guilty of a misdemeanor.

(c) The department shall issue a permit upon the payment, in the case of a resident, of a base fee of twenty-five dollars ($25), as adjusted under Section 713, when an onsite investigation of the project size is not deemed necessary by the department, and a base fee of one hundred thirty dollars ($130), as adjusted under Section 713, when the department deems that an onsite investigation is necessary. In the case of a nonresident, the base fee shall be one hundred dollars ($100), as adjusted under Section 713, when an onsite investigation is not deemed necessary, and a base fee of two hundred twenty dollars ($220), as adjusted under Section 713, when an onsite investigation is deemed necessary.

(d) It is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges.

SEC. 186. Section 8277 of the Fish and Game Code is amended to read:

8277. (a) The director may extend the Dungeness crab season in any district or part thereof.

(b) Before extending the Dungeness crab season, the director shall consider written findings of the department regarding the state of the Dungeness crab resource in the district, or part thereof, which consider,

but are not limited to, population and maturity. The director may extend the season only if the written findings do not conclude that the extension will damage the Dungeness crab resource.

(c) The director shall not extend the Dungeness crab season past August 31 in a district, or part thereof, north of the southern boundary of Mendocino County or past July 31 in a district, or part thereof, south of Mendocino County. The director shall order closure of the season at any time during the extension period if the director determines that further fishing will damage the Dungeness crab resource.

SEC. 187. Section 8278 of the Fish and Game Code is amended to read:

8278. (a) Except as otherwise provided, no Dungeness crab less than six and one-quarter (6 1/4) inches in breadth, and no female Dungeness crab, may be taken, possessed, bought, or sold, except that not more than 1 percent in number of any load or lot of Dungeness crabs may be less than six and one-quarter (6 1/4) inches in breadth but not less than five and three-quarters (5 3/4) inches in breadth.

(b) Dungeness crab shall be measured by the shortest distance through the body from edge of shell to edge of shell directly from front of points (lateral spines).

SEC. 188. Section 8494 of the Fish and Game Code is amended to read:

8494. (a) Commencing April 1, 2006, any vessel using bottom trawl gear in state-managed halibut fisheries, as described in subdivision (a) of Section 8841, shall possess a valid California halibut bottom trawl permit that has not been suspended or revoked and that is issued by the department authorizing the use of trawl gear by that vessel for the take of California halibut.

(b) A California halibut bottom trawl vessel permit shall be issued annually, commencing with the 2006 permit year. Commencing with the 2007–08 season, in order to be eligible for that permit, an applicant shall have been issued a California halibut bottom trawl vessel permit in the immediately preceding permit year.

(c) The department shall not issue a California halibut bottom trawl vessel permit pursuant to this section for use in the California halibut fishery unless that vessel has landed a minimum of 200 pounds of California halibut and reported that landing on fish landing receipts as being caught with bottom trawl gear in at least one of the following:

(1) At least two of the calendar years 1995 to 2003, inclusive.

(2) At least one of the calendar years 1995 to 2003, inclusive, and from January 1, 2004, to February 19, 2004, inclusive.

(d) Permits issued pursuant to this section may be transferred only if at least one of the following occur:

(1) The commission adopts a restricted access program for the fishery that is consistent with the commission's policies regarding restricted access to commercial fisheries.

(2) Prior to the implementation of a restricted access program, the permit is transferred to another vessel owned by the same permitholder of equal or less capacity, as determined by the department, and if the originally permitted vessel was lost, stolen, destroyed, or suffered a major irreparable mechanical breakdown. The department may not issue a permit for a replacement vessel if the department determines that the originally permitted vessel was fraudulently reported as lost, stolen, destroyed, or damaged. Only the permitholder at the time of the loss, theft, destruction, or irreparable mechanical breakdown of a vessel may apply to transfer the vessel permit. Evidence that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard, or any other law enforcement agency or fire department that conducted an investigation of the loss.

(3) Prior to the implementation of a halibut trawl restricted access program, the commission may consider requests from a vessel permitholder or his or her conservator or estate representative to transfer a permit with the vessel if both of the following conditions are met:

(A) The permitholder has died, is permanently disabled, or the permitholder is at least 65 years of age and has decided to retire from commercial fishing.

(B) California halibut landings contributed significantly to the record and economic income derived from the vessel, as determined by regulations adopted by the commission. The commission may request information that it determines is reasonably necessary from the permitholder or his or her heirs or estate for the purpose of verifying statements in the request prior to authorizing the transfer of the permit.

(e) The commission shall establish California halibut bottom trawl vessel permit fees based on the recommendations of the department and utilizing the guidelines outlined in subdivision (b) of Section 711 to cover the costs of administering this section. Prior to the adoption of a restricted access program pursuant to subdivision (d), fees may not exceed one thousand dollars ($1,000) per permit.

(f) Individuals holding a federal groundfish trawl permit may retain and land up to 150 pounds of California halibut per trip without a California halibut trawl permit in accordance with federal and state regulations, including, but not limited to, regulations developed under a halibut fishery management plan.

(g) This section shall become inoperative upon the adoption by the commission of a halibut fishery management plan in accordance with the requirements of Part 1.7 (commencing with Section 7050).

(h) The commission may adopt regulations to implement this section.

SEC. 189. Section 8495 of the Fish and Game Code is amended to read:

8495. (a) The following area is designated as the California halibut trawl grounds:

The ocean waters lying between one and three nautical miles from the mainland shore lying south and east of a line running due west (270° true) from Point Arguello and north and west of a line running due south (180° true) from Point Mugu.

(b) Notwithstanding subdivision (a), the use of trawl gear for the take of fish is prohibited in the following areas of the California halibut trawl grounds:

(1) Around Point Arguello. The area from a line extending from Point Arguello true west (270°) and out three miles, to a line extending from Rocky Point true south (180°) and out three miles.

(2) Around Point Conception. From a point on land approximately one-half mile north of Point Conception at latitude 34° 27.5′ extending seaward true west (270°) from one to three miles, to a point on land approximately ½ mile east of Point Conception at longitude 120° 27.5′ extending seaward true south (180°) from one to three miles.

(3) In the Hueneme Canyon in that portion demarked by the IMO Vessel Traffic safety zone on NOAA/NOS Chart 18725 and from one mile to the three mile limit of state waters.

(4) In Mugu Canyon, from Laguna Point, a line extending true south (180°) and out three miles, to Point Mugu, a line extending true south (180°) and from one to three miles.

(c) (1) Notwithstanding subdivision (a), commencing April 1, 2008, the following areas in the California halibut trawl grounds shall be closed to trawling, unless the commission finds that a bottom trawl fishery for halibut minimizes bycatch, is likely not damaging sea floor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral, or other biogenic habitats:

(A) The ocean waters lying between one and three nautical miles from the mainland shore from a point east of a line extending seaward true south (180°) from a point on land approximately ½ mile east of Point Conception at longitude 120° 27.5′ to a line extending due south from Gaviota.

(B) The ocean waters lying between one and two nautical miles from the mainland shore lying east of a line extending due south from Santa Barbara Point (180°) and west of a line extending due south from Pitas Point (180°).

(C) Except as provided in subdivision (b), the ocean waters lying between one and three nautical miles from the mainland shore lying

south and east of a line running due west (270° true) from Point Arguello to a line extending seaward true south (180°) from a point on land approximately ½ mile east of Point Conception at longitude 120° 27.5´, and from the western border of the IMO Vessel Traffic safety zone on NOAA/NOS Chart 18725 in Hueneme Canyon running south and east to a line running due south (180° true) from Point Mugu.

(2) In making the finding described in paragraph (1), the commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts.

(d) Commencing January 1, 2008, the commission shall review information every three years from the federal groundfish observer program and other available research and monitoring information it determines relevant, and shall close any areas in the California halibut trawl grounds where it finds that the use of trawl gear does not minimize bycatch, is likely damaging sea floor habitat, is adversely affecting ecosystem health, or impedes reasonable restoration of kelp, coral, or other biogenic habitats. The commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts in making that finding.

(e) Notwithstanding any other provision of law, the commission shall determine the size, weight, and configuration of all parts of the trawl gear, including, but not limited to, net, mesh, doors, appurtenances, and towing equipment as it determines is necessary to ensure trawl gear is used in a sustainable manner within the California halibut trawl grounds.

SEC. 190. Section 8610.7 of the Fish and Game Code is amended to read:

8610.7. (a) Commencing on July 1, 1993, there shall be paid to any person who submitted the form required by Section 7 of Article X B of the California Constitution within the 90-day period specified in subdivision (a) of that section, holds a permit issued pursuant to Section 5 of Article X B, who operates in the zone established pursuant to that article, who surrenders that permit to the department between July 1, 1993, and January 1, 1994, inclusive, and who agrees to permanently discontinue fishing with gill and trammel nets within the zone, a one-time compensation consisting of the average annual ex vessel value of the fish other than any species of rockfish landed by a fisherman, which were taken pursuant to a valid general gill net or trammel net permit issued pursuant to Sections 8681 and 8682 within the zone during the years 1983 to 1987, inclusive. The department shall determine the amount

of compensation to be paid by reviewing logs and landing receipts submitted to the department.

(b) Any person who did not submit the form required by Section 7 of Article X B of the California Constitution within the 90-day period specified in subdivision (a) of that section, or whose claim to compensation cannot be verified, shall not be compensated.

(c) Any person who is denied compensation by the department, as a result of the department's failure to verify landings, may appeal that decision to the commission.

(d) The California Victim Compensation and Government Claims Board shall, prior to the disbursement of any funds, verify the eligibility of each person seeking compensation and the amount of the compensation to be provided in order to ensure compliance with this section.

(e) Notwithstanding any other provision of law, any legal action or proceeding to challenge the validity of subdivision (b) of Section 3, or of Section 7, of Article X B of the California Constitution shall be commenced on or before April 1, 1993. In all actions brought to challenge the validity of subdivision (b) of Section 3, or of Section 7, of Article X B of the California Constitution, including the hearing of the action on appeal from the decision of a lower court, all courts where those actions are filed or pending shall give preference to those actions over all other civil actions filed or pending in that court, with respect to setting the action for trial or hearing, and in trying or hearing the matter, to the end that all of these actions shall be heard and determined as expeditiously as possible.

(f) If subdivision (b) of Section 3, or Section 7, of Article X B of the California Constitution is held invalid, any compensation paid to a person pursuant to this section shall be repaid to the state. No person shall be issued any permit or license pursuant to this article until repayment has been made.

SEC. 191. Section 8615 of the Fish and Game Code is amended to read:

8615. (a) (1) Within the first six months of operation pursuant to an experimental permit and after a reasonable and concerted effort to utilize a new type of commercial fishing gear, the permittee may request that the experimental permit be terminated if it is economically infeasible to harvest the target species or if the alternative gear is impractical, inefficient, or ineffective within the fishery or regional area selected. The permittee shall submit copies of all landing receipts, a financial statement setting forth the expenses and any revenue generated by the operation of the alternative fishing gear, and a brief summary from any observers, monitors, and employees regarding the operation of the

alternative fishing gear to the department. The department shall review the permittee's submitted material.

(2) If the submitted material supports the claim that the new type of commercial fishing gear utilized by the permittee was either inefficient, impractical, or ineffective, or that it was not economically feasible for the permittee to harvest the target species, the department shall terminate the experimental permit and submit its findings to the State Coastal Conservancy. Upon receiving the department's report, the State Coastal Conservancy may terminate the permittee's loan. If the permittee returns the collateral fishing gear to the department, the State Coastal Conservancy shall reimburse the permittee from the loan fund for the principal amount of the loan repaid by the permittee. The department shall take possession of the fishing gear for the State Coastal Conservancy, which may resell the gear as set forth in subdivision (a) of Section 8614.

(3) If the information does not support the claim made by the permittee, the department may still terminate the experimental permit. The State Coastal Conservancy may terminate the remaining balance on the loan if the permittee returns the collateral fishing gear to the department, but the State Coastal Conservancy shall not reimburse the permittee for previous loan payments.

(b) After six months of operation pursuant to an experimental permit, any request to terminate the permit for the reasons set forth in subdivision (a) shall include, in addition to the information required by paragraph (1) of subdivision (a), an explanation of the changed circumstances or reasons that cause the new type of gear to become inefficient, impractical, or ineffective or economically infeasible to harvest the target species after the initial six-month operating period. The department shall review the request and make its recommendation to the State Coastal Conservancy following the procedures set forth in subdivision (a). If the department terminates the experimental gear permit, the State Coastal Conservancy may terminate the remaining balance on the loan if the permittee returns the collateral fishing gear to the department, but it shall not reimburse the permittee for any loan payments received. The department shall take possession of the alternative fishing gear for the State Coastal Conservancy, which may resell the gear as set forth in subdivision (a) of Section 8614.

SEC. 192. Section 8841 of the Fish and Game Code is amended to read:

8841. (a) The commission is hereby granted authority over all state-managed bottom trawl fisheries not managed under a federal fishery management plan pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) or a

state fishery management plan pursuant to Part 1.7 (commencing with Section 7050), to ensure that resources are sustainably managed, to protect the health of ecosystems, and to provide for an orderly transition to sustainable gear types in situations where bottom trawling may not be compatible with these goals.

(b) The commission is hereby granted authority to manage all of the following fisheries in a manner that is consistent with this section and Part 1.7 (commencing with Section 7050):

(1) California halibut.

(2) Sea cucumber.

(3) Ridge-back, spot, and golden prawn.

(4) Pink shrimp.

(c) The commission is also granted authority over other types of gear targeting the same species as the bottom trawl fisheries referenced in subdivision (a) to manage in a manner that is consistent with the requirements of Part 1.7 (commencing with Section 7050).

(d) Every commercial bottom trawl vessel issued a state permit is subject to the requirements and policies of the federal groundfish observer program (50 C.F.R. 660.360).

(e) The commission may only authorize additional fishing areas for bottom trawls after it determines, based on the best available scientific information, that bottom trawling in those areas is sustainable, does not harm bottom habitat, and does not unreasonably conflict with other users.

(f) It is unlawful to use roller gear more than eight inches in diameter.

(g) Commencing April 1, 2006, it is unlawful to fish commercially for prawns or pink shrimp, unless an approved bycatch reduction device is used with each net. On or before April 1, 2006, the commission shall approve one or more bycatch reduction devices for use in the bottom trawl fishery. For purposes of this subdivision, a rigid grate fish excluder device is the approved type of bycatch reduction device unless the commission, the Pacific Marine Fishery Management Council, or the National Marine Fisheries Service determines that a different type of fish excluder device has an equal or greater effectiveness at reducing bycatch. If the commission does not approve a bycatch reduction device prior to April 1, 2006, then a device that is approved by the Pacific Marine Fishery Management Council or the National Marine Fisheries Service shall be deemed approved by the commission.

(h) Except as provided in Section 8495 or 8842, it is unlawful to engage in bottom trawling in ocean waters of the state.

(i) This section does not apply to the use of trawl nets pursuant to a scientific research permit.

(j) The commission shall facilitate the conversion of bottom trawlers to gear that is more sustainable if the commission determines that

conversion will not contribute to overcapacity or overfishing. The commission may participate in, and encourage programs that support, conversion to low-impact gear or capacity reduction by trawl fleets. The department may not issue new permits to bottom trawlers to replace those retired through a conversion program.

(k) As soon as practicable, but not later than May 1, 2005, the commission and the department shall submit to the Pacific Fishery Management Council and the National Marine Fisheries Service a request for federal management measures for the pink shrimp fishery that the commission and the department determine are needed to reduce bycatch or protect habitat, to account for uncertainty, or to otherwise ensure consistency with federal groundfish management.

(*l*) No vessel may utilize bottom trawling gear without a state or federal permit.

SEC. 193. Section 9023 of the Fish and Game Code is amended to read:

9023. (a) Traps may be used throughout the year to take carp in any district under the restrictions set forth in subdivision (b).

(b) Traps shall not exceed six feet in greatest dimension. They shall be made of cotton or nylon twine. Meshes shall not be less than three and one-half inches in length, except that fyke and bait bags may be any size mesh. Traps shall have only a single vertical fyke opening at the top of the trap. They shall be baited only with grain or grain products. Fish other than carp taken in traps subject to this section shall be immediately returned to the water.

SEC. 194. 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 July 1, 2011, ensure that 25 percent of the fish produced by state fish hatcheries are used for the purpose of initiating and managing the restoration of naturally indigenous stocks of trout to their original California source watersheds. This paragraph shall not be construed to prohibit the department from using surplus fish in waters outside of their original California source watersheds. All trout restored pursuant to this paragraph shall be native California trout, as defined in Section 7261. The department shall attain the 25 percent restoration goal of this paragraph according to the following schedule:

(A) By July 1, 2009, 15 percent and at least four species, not including the coastal rainbow trout/steelhead.

(B) By July 1, 2010, 20 percent and at least four species, not including the coastal rainbow trout/steelhead.

(C) By July 1, 2011, and thereafter, 25 percent and at least five species, not including the coastal rainbow trout/steelhead.

(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 subparagraphs (1) and (3) of subdivision (b), and after the expenditure in subparagraph (2) of subdivision (b), to the Fish and Game Preservation Fund. The department may utilize federal funds to meet the minimums specified in this subdivision.

(d) A portion of the moneys subject to appropriation pursuant to subdivision (a) may be used for the purpose of obtaining scientifically valid genetic determinations of California native trout stocks, consistent with Theme 1 in the executive summary of the department's Strategic Plan for Trout Management, published November 2003.

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

SEC. 195. Section 15512 of the Fish and Game Code is amended to read:

15512. (a) If aquatic plants or animals are destroyed pursuant to subdivision (e) of Section 15505, the owner shall be promptly paid from the General Fund an amount equal to 75 percent of the replacement value of the plants or animals, less the value determined by the department of any replacement stock provided by the department under subdivision (b) if the claim is submitted pursuant to Section 15513. If the replacement value is not settled between the owner and the department, the replacement value shall be determined by an appraiser appointed by the director and an appraiser appointed by the owner. Appraiser's fees shall be paid by the appointing party. Disputes between these two appraisers shall be submitted to arbitration under the Commercial Arbitration Rules of the American Arbitration Association.

(b) If the department provides replacement stock to an aquaculturist whose plants or animals are destroyed pursuant to subdivision (e) of Section 15505, the amount to be paid to the aquaculturist pursuant to this section shall be reduced by the value of the replacement stock, as determined by the department.

(c) The result of the arbitration or the amount settled between the owner and the department, reduced by the value determined by the department of any replacement stock provided under subdivision (b), may be submitted as a claim by the owner to the California Victim Compensation and Government Claims Board pursuant to Section 15513.

SEC. 196. Section 3955 of the Food and Agricultural Code is amended to read:

3955. Claims against an association shall be presented to the California Victim Compensation and Government Claims Board in accordance with Part 3 (commencing with Section 900) and Part 4

(commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

SEC. 197. Section 4054 of the Food and Agricultural Code is amended to read:

4054. (a) If the board of an association, by resolution adopted by vote of two-thirds of all its members, finds and determines that the public interest and necessity require the acquisition of any building or improvement that is situated on property that is owned by the association, in trust or otherwise, or of any outstanding rights to that property, with the approval of the department and the association, the building, improvement, or outstanding rights may be acquired by eminent domain pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(b) The use by the association of its property shall be considered a more necessary public use than the use of the property by any grantee, lessee, or licensee for the purposes that are specified in Section 4051.

(c) Notwithstanding Article 5 (commencing with Section 25450) of Chapter 5 of Division 2 of Title 3 of the Government Code, or Sections 10108 and 10308 of the Public Contract Code, the board of an association or governing board of a county fair, by resolution adopted by vote of two-thirds of all its members, may purchase materials and lease equipment for not in excess of twenty thousand dollars ($20,000) when the purchase or lease is made in conjunction with donated labor construction improvements on the grounds of the association or the county fairgrounds, respectively.

SEC. 198. Section 5774.5 of the Food and Agricultural Code is amended to read:

5774.5. In addition to any other notice requirements of this article, if the secretary determines that it may become necessary to use aerial application of a pesticide in a pest eradication program over an urban area, the secretary shall notify, as soon as it is feasible, the city and county in that affected area of the possibility of an aerial application.

SEC. 199. Section 13127.92 of the Food and Agricultural Code is amended to read:

13127.92. (a) Extensions of time granted pursuant to Sections 13127.3, 13127.31, and 13127.5 shall only be for the time necessary to complete the mandatory health effects studies.

(b) Mandatory health effects studies shall be completed in accordance with the following timetable:

(1) Forty-eight months for oncogenicity, chronic feeding, and reproduction studies.

(2) Twenty-four months for teratogenicity and neurotoxicity studies.

(3) Twelve months for mutagenicity studies.

(c) A deferral of suspension of registration issued pursuant to Section 13127.5 shall be subject to an annual review by the director and shall be limited to the time necessary to complete the required studies, and shall in no case exceed four years with the time tolling from the date that the registrant petitioned for an extension.

(d) Any extension of time for submission of the mandatory health effects studies granted pursuant to Section 13127.5 shall be canceled by June 15, 1993, and the registration suspended for the affected ingredient, if the registrant fails to initiate the required studies by June 15, 1992.

SEC. 200. Section 14978.2 of the Food and Agricultural Code is amended to read:

14978.2. (a) The board may establish the Commercial Feed Inspection Committee as an entity to administer this chapter. The committee shall consist of eight persons appointed by the board who shall be licensed under this chapter. The committee may, with the concurrence of the director, appoint one additional member to the committee, who shall be a public member. The public member shall be a citizen and resident of California who is not subject to the licensing requirements of this chapter, and who has no financial interest in any person licensed under this chapter.

(b) Each member shall have an alternate member appointed in the same manner as the member, who shall serve in the absence of the member for whom they are designated as alternate and who shall have all the duties and exercise the full rights and privileges of members.

(c) The committee may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers as it deems necessary. The officers shall have the powers and duties delegated to them by the committee.

(d) The members and alternate members, when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties in accordance with the rules of the California Victim Compensation and Government Claims Board.

(e) A quorum of the committee shall be five members. A vote of the majority of the members present at a meeting at which there is a quorum shall constitute the act of the committee.

(f) No member or alternate member, or any employee or agent thereof, shall be personally liable for the actions of the committee or responsible individually in any way for errors in judgment, mistakes, or other acts, either by commission or omission, except for his or her own individual acts of dishonesty or crime.

SEC. 201. Section 19314 of the Food and Agricultural Code is amended to read:

19314. The department may suspend or revoke a registration certificate, at any time, if it finds any of the following has occurred:

(a) The registrant has sold or offered for sale to an unlicensed person, any inedible kitchen grease.

(b) The registrant has stolen, misappropriated, contaminated, or damaged inedible kitchen grease or containers thereof.

(c) The registrant has violated this article or any regulations adopted to implement this article.

(d) The registrant has taken possession of inedible kitchen grease from an unregistered transporter or has knowingly taken possession of inedible kitchen grease that has been stolen.

(e) The registrant has been found to have engaged in, or aided and abetted another person or entity in the commission of, any violation of a statute, regulation, or order relating to the transportation or disposal of inedible kitchen grease, including a violation of the federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), the Porter-Cologne Water Quality Control Act (Chapter 1.5 (commencing with Section 13020) of Division 7 of the Water Code), Section 5650 of the Fish and Game Code, commercial vehicle weight limits, or commercial vehicle hours of service.

(f) For purposes of this section, "registrant" includes any business entity, trustee, officer, director, partner, person, or other entity holding more than 5 percent equity, ownership, or debt liability in the registered entity engaged in the transportation of inedible kitchen grease.

(g) (1) The registrant may appeal the suspension or revocation decision of the department.

(2) The department shall establish procedures for the appeals process, to include a noticed hearing.

(3) The department may reverse a suspension or revocation upon a finding of good cause to do so.

SEC. 202. Section 30801 of the Food and Agricultural Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be stamped with the name of the county and the year of issue.

(b) The board of supervisors or animal control department may authorize veterinarians to issue the licenses to owners of dogs who make application.

(c) The licenses shall be issued for a period of not to exceed two years.

(d) In addition to the authority provided in subdivisions (a), (b), and (c), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have

attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination.

SEC. 203. Section 36805 of the Food and Agricultural Code is amended to read:

36805. (a) Ice cream, frozen dairy dessert, frozen dessert, sherbet, or quiescently frozen confections when sold in package form shall be labeled with the name, address, and ZIP Code of the manufacturer, the wholesale distributor, or the retailer.

(b) If the name and address is not that of the original milk products processing plant, there shall be stamped, printed, or embossed upon the package, in a manner acceptable to the director, the plant number of the manufacturer or packer. This plant identification shall be consistent with, and not more restrictive than, the National Uniform Coding System for packaging identification of milk and milk products processing plants.

SEC. 204. Section 39901 of the Food and Agricultural Code is amended to read:

39901. (a) Dairy beverages are milk and dairy food beverages resembling milk or milk products. However, dairy beverages do not conform to the compositional standards for milk or milk products as established in this code or Title 21 of the Code of Federal Regulations because they contain safe and suitable ingredients or combinations of ingredients not specified in those standards. Dairy beverages are products intended for consumption as a beverage. Milk or the components of milk shall comprise at least 15 percent of the product on a dry matter basis or at least 2 percent on a total weight basis.

(b) For purposes of establishing compliance with the minimum dairy ingredient criteria, dairy ingredients shall include all products, components, and derivatives of milk, including, but not limited to, whey and whey products and caseinates specified in subdivision (c) of Section 135.110 of Title 21 of the Code of Federal Regulations, but excluding added lactose.

SEC. 205. Section 42684 of the Food and Agricultural Code is amended to read:

42684. (a) It is hereby declared that the establishment and maintenance of minimum standards of quality and maturity for fruits, nuts, and vegetables is essential to ensure that products of acceptable and marketable quality will be available to the consumer.

(b) Any quality and maturity standards adopted by the director pursuant to this division shall apply to the particular fruit, nut, or vegetable involved regardless of whether the item was produced in this state or outside of this state.

(c) The director may, upon a petition of a commercial producer or handler that the director finds has a substantial interest in the growing or handling of the particular fruit, nut, or vegetable involved, hold a hearing to establish, modify, or rescind, by regulation, quality and maturity standards for any fruits, nuts, or vegetables.

(d) The director shall, upon a petition of 10 commercial producers or handlers, each of whom the director finds has a separate and substantial interest in the growing or handling of the particular fruit, nut, or vegetable involved, or a petition by the Director of Consumer Affairs, hold a hearing to establish, modify, or rescind, by regulation, quality and maturity standards for any fruits, nuts, or vegetables.

(e) In establishing, modifying, or rescinding any quality and maturity standard for any fruit, nut, or vegetable pursuant to this chapter, the director shall do all of the following: (1) find that the regulation will provide the consumer with acceptable quality fruits, nuts, and vegetables, which will also provide stability in the marketing of these products, (2) find that the regulation will tend to prevent waste in the production and marketing of fruits, nuts, and vegetables, (3) consider the impact of the regulation upon the agricultural industry, and (4) find that the regulation is necessary to accomplish the purposes of this chapter.

(f) All 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. However, the director, when adopting any emergency regulations for quality and maturity standards for any fruits, nuts, and vegetables, shall hold a public hearing. Notice of the hearing shall be given to all persons known to the director to be interested in the proposed emergency regulations, not less than three days prior to such hearing. This public hearing on emergency regulations is not in place of, and shall not preclude the director from holding, a public hearing within 120 days after adoption of emergency regulations to make the emergency regulations permanent.

SEC. 206. Section 52295 of the Food and Agricultural Code is amended to read:

52295. Members of the board shall receive no salary but may be allowed per diem in accordance with California Victim Compensation and Government Claims Board rules for attendance at meetings and other board activities authorized by the board and approved by the director.

SEC. 207. Section 52891.1 of the Food and Agricultural Code is amended to read:

52891.1. (a) The board may, by resolution, determine issues that are in the best interest of the cotton industry in the district, which shall not be limited to the growing of cottons other than Acala and Pima. The board shall authorize the conduct of referendums among all the cottongrowers in the district to vote upon the issues concerning the district. The resolution may contain provisions to protect the quality and integrity of approved fiber and seed grown within the district.

(b) The referendum shall be conducted by the secretary, upon the request of the board, using information supplied by the board and such other information as determined by the secretary, or a referendum shall be conducted by the secretary if a petition signed by not less than 5 percent of the qualified cottongrowers in the district is presented to the board. The costs of any referendum conducted pursuant to this chapter shall be paid from funds collected pursuant to this chapter.

(c) The secretary shall find the resolution approved if either of the following conditions are met:

(1) Not less than 65 percent of the cottongrowers certified by the secretary who voted in that referendum, voted in favor of the issue, and that those cottongrowers so voting represent at least a majority of the cotton producing acreage of all cottongrowers who voted in that referendum.

(2) At least a majority of those cottongrowers who voted in that referendum voted in favor of the issue and that those cottongrowers so voting represent not less than 65 percent of the cotton producing acreage of all cottongrowers who voted in that referendum. The secretary shall then so certify to the board, which shall then make the approved resolution effective as an order of the board within 10 days after the certification by the secretary.

SEC. 208. Section 62069 of the Food and Agricultural Code is amended to read:

62069. The director may establish minimum prices to be paid by handlers to producer-handlers for milk not used by the purchasing handler as class 1 milk. These provisions may provide that the milk, if used in classes other than class 1 by the purchasing handler, may be paid for at the minimum prices established by the director for this other usage but which shall not be less than the prices as found by the director to be paid by manufacturing milk plants in, or adjacent to, the area that use milk for similar purposes. The prices shall remain in effect only for the period during which, as determined by the director, there is a surplus of producer-handler milk.

SEC. 209. Section 73053 of the Food and Agricultural Code is amended to read:

73053. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

SEC. 210. Section 73202 of the Food and Agricultural Code is amended to read:

73202. This chapter, except as necessary to conduct an implementation referendum, does not become operative until the director finds in a referendum conducted by the director, or a person designated by the director, that at least 40 percent of the total number of producers from the list established by the director pursuant to Section 73201, participated, and that he or she finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed a majority of the volume of navel oranges in the preceding season by all of the producers who voted in the referendum.

(b) A majority of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed 65 percent or more of the volume of navel oranges in the preceding season by all of the producers who voted in the referendum.

SEC. 211. Section 75022 of the Food and Agricultural Code is amended to read:

75022. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

SEC. 212. Section 77373 of the Food and Agricultural Code is amended to read:

77373. (a) Upon a finding by a two-thirds vote of the full commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current marketing year.

(b) The secretary shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with the director requesting a suspension signed by 20 percent of the producers by number who produced not less than 20 percent of the volume of peppers in the immediately preceding marketing year, and 20 percent of the handlers by number who handled not less than 20 percent of the volume of peppers in the immediately preceding marketing year, hold a referendum among the producers and handlers to determine if the operations of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows, by

the weight of evidence, that the operation of this chapter has not tended to effectuate its declared purposes.

(c) The secretary shall establish a referendum period, that shall not be less than 10 days nor more than 60 days in duration. The director may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. The secretary shall suspend operation of this chapter if the director finds either one of the following has occurred:

(1) At least 40 percent of the total number of producers from the list established by the director have participated in the referendum:

(A) Sixty-five percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed a majority of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

(B) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the producers who voted in the referendum.

(2) At least 40 percent of the total number of handlers from the list established by the director have participated in the referendum:

(A) Sixty-five percent or more of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled a majority of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

(B) A majority of the handlers who voted in the referendum voted in favor of suspension, and the handlers so voting handled 65 percent or more of the total quantity of peppers in the preceding marketing year by all of the handlers who voted in the referendum.

SEC. 213. Section 77375 of the Food and Agricultural Code is amended to read:

77375. After the effective date of suspension, the operation of the commission shall be concluded and any and all funds remaining held by the commission and not required to defray the expenses of concluding and terminating operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing year. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the prorated refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate program conducted by the University of California or the California State University system, another state agency,

or a federal agency that deals with the purposes of this chapter. If an appropriate program does not exist, the funds shall be paid into the State Treasury as unclaimed trust funds.

SEC. 214. Section 77554 of the Food and Agricultural Code is amended to read:

77554. All funds received by any person from the assessments levied pursuant to this chapter or otherwise received by the commission shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent designated by the commission for that purpose. The agent shall be bonded by a fidelity bond that is executed by a surety company authorized to transact business in this state, in favor of the commission, in the amount of not less than twenty-five thousand dollars ($25,000).

SEC. 215. Section 77941 of the Food and Agricultural Code is amended to read:

77941. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member, alternate member, employee, or agent of the commission is personally liable for the contracts of the commission nor is that person responsible individually in any way to any producer or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member, alternate member, employee, or agent of the commission, is responsible individually for any act or omission of any other member, alternate member, employee, or agent of the commission. Liability is several and not joint, and no member, alternate member, employee, or agent of the commission is liable for the default of any other member, alternate member, employee, or agent of the commission.

SEC. 216. Section 800 of the Government Code is amended to read:

800. (a) In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law, except actions resulting from actions of the California Victim Compensation and Government Claims Board, if it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant if he or she prevails in the civil action may collect from the public entity reasonable attorney's fees, computed at one hundred dollars ($100) per hour, but not to exceed seven thousand five hundred dollars ($7,500), if he or she is personally obligated to pay the fees in addition to any other relief granted or other costs awarded.

(b) This section is ancillary only, and shall not be construed to create a new cause of action.

(c) The refusal by a public entity or officer thereof to admit liability pursuant to a contract of insurance shall not be considered arbitrary or capricious action or conduct within the meaning of this section.

SEC. 217. Section 850.6 of the Government Code is amended to read:

850.6. (a) Whenever a public entity provides fire protection or firefighting service outside of the area regularly served and protected by the public entity providing that service, the public entity providing the service is liable for any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of that fire protection or firefighting service. Notwithstanding any other law, the public entity receiving the fire protection or firefighting service is not liable for any act or omission of the public entity providing the service or for any act or omission of an employee of the public entity providing the service; but the public entity providing the service and the public entity receiving the service may by agreement determine the extent, if any, to which the public entity receiving the service will be required to indemnify the public entity providing the service.

(b) Notwithstanding any other provision of this section, any claims against the state shall be presented to the California Victim Compensation and Government Claims Board in accordance with Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1.

SEC. 218. Section 905.3 of the Government Code is amended to read:

905.3. Notwithstanding any other provision of law to the contrary, no claim shall be submitted by a local agency or school district, nor shall a claim be considered by the California Victim Compensation and Government Claims Board pursuant to Section 905.2, if that claim is eligible for consideration by the Commission on State Mandates pursuant to Article 1 (commencing with Section 17550) of Chapter 4 of Part 7 of Division 4 of Title 2.

SEC. 219. Section 920 of the Government Code is amended to read:

920. As used in this chapter, "omnibus claim appropriation" means an act of appropriation, or an item of appropriation in a budget act, by which the Legislature appropriates a lump sum to pay the claim of the California Victim Compensation and Government Claims Board or its secretary against the state in an amount that the Legislature has determined is properly chargeable to the state.

SEC. 220. Section 925 of the Government Code is amended to read:

925. As used in this chapter, "board" means the California Victim Compensation and Government Claims Board.

SEC. 221. Section 926.19 of the Government Code is amended to read:

926.19. (a) Unless otherwise provided for by statute, any state agency that fails to pay a person any undisputed payment or refund due to that person shall be liable for interest on the undisputed amount pursuant to this section. The interest shall be paid out of the agency's funds and shall accrue at a rate equal to the interest accrued in the Pooled Money Investment Account minus 1 percent over the term that the payment or refund was held by the agency, beginning on the 31st day after the agency provides notice to the person that a payment or refund is owed to that person or after the agency receives notice from the person that an undisputed payment or refund is due. The interest shall cease to accrue on the date full payment or refund is made.

(b) If the state agency's failure to make payment as required by this section is the result of a dispute between the state agency and the person to whom money is owed, interest shall begin to accrue on the 31st day after the dispute has been settled by mutual agreement, arbitration, or court decision. A state agency may dispute a payment or refund if the state agency so notifies the person within 15 days after the state agency receives notice from the person that the payment or refund is due.

(c) If the state agency is not authorized to make a payment or refund to a person pursuant to this section, that state agency shall submit the claim to the Controller's office within 15 days of receiving a claim, or shall be liable for an interest penalty beginning on the 16th day, which shall be paid out of the state agency's funds and shall continue to accrue until the claim is received by the Controller's office. After the claim is forwarded to the Controller's office, an interest penalty fee shall begin to accrue on the 16th day after receipt by the Controller's office, and shall be paid out of the Controller's funds. In any event, the interest penalty shall cease to accrue on the date full payment is made to the person.

(d) (1) If a payment or refund is the joint responsibility of more than one state agency, not including the Controller's office, and neither agency is authorized to make a payment or refund, each agency shall forward the claim to the Controller's office within 15 days of receipt. Interest shall begin to accrue on the 16th day, pursuant to subdivision (c). Any accrued interest shall be the responsibility of the state agency that delays the transmittal of the claim to the Controller.

(2) If either of the responsible agencies is authorized to make a payment or refund directly to the person, each agency shall have 15 days to transmit the claim to the other agency or pay the person. Interest shall

begin to accrue on the 16th day, and shall be the responsibility of the agency delaying the payment process.

(e) If a state agency is required by this section to pay penalties that accumulate in excess of one thousand dollars ($1,000) in one fiscal year, the head of the state agency shall submit to the Legislature, within 60 days following the end of the fiscal year, a written report on the actions taken to correct the problem, including recommendations on actions to avoid a recurrence of the problem and recommendations as to statutory changes, if needed.

(f) A court shall award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to this section if it is found that the state agency has violated this section. The costs and fees shall be paid by the state agency at fault and shall not become a personal economic liability of any public officer or employee thereof. In the case of disputed payments or refunds, nothing in this section shall be construed as precluding a court from awarding a prevailing party the interest accrued while the dispute was pending.

(g) No state agency shall seek additional appropriations to pay interest that accrues as a result of this section.

(h) No person shall receive an interest payment pursuant to this section if it is determined that the person has intentionally overpaid on a liability solely for the purpose of receiving interest.

(i) No interest shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.

(j) This section shall not apply to any of the following:

(1) Payments, refunds, or credits for income tax purposes.

(2) Payment of claims for reimbursement for health care services or mental health services provided under the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) Any payment made pursuant to a public social service or public health program to a recipient of benefits under that program.

(4) Payments made on claims by the California Victim Compensation and Government Claims Board.

(5) Payments made by the Commission on State Mandates.

(6) Payments made by the Department of Personnel Administration pursuant to Section 19823.

SEC. 222. Section 965.1 of the Government Code is amended to read:

965.1. Pursuant to Section 13909, the California Victim Compensation and Government Claims Board may delegate to the

executive officer the authority to allow a claim filed pursuant to subdivision (c) of Section 905.2 if the settlement amount of that claim does not exceed fifty thousand dollars ($50,000), or to reject any claim as so described.

SEC. 223. Section 997.1 of the Government Code is amended to read:

997.1. (a) Any person may file an application with the California Victim Compensation and Government Claims Board for compensation based on personal property loss, personal injury, or death, including noneconomic loss, arising from the Bay Bridge or I-880 Cypress structure collapse caused by the October 17, 1989, earthquake. Any application made pursuant to this section shall be presented to the board no later than April 18, 1990, on forms prescribed and provided by the board, except that a late claim may be presented to the board pursuant to the procedure specified by Section 911.4. Each presented application shall be verified under penalty of perjury and shall contain all of the following information:

(1) The name of the injured party or in the event of loss of life, the name and age of the decedent and the names and ages of heirs as defined in subdivision (b) of Section 377 of the Code of Civil Procedure.

(2) An authorization permitting the board to obtain relevant medical and employment records.

(3) A brief statement describing when, where, and how the injury or death occurred.

(4) A statement as to whether the applicant wishes to apply for emergency relief provided pursuant to Section 997.2.

(b) Upon receipt of an application, the board shall evaluate the application and may require the applicant to submit additional information or documents that are necessary to verify and evaluate the application. The board shall resolve an application within six months from the date of presentation of the application unless this period of time is extended by mutual agreement between the board and the applicant. Any application that is not resolved within this resolution period shall be deemed denied.

(c) Following resolution of an application, if the applicant desires to pursue additional remedies otherwise provided by this division, the applicant shall file a court action within six months of the mailing date of the board's rejection or denial of the application or the applicant's rejection of the board's offer.

(d) Any claim pursuant to Part 3 (commencing with Section 900) made before or after the effective date of this part for personal property loss, personal injury, or death resulting from the collapse of the Bay Bridge or the I-880 Cypress structure against the State of California, its

agencies, officers, or employees, shall be deemed to be an application under this part and subject to the provisions set forth in this part. Additionally, any application made pursuant to this part shall be deemed to be in compliance with Part 3 (commencing with Section 900).

(e) Notwithstanding any other provision of law, resolution of applications pursuant to the provisions of this part is a condition precedent to the filing of any action for personal property loss, personal injury, or death resulting from the collapse of the Bay Bridge or the I-880 Cypress structure in any court of the State of California against the State of California, its agencies, officers, or employees. Any suit filed by an applicant in any court of this state against the State of California or its agencies, officers, or employees shall be stayed pending resolution of the application.

SEC. 224. Section 998.2 of the Government Code is amended to read:

998.2. (a) Any person or business may file an application with the California Victim Compensation and Government Claims Board for compensation based on personal injury, property loss, business loss, or other economic loss, claimed to have been incurred as a result of the Lake Davis Northern Pike Eradication Project. Any application made pursuant to this section shall be presented to the board in accordance with this division. A late claim may be presented to the board pursuant to the procedure specified by Section 911.4. Each application shall contain, in addition to the information required by Section 910, all of the following:

(1) The legal name of any business claiming a loss, as well as the names of the owners and officers of the business.

(2) For any property owner claiming diminution of property value, the names of all persons holding a legal interest in the property.

(3) The name of any person claiming to have suffered personal injury.

(4) An authorization permitting the office of the Attorney General or its designee to obtain relevant medical, employment, business, property, and tax records.

(5) A brief statement describing when, where, and how the injury, loss, or diminution in market value occurred.

(b) Upon receipt of an application presented pursuant to this section from the California Victim Compensation and Government Claims Board, the office of the Attorney General or its designee shall examine the application and may require the applicant to submit additional information or documents that are necessary to verify and evaluate the application. The office of the Attorney General or its designee shall attempt to resolve an application within six months from the effective date of this part unless this period of time is extended by mutual

agreement between the office of the Attorney General or its designee and the applicant. Any application that does not result in a final settlement agreement within the resolution period shall be deemed denied, allowing the claimant to proceed with a court action pursuant to Chapter 2 (commencing with Section 945) of Part 4.

(c) The office of the Attorney General or its designee shall adopt guidelines in consultation with one representative designated by the City of Portola, one representative designated by the County of Plumas, and one member of the public to be selected jointly by the city and the county. Any guidelines so developed shall be used to evaluate and settle claims filed pursuant to this part. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, any regulations adopted thereunder by the Attorney General in order to implement this section shall not be subject to the review and approval of the Office of Administrative Law, nor subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2).

(d) Any court action following denial of an application, including denial pursuant to subdivision (b), shall be filed within six months of the mailing date of the board's rejection or denial of the application or the applicant's rejection of the board's offer pursuant to Section 945.6 or subdivision (b) of Section 998.3.

(e) Any claim pursuant to Part 3 (commencing with Section 900) made before or after the effective date of this part for personal injury, property loss, business loss, or other economic loss resulting from the Lake Davis Northern Pike Eradication Project against the State of California, it agencies, officers, or employees, shall be deemed to be an application under this part and is subject to the provisions set forth in this part. Additionally, any application made pursuant to this part shall be deemed to be in compliance with Part 3 (commencing with Section 900).

(f) Notwithstanding any other provision of law, the resolution or denial of an application pursuant to this part is a condition precedent to the filing of any action for personal injury, property damage, business loss, or other economic loss, resulting from the Lake Davis Northern Pike Eradication Project in any court of the State of California, against the State of California, it agencies, officers, or employees. Any suit filed by an applicant in any court of this state against the State of California or its agencies, officers, or employees shall be stayed pending resolution or denial of the application.

SEC. 225. Section 1151 of the Government Code is amended to read:

1151. State employees may authorize deductions to be made from their salaries or wages for payment of one or more of the following:

(a) Insurance premiums or other employee benefit programs sponsored by a state agency under appropriate statutory authority.

(b) Premiums on National Service Life Insurance or United States Government Converted Insurance.

(c) Shares or obligations to any regularly chartered credit union.

(d) Recurrent fees or charges payable to a state agency for a program that has a purpose related to government, as determined by the Controller.

(e) The purchase of United States savings bonds in accordance with procedures established by the Controller.

(f) Payment of charitable contributions under any plan approved by the California Victim Compensation and Government Claims Board in accordance with procedures established by the Controller.

(g) Passes, tickets, or tokens issued for a period of one month, or more, by a public transportation system.

(h) Deposit into an employee's account with a state or federal bank or savings and loan association located in this state, for services offered by that bank or savings and loan association.

(i) The purchase of any investment or thrift certificate issued by an industrial loan company licensed by this state.

SEC. 226. Section 3515.7 of the Government Code is amended to read:

3515.7. (a) Once an employee organization is recognized as the exclusive representative of an appropriate unit it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction.

(b) The state employer shall furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and the appropriate fair share fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee. These fees shall be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine readable data. Fair share fee deductions shall continue until the effective date of a successor agreement or implementation of the state's last, best, and final offer, whichever occurs first. The Controller shall retain, from the fair share fee deduction, an amount equal to the cost of administering this section. The state employer shall not be liable in any action by a state employee seeking recovery of, or damages for, improper use or calculation of fair share fees.

(c) Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the California Victim Compensation and Government Claims Board for receipt of charitable contributions by payroll deductions.

(d) A fair share fee provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for the vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during the term. If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote in a manner that it shall prescribe. Notwithstanding this subdivision, the state employer and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on a fair share fee provision.

(e) Every recognized employee organization that has agreed to a fair share fee provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees in the unit, within 90 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee in the unit may petition the board for an order compelling this compliance, or the board may issue a compliance order on its own motion.

(f) If an employee who holds conscientious objections pursuant to subdivision (c) requests individual representation in a grievance, arbitration, or administrative hearing from the recognized employee organization, the recognized employee organization is authorized to charge the employee for the reasonable cost of the representation.

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

SEC. 227. Section 3539.5 of the Government Code is amended to read:

3539.5. (a) The Department of Personnel Administration may adopt or amend regulations to implement employee benefits for those state officers and employees excluded from, or not otherwise subject to, the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512)).

(b) These regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 228. Section 3543.1 of the Government Code is amended to read:

3543.1. (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

(d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 45060 and 45168 of the Education Code, until an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then the deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

SEC. 229. Section 3549.1 of the Government Code is amended to read:

3549.1. All the proceedings set forth in subdivisions (a) to (d), inclusive, are exempt from the provisions of Sections 35144 and 35145 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9

(commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise:

(a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

SEC. 230. Section 3572 of the Government Code is amended to read:

3572. This section shall apply only to the California State University.

(a) The duty to meet and confer in good faith requires the parties to begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of the adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse. The California State University shall maintain close liaison with the Department of Finance and the Legislature relative to the meeting and conferring on provisions of the written memoranda that have fiscal ramifications. The Governor shall appoint one representative to attend the meeting and conferring, including the impasse procedure, to advise the parties on the views of the Governor on matters that would require an appropriation or legislative action, and the Speaker of the Assembly and the Senate Committee on Rules may each appoint one representative to attend the meeting and conferring to advise the parties on the views of the Legislature on matters that would require an appropriation or legislative action.

(b) No written memoranda reached pursuant to this chapter that require budgetary or curative action by the Legislature or other funding agencies shall be effective unless and until that action has been taken. Following execution of written memoranda of understanding, an appropriate request for financing or budgetary funding for all state-funded employees or for necessary legislation shall be forwarded promptly to the Legislature and the Governor or other funding agencies. When memoranda require legislative action pursuant to this section, if the Legislature or the Governor fail to fully fund the memoranda or to take the requisite curative action, the entire memoranda shall be referred back to the parties for further meeting and conferring unless the parties agree that provisions of the memoranda that are nonbudgetary and do not require funding shall

take effect whether or not the funding requests submitted to the Legislature are approved.

SEC. 231. Section 5906 of the Government Code is amended to read:

5906. Any bonds issued by a state or local government pursuant to this chapter, or otherwise, and the purchasers or holders thereof, shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution. Any loan, lease, installment sale, investment, forbearance of money, or other agreement between a user of the proceeds of or other moneys pledged to bonds and the issuer of the bonds, or entered into by or on behalf of the issuer of the bonds that provides for the use of the proceeds of the bonds or other moneys pledged to or securing the bonds, and the issuer of the bonds or any person acting on its behalf in connection with the foregoing shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution. This section creates and authorizes exempted classes of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

SEC. 232. 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, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

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

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

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

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

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

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. 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 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. 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 Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

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

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

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

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

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

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section

12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

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

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

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

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

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

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

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

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or

Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

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

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

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

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

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

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

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

(bb) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the

California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

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

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

SEC. 233. Section 6254.26 of the Government Code is amended to read:

6254.26. (a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

(1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.

(2) Quarterly and annual financial statements of alternative investment vehicles.

(3) Meeting materials of alternative investment vehicles.

(4) Records containing information regarding the portfolio positions in which alternative investment funds invest.

(5) Capital call and distribution notices.

(6) Alternative investment agreements and all related documents.

(b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:

(1) The name, address, and vintage year of each alternative investment vehicle.

(2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.

(3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.

(4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.

(5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.

(6) The net internal rate of return of each alternative investment vehicle since inception.

(7) The investment multiple of each alternative investment vehicle since inception.

(8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.

(9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.

(c) For purposes of this section, the following definitions shall apply:

(1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.

(3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.

(4) "Public investment fund" means any public pension or retirement system, and any public endowment or foundation.

SEC. 234. Section 6577 of the Government Code is amended to read:

6577. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all of the following:

(a) All bonds to be funded or refunded by them.

(b) All expenses incident to the calling, retiring, or paying of the outstanding bonds and the issuance of the funding or refunding bonds, including the costs of issuing the refunding bonds, as defined in Section 53550.

(c) Interest upon the funding or refunding bonds from the date of sale to the date of payment of the bonds to be funded or refunded out of the proceeds of the sale or the date upon which the bonds to be funded or refunded will be paid pursuant to the call or agreement with the holders of such bonds.

(d) Any premium necessary in the calling or retiring of the outstanding bonds and the interest accruing on them to the date of the call or retirement.

SEC. 235. Section 7072 of the Government Code is amended to read:

7072. For purposes of this chapter, the following definitions shall apply:

(a) "Department" means the Department of Housing and Community Development.

(b) "Date of original designation" means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the department pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the former Trade and Commerce Agency pursuant to Chapter 12.8 (commencing with Section 7070) or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) "Eligible area" means any of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the department, fulfills at least one of the following criteria:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the department for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(3) A geographic area that meets at least two of the following criteria:

(A) The census tracts within the proposed zone have an unemployment rate not less than 3 percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(B) The county of the proposed zone has more than 70 percent of the children enrolled in public school participating in the federal free lunch program.

(C) The median household income for a family of four within the census tracts of the proposed zone does not exceed 80 percent of the statewide median income for the most recently available calendar year.

(d) "Enterprise zone" means any area within a city, county, or city and county that is designated as an enterprise zone by the department in accordance with Section 7073.

(e) "Governing body" means a county board of supervisors or a city council, as appropriate.

(f) "High technology industries" includes, but is not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) "Resident," unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) "Targeted employment area" means an area within a city, county, or city and county that is composed solely of those census tracts designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using either the most recent United States Department of Census data available at the time of the original enterprise zone application or the most recent census data available at the time the targeted employment area is designated to determine that eligibility. The purpose of a "targeted employment area" is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county, or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or

more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

SEC. 236. Section 7509 of the Government Code is amended to read:

7509. (a) The restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any loans made by, or forbearances of, any state or local public retirement system, including, but not limited to, any public retirement system authorized and regulated by the State Teachers' Retirement Law, the Public Employees' Retirement Law, the County Employees Retirement Law of 1937, any public retirement system administered by the Teachers Retirement Board or Board of Administration of the Public Employees' Retirement System, or any public retirement system acting pursuant to the laws of this state or the laws of any local agency.

(b) For the purposes of this section, "local agency" means county, city, city and county, district, school district, or any public or municipal corporation, political subdivision, or other public agency of the state, or any instrumentality of one or more of these agencies.

(c) This section creates and authorizes any state or local retirement system as an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.

SEC. 237. Section 7520 of the Government Code is amended to read:

7520. (a) Notwithstanding any other provision of law, any public pension fund or retirement system of this state or local agency of this state may contract with a savings and loan association doing business in this state under terms by which the association shall receive deposits of money from the fund or system for a term of 12 months or longer upon the association's agreement to offer loans for the construction of new residential structures and related improvements, including apartment buildings or other multiple-unit structures, in an amount equal to the amount of the deposit, at a rate of interest equal to the rate of interest on the deposit plus 200 basis points. The savings and loan association may require additionally an origination fee not exceeding the amount required by the savings and loan association for comparable loans not subject to this section, but in no case exceeding 5 percent of the loan amount. This fee shall not be deemed to include any expenses of the association directly related to approving, processing, or recording loans made pursuant to

this section. Reasonable charges to cover those expenses may be imposed in connection with the loans.

(b) Nothing in this section shall authorize a pension fund or retirement system to make deposits at less than the otherwise applicable rate of interest nor prohibit the fund or system from depositing funds with other financial institutions or under other conditions.

SEC. 238. Section 7901 of the Government Code is amended to read:

7901. For the purposes of Article XIII B of the California Constitution and this division:

(a) "Change in California per capita personal income" means the number resulting when the quotient of the California personal income, as published by the United States Department of Commerce in the Survey of Current Business for the fourth quarter of a calendar year divided by the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly determined quotient for the next prior year. For example, the change in California per capita personal income for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the fourth quarter 1979 personal income divided by the January 1, 1980, population, the quotient divided by the fourth quarter 1978 personal income divided by the January 1, 1979, population.

(b) "Change in population" for a local agency for a calendar year means the number resulting when the percentage change in population between January 1 of the next calendar year and January 1 of the calendar year in question, as estimated by the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code for each city and county and Section 2228 of the Revenue and Taxation Code for each special district, plus 100, is divided by 100. For example, the change in population for 1979 would equal the percentage change in population between January 1, 1980, and January 1, 1979, plus 100, the sum divided by 100. For purposes of the state's appropriations limit, "change in population" means the number resulting when the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly estimated population for January 1 of the calendar year in question. For example, the change in population for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the January 1, 1980, population divided by the January 1, 1979, population.

A city or special district may choose to use the change in population within its jurisdiction or within the county in which it is located. For a special district located in two or more counties, the special district may choose to use the change in population in the county in which the portion of the district is located which has the highest assessed valuation. Each

city and special district shall select its change in population pursuant to this paragraph annually by a recorded vote of the governing body of the city or special district. A charter city and county may choose to use the change in population provided in this paragraph or may choose to use the change in population provided in Section 2 of Chapter 1221 of the Statutes of 1980.

A county may choose to use any one of the following:

(1) The change in population within its jurisdiction.

(2) The change in population within its jurisdiction, combined with the change in population within all counties having borders that are contiguous to that county.

(3) The change in population within the incorporated portion of the county.

(c) "Change in population" for a school district means the change in average daily attendance between the year prior to that for which the appropriations limit is being computed and the year for which the appropriations limit is being computed, using the average daily attendance as defined in Section 7906.

(d) "Change in population" for a community college district means the number resulting when the average daily attendance reported by the community college district for state apportionment funding purposes computed pursuant to former Article 2 (commencing with Section 84520) of Chapter 4 of Part 50 of the Education Code is divided by the similarly computed average daily attendance for the previous year.

(e) "Local agency" means a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools. The term "special district" shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12½ cents per one hundred dollars ($100) of assessed value for the 1977–78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.

If a special district levied, or had levied on its behalf, different property tax rates for the 1977–78 fiscal year depending on which area or zone within the district boundaries property was located, it shall be deemed not to have levied a secured property tax rate in excess of 12½ cents per one hundred dollars ($100) of assessed value if the total revenue derived from the ad valorem property tax levied by or for the district for

1977–78, divided by the total amount of taxable assessed valuation within the district's boundaries for 1977–78, does not exceed .00125.

(f) "School district" means an elementary, high school, or unified school district.

(g) "Local jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

(h) As used in Section 2 and subdivision (b) of Section 3 of Article XIII B, "revenues" means all tax revenues and the proceeds to a local jurisdiction or the state received from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues as described in subdivision (i) of Section 8 of Article XIII B. For a local jurisdiction, revenues and appropriations shall also include subventions, as defined in Section 7903, and with respect to the state, revenues and appropriations shall exclude those subventions.

(i) (1) "Proceeds of taxes" shall not include proceeds to a local jurisdiction or the state from regulatory licenses, user charges, or user fees except to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service.

(2) "Proceeds of taxes" also does not include the proceeds received by a local jurisdiction from a license tax imposed pursuant to Section 25149.5 of the Health and Safety Code or a tax or fee imposed pursuant to Section 25173.5 of the Health and Safety Code on the operation of a hazardous waste facility, or the proceeds received by a local jurisdiction from a surcharge that is collected by a regional disposal facility, as authorized pursuant to Section 115255 of the Health and Safety Code to the extent that these proceeds of the license tax, tax, fee, or surcharge are expended for costs or increased burdens on local jurisdictions that are associated with the hazardous waste facility or regional disposal facility. These costs or burdens include, but are not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, emergency medical response, law enforcement, air and groundwater monitoring, epidemiological studies, emergency response training, and equipment related to the hosting of the hazardous waste facility or regional disposal facility.

SEC. 239. Section 7907 of the Government Code is amended to read:

7907. For county superintendents of schools:

(a) "Proceeds of taxes" shall be deemed to include subventions received from the state only if those subventions are received for one or more of the following programs:

(1) Educational services provided directly to pupils, including, but not limited to, the services described in subdivision (c) of Section 1981

of, Sections 1904, 2550.2, 2551.3, 8152, 48633, 52570, and 58804 of, and Article 1 (commencing with Section 52300) of Chapter 9 of Part 28 of, the Education Code.

(2) Support services provided to school districts, including, but not limited to, the services described in subdivision (b) of Section 2550 of, and Sections 1510, 2509, 2551, 2554, and 2555 of, the Education Code.

(3) Direct services provided to school districts, as described in subdivision (a) of Section 2550 of the Education Code.

(b) For programs identified in paragraph (1) of subdivision (a), an amount shall be calculated equal to the appropriations made for those programs from the proceeds of taxes for the 1978–79 fiscal year, adjusted for the 1979–80 and 1980–81 fiscal years by the lesser of the change in cost of living or change in California per capita personal income applicable to each year and by the percentage change in average daily attendance in those programs for the 1979–80 and 1980–81 fiscal years.

(c) For all other programs operated by the county superintendent of schools, including, but not limited to, the programs identified in paragraphs (2) and (3) of subdivision (a), an amount shall be calculated equal to the appropriations made for those programs from the proceeds of taxes for the 1978–79 fiscal year, adjusted for the 1979–80 and 1980–81 fiscal years by the lesser of the change in cost of living or change in California per capita personal income for each year and by the percentage change in population, as defined by subdivision (d) of Section 7901, for all the districts in the county for the 1979–80 and 1980–81 fiscal years. The "percentage change in population" for the program identified in paragraph (3) of subdivision (a) shall be, for purposes of this subdivision, the percentage change in direct services average daily attendance as calculated pursuant to subdivision (a) of Section 2550 of the Education Code.

(d) The sum of the amounts calculated in subdivisions (b) and (c) shall be the appropriations limit for the county superintendent for the 1980–81 fiscal year.

(e) For the 1981–82 fiscal year and each year thereafter, the appropriations limit for the prior year shall be adjusted by the appropriate average daily attendance and the lesser of the change in cost of living or California per capita personal income.

(f) For the 1981–82 fiscal year through the 1987–88 fiscal year, state apportionments to county superintendents in excess of the amounts in subdivision (d) or (e) shall not be considered proceeds of taxes for a county superintendent of schools.

(g) For the 1988–89 fiscal year and each fiscal year thereafter, the state apportionments to county superintendents that shall be considered

"proceeds of taxes" for a county superintendent of schools shall be equal to the lesser of the following:

(1) The total amount of state apportionments received for that fiscal year, excluding amounts paid for reimbursement of state mandates in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979.

(2) The appropriations limit for the county superintendent for that fiscal year, less the sum of all of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year that are from the proceeds of taxes.

(C) Locally voted taxes received during the current year, such as parcel taxes or square foot taxes, other than for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current year, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234 of the Education Code.

(E) Local proceeds of taxes received during the current fiscal year which offset state aid.

(3) Amounts paid for court or federal mandates shall be excluded from the appropriations limit.

SEC. 240. Section 8902 of the Government Code is amended to read:

8902. During those times that a Member of the Legislature is required to be in Sacramento to attend a session of the Legislature and during those times that a member is traveling to and from, or is in attendance at, any meeting of a committee of which he or she is a member or is attending to any other legislative function or responsibility as authorized or directed by the rules of the house of which he or she is a member or by the joint rules, he or she shall be entitled to reimbursement of his or her living expenses at a rate established by the California Victim Compensation and Government Claims Board that is not less than the rate provided to federal employees traveling to Sacramento.

SEC. 241. Section 8652 of the Government Code is amended to read:

8652. Before payment may be made by the state to any person in reimbursement for taking or damaging private property necessarily utilized by the Governor in carrying out his or her responsibilities under this chapter during a state of war emergency or state of emergency, or for services rendered at the instance of the Governor under those conditions, the person shall present a claim to the California Victim Compensation and Government Claims Board in accordance with the provisions of the Government Code governing the presentation of claims

against the state for the taking or damaging of private property for public use, which provisions shall govern the presentment, allowance, or rejection of the claims and the conditions upon which suit may be brought against the state. Payment for property or services shall be made from any funds appropriated by the state for that purpose.

SEC. 242. Section 8894.1 of the Government Code is amended to read:

8894.1. This chapter shall not apply to potentially hazardous (unreinforced masonry) buildings covered under Chapter 12.2 (commencing with Section 8875), any building covered under Chapter 13.4 (commencing with Section 8893), school buildings covered under Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5 of the Education Code, hospital buildings covered under Chapter 1 (commencing with Section 129675) of Part 7 of Division 107 of the Health and Safety Code, and historical buildings covered under Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code.

SEC. 243. Section 11007.6 of the Government Code is amended to read:

11007.6. Any state agency may, subject to rules and regulations of the California Victim Compensation and Government Claims Board, insure its officers and employees not covered by Part 2.6 (commencing with Section 19815) of Division 5 against injury or death incurred while flying on state business in any, except regularly scheduled, passenger aircraft.

SEC. 244. Section 11014 of the Government Code is amended to read:

11014. (a) In exercising the powers and duties granted to and imposed upon it, any state agency may construct and maintain communication lines as may be necessary.

(b) In providing communications and necessary powerlines in connection with activities under subdivision (a), the agency, with the approval of the Department of General Services, may enter into contracts with owners of similar facilities for use of their facilities, such as pole lines, and provisions may be made for indemnification and holding harmless of the owners of those facilities by reason of this use. Insurance may be purchased by the Department of General Services, upon request of the agency, to protect the state against loss or expense arising out of the contract.

(c) Any claim for damages arising against the state under this section shall be presented to the California Victim Compensation and Government Claims Board in accordance with Sections 905.2 and 945.4, and if not covered by insurance as provided under subdivision (b), the

claim shall be payable only out of funds appropriated by the Legislature for this purpose. If the state elects to insure its liability under this section, the California Victim Compensation and Government Claims Board may automatically deny that claim.

SEC. 245. Section 11030.1 of the Government Code is amended to read:

11030.1. When a state employee not covered by Part 2.6 (commencing with Section 19815) of Division 5 dies while traveling on official state business, the state shall, under rules and regulations adopted by the California Victim Compensation and Government Claims Board, pay the traveling expenses necessary to return the body to his or her official headquarters or the place of burial. This subdivision shall not be construed to authorize the payment of the traveling expenses, either going or returning, of one accompanying that body.

SEC. 246. Section 11030.2 of the Government Code is amended to read:

11030.2. Any state officer or employee not covered by Part 2.6 (commencing with Section 19815) of Division 5 when working overtime at his or her headquarters on state business may receive his or her actual and necessary expenses, during his or her regular workweek, subject to rules and regulations adopted by the California Victim Compensation and Government Claims Board limiting the amount of the expenses and prescribing the conditions under which the expenses may be paid. However, each state agency may determine the necessity for and limit these expenses of its employees in a manner that does not conflict with and is within the limitations prescribed by the California Victim Compensation and Government Claims Board.

SEC. 247. Section 11031 of the Government Code is amended to read:

11031. The headquarters of elective constitutional officers, other than Members of the Legislature, shall be established by the filing of a written statement with the California Victim Compensation and Government Claims Board that certifies that the selected headquarters is the place where the officer spends the largest portion of his or her regular workdays or working time.

SEC. 248. Section 11125.7 of the Government Code is amended to read:

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting

where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) This section is not applicable to closed sessions held pursuant to Section 11126.

(e) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(f) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims Board pursuant to Sections 13963 and 13963.1.

(g) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

SEC. 249. Section 11125.8 of the Government Code is amended to read:

11125.8. (a) Notwithstanding Section 11131.5, in any hearing that the California Victim Compensation and Government Claims Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda,

announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

SEC. 250. Section 11270 of the Government Code is amended to read:

11270. As used in this article, "administrative costs" means the amounts expended by the Legislature, Controller, and Treasurer, the State Personnel Board, the Department of General Services, the California Victim Compensation and Government Claims Board, the Department of Finance, the Office of Administrative Law, the Department of Personnel Administration, the Secretary of State and Consumer Services, the Secretary of Business, Transportation and Housing, the Secretary of California Health and Human Services, the Secretary of the Resources Agency, the Secretary of the Department of Corrections and Rehabilitation, and the California State Library, and a proration of any other cost to or expense of the state for services or facilities provided for the Legislature and the above agencies, for supervision or administration of the state government or for services to the various state agencies.

SEC. 251. Section 11275 of the Government Code is amended to read:

11275. If, upon receipt of the statement provided in Section 11274, the state agency does not have funds available by law for the payment of the administrative costs, or if it has any other reason why the payment of those costs should not be made at the time specified on the statement, the state agency shall, prior to the expiration of the 30-day period referred to in the statement, file with the Controller, in duplicate, a written request to defer payment of those administrative costs, which request shall set forth the reasons why that payment should be deferred. Upon receipt of any request filed because of lack of availability of funds, the Controller shall forthwith transmit one copy of that request to the Department of Finance and shall defer action to effect the transfer of funds covering the administrative costs referred to in the request until the transfer has been approved by the Director of Finance. The Department of Finance shall notify the Controller of the approval of the deferral request. Upon receipt of any request filed because of any reason other than lack of availability of funds, the Controller shall forthwith transmit one copy of that request to the California Victim Compensation and Government Claims Board and shall defer action to effect the transfer of funds until

that transfer has been approved by the California Victim Compensation and Government Claims Board.

SEC. 252. Section 12467 of the Government Code is amended to read:

12467. (a) (1) The Legislature finds and declares that the General Fund has experienced significant deficits in recent years due to economic factors and extraordinary demand for public services supported by the General Fund. In order to meet the cash needs of the state, it has been necessary to obtain external loans. The Legislature desires to provide a specific mechanism to eliminate chronic General Fund cash deficits, provide fiscal stability, and facilitate temporary, short-term borrowing.

(2) For purposes of this section, "unused borrowable resources," as of any date, means total available borrowable resources on that date less total cumulative loan balances on that date.

(b) On November 15, 1994, the Controller shall provide a detailed report to the Legislature and the Governor of the estimated cash condition of the General Fund for the 1994–95 fiscal year. The Legislative Analyst shall prepare an analysis of General Fund revenues and expenditures for the 1994–95 fiscal year for use by the Controller in the estimate of the 1994–95 General Fund cash condition. The Legislative Analyst shall review the Controller's estimate of the General Fund cash condition and within five working days shall advise the Controller, the Treasurer, the Chairperson of the Joint Legislative Budget Committee, and the Director of Finance whether that estimate reasonably reflects anticipated expenditures and revenues during the fiscal year. The Controller's report shall identify the amount of any 1995 cash shortfall, as set forth in this subdivision. To that end, the Controller shall identify the projected amount by which the unused borrowable resources on June 30, 1995, will differ from the unused borrowable resources on June 30, 1995, as indicated in the cash flow analysis included in the official statement accompanying the sale of the July 1994 revenue anticipation warrants. If the Controller's report identifies a decrease in the unused borrowable resources on June 30, 1995, of more than four hundred thirty million dollars ($430,000,000), then the 1995 cash shortfall shall be the amount of the difference that exceeds four hundred thirty million dollars ($430,000,000). On or before January 10, 1995, the Governor shall propose legislation providing for sufficient General Fund expenditure reductions, revenue increases, or both, to offset the amount of the estimated 1995 cash shortfall as reported by the Controller. This legislation, or legislation providing equivalent expenditure reductions, revenue increases, or both, shall be enacted on or before February 15, 1995.

(c) The Director of Finance shall include updated cash flow statements for the 1994–95 and 1995–96 fiscal years in the May revision to the budget proposal for the 1995–96 fiscal year submitted to the Legislature pursuant to Section 13308. The revised budget proposal for the 1995–96 fiscal year shall not result in any projected negative amount of unused borrowable resources as of June 30, 1996. By June 1, 1995, the Controller shall concur with those updated statements or provide a report to the Governor and the Legislature identifying specific corrections, objections, or concerns and the Controller's estimate of the cash condition of the General Fund for the 1994–95 and 1995–96 fiscal years. If the Controller identifies any projected negative amount of unused borrowable resources as of June 30, 1996, then the Governor shall propose additional General Fund expenditure reductions, revenue increases, or both, to eliminate that cash shortfall. The enacted budget shall not result in any projected negative unused borrowable resources as of June 30, 1996.

(d) On October 15, 1995, the Controller shall provide a detailed report to the Legislature and the Governor of the estimated cash condition of the General Fund for the 1995–96 fiscal year. The Legislative Analyst shall prepare an analysis of General Fund revenues and expenditures for the 1995–96 fiscal year for use by the Controller in the estimate of the 1995–96 General Fund cash condition. The Legislative Analyst shall review the Controller's estimate of the General Fund cash condition and within five working days shall advise the Controller, the Treasurer, the Chairperson of the Joint Legislative Budget Committee, and the Director of Finance whether that estimate reasonably reflects anticipated expenditures and revenues during the fiscal year. The Controller's report shall identify the amount of any 1996 cash shortfall, as set forth in this subdivision. The Controller shall identify the projected amount of unused borrowable resources as of June 30, 1996. If the Controller's report identifies a negative amount of unused borrowable resources as of June 30, 1996, then the 1996 cash shortfall shall be the amount necessary to bring the balance of unused borrowable resources on June 30, 1996, to zero. Within 10 days of the Legislative Analyst's review, the Governor shall propose legislation providing for sufficient General Fund expenditure reductions, revenue increases, or both, to offset the estimated 1996 cash shortfall as reported by the Controller. This legislation, or legislation providing equivalent expenditure reductions, revenue increases, or both, shall be enacted on or before December 1, 1995.

(e) (1) If the legislation required by subdivision (b) is not enacted, within five days the Director of Finance shall reduce all General Fund appropriations for the 1994–95 fiscal year, except those required by subdivision (b) of Section 8 of Article XVI, Section 25 of Article XIII, Section 6 of Article XIII B, or any other provision of the California

Constitution, and general obligation debt service, or law of the United States, by the percentage equal to the ratio of the 1995 cash shortfall to total remaining General Fund appropriations for the 1994–95 fiscal year, after excluding the appropriations that are not subject to reduction.

(2) If the legislation required by subdivision (d) is not enacted, within five days the Director of Finance shall reduce all General Fund appropriations for the 1995–96 fiscal year, except those required by subdivision (b) of Section 8 of Article XVI, Section 25 of Article XIII, Section 6 of Article XIII B, or any other provision of the California Constitution, any general obligation debt service, or law of the United States, by the percentage equal to the ratio of the 1996 cash shortfall to total remaining General Fund appropriations for the 1995–96 fiscal year, after excluding the appropriations that are not subject to reduction.

(3) Notwithstanding any other provision of law, if a General Fund appropriation that is reduced pursuant to paragraph (1) or (2) is for a program under which individuals other than an officer or employee of the state receive an amount determined pursuant to statute, whether that amount is an entitlement or not, that amount shall be reduced by the same percentage as the General Fund appropriation from which that payment is made is reduced.

(f) The State of California hereby pledges to and agrees with the holders of any registered reimbursement warrants and any revenue anticipation notes issued in July 1994, and any banking institutions that provide credit support for these warrants or notes, that the state will not limit or alter the obligation hereby required of the state by this section until the registered reimbursement warrants and revenue anticipation notes, together with interest thereon, are fully met and discharged.

SEC. 253. Section 12807.5 of the Government Code is amended to read:

12807.5. The Secretary of the Resources Agency, in reviewing projects pursuant to Sections 5096.87 and 5096.128 of the Public Resources Code, shall consider the arborescent prototype park project of the Southgate Recreation and Park District in Sacramento County.

It is the intent of the Legislature that, if the secretary deems that project to be among projects of highest priority and there are insufficient moneys available under the Z'berg-Collier Park Bond Act and the Nejedly-Hart State, Urban, and Coastal Park Bond Act of 1976 to fund a one hundred seventy-two thousand dollar ($172,000) grant to the district for that project, any deficiency in that grant be made from other available sources.

SEC. 254. Section 12838.1 of the Government Code is amended to read:

12838.1. (a) There is hereby created within the Department of Corrections and Rehabilitation, under the Chief Deputy Secretary for

Adult Operations, the Division of Adult Institutions and the Division of Adult Parole Operations. Each division shall be headed by a division chief, who shall be appointed by the Governor, upon recommendation of the secretary, subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(b) The Governor shall, upon recommendation of the secretary, appoint five subordinate officers to the Chief of the Division of Adult Institutions, subject to Senate confirmation, who shall serve at the pleasure of the Governor. Each subordinate officer appointed pursuant to this subdivision shall oversee an identified category of adult institutions, one of which shall be female offender facilities.

SEC. 255. Section 13300 of the Government Code is amended to read:

13300. (a) The department shall devise, install, supervise, and, at its discretion, revise and modify, a modern and complete accounting system for each agency of the state permitted or charged by law with the handling of public money or its equivalent, to the end that all revenues, expenditures, receipts, disbursements, resources, obligations, and property of the state be properly, accurately, and systematically accounted for and that there shall be obtained accurate and comparable records, reports, and statements of all the financial affairs of the state.

(b) This system shall be of a nature so as to permit a comparison of budgeted expenditures, actual expenditures, and encumbrances and payables, as defined by the California Fiscal Advisory Board, and estimated revenue to actual revenue, which is compatible with a budget coding system, developed by the department. In addition, the system shall provide for a federal revenue accounting system with cross-references of federal fund sources to state activities.

(c) This system shall include a cost accounting system that accounts for expenditures by line item, governmental unit, and fund source. The system shall also be capable of performing program cost accounting as required. The system and the accounts maintained by the several agencies of the state shall be coordinated with the central accounts maintained by the Controller, and shall provide the Controller with all information necessary to the maintenance by the Controller of a comprehensive system of central accounts for the entire state government. The Controller or the Director of Finance may submit to the California Victim Compensation and Government Claims Board and the California Victim Compensation and Government Claims Board shall consider and adopt any rule or regulation required to implement this section.

(d) The requirements of this section shall apply to departments commencing with the second fiscal year following the fiscal year for which funds are appropriated by the Legislature to implement this section.

The department shall adopt guidelines and instructions to implement the application of this section.

SEC. 256. Section 13332.09 of the Government Code is amended to read:

13332.09. (a) No purchase order or other form of documentation for acquisition or replacement of motor vehicles shall be issued against any appropriation until the Department of General Services has investigated and established the necessity therefor.

(b) A state agency may not acquire surplus mobile equipment from any source for program support until the Department of General Services has investigated and established the necessity therefor.

(c) Notwithstanding any other provision of law, all contracts for the acquisition of motor vehicles or general use mobile equipment for a state agency shall be made by or under the supervision of the Department of General Services. Pursuant to Section 10298, the Department of General Services may collect a fee to offset the cost of the services provided.

(d) All passenger-type motor vehicles purchased for state officers and employees, except constitutional officers, shall be American-made vehicles of the light class, as defined by the California Victim Compensation and Government Claims Board, unless excepted by the Director of General Services on the basis of unusual requirements, including, but not limited to, use by the California Highway Patrol, that would justify the need for a motor vehicle of a heavier class.

(e) No general use mobile equipment having an original purchase price of twenty-five thousand dollars ($25,000) or more shall be rented or leased from a nonstate source and payment therefor made from any appropriation for the use of the Department of Transportation, without the prior approval of the Department of General Services after a determination that comparable state-owned equipment is not available, unless obtaining approval would endanger life or property, in which case the transaction and the justification for not having sought prior approval shall be reported immediately thereafter to the Department of General Services.

(f) As used in this section:

(1) "General use mobile equipment" means equipment that is listed in the Mobile Equipment Inventory of the State Equipment Council and that is capable of being used by more than one state agency, and shall not be deemed to refer to equipment having a practical use limited to the controlling state agency only. Section 575 of the Vehicle Code shall have no application to this section.

(2) "State agency" means a state agency, as defined pursuant to Section 11000, and each campus of the California State University. The University of California is requested and encouraged to have the

Department of General Services perform the tasks identified in this section with respect to the acquisition or replacement of motor vehicles by the University of California.

SEC. 257. Section 13905 of the Government Code is amended to read:

13905. The board shall have a seal, bearing the following inscription: "California Victim Compensation and Government Claims Board." The seal shall be fixed to all writs and authentications of copies of records and to other instruments that the board directs.

SEC. 258. Section 13972 of the Government Code is amended to read:

13972. (a) If a private citizen incurs personal injury or death or damage to his or her property in preventing the commission of a crime against the person or property of another, in apprehending a criminal, or in materially assisting a peace officer in prevention of a crime or apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, the private citizen, his or her surviving spouse, his or her surviving children, a person dependent upon the citizen for his or her principal support, or a public safety or law enforcement agency acting on behalf of any of the above may file a claim with the California Victim Compensation and Government Claims Board for indemnification to the extent that the claimant is not compensated from any other source for the injury, death, or damage. The claim shall generally show all of the following:

(1) The date, place, and other circumstances of the occurrence or events that gave rise to the claim.

(2) A general description of the activities of the private citizen in prevention of a crime, apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe.

(3) The amount or estimated amount of the injury, death, or damage sustained for which the claimant is not compensated from any other source, insofar as it may be known at the time of the presentation of the claim.

(4) Any other information that the California Victim Compensation and Government Claims Board may require.

(b) A claim filed under subdivision (a) shall be accompanied by a corroborating statement and recommendation from the appropriate state or local public safety or law enforcement agency.

SEC. 259. Section 13973 of the Government Code is amended to read:

13973. (a) Upon presentation of a claim pursuant to this chapter, the California Victim Compensation and Government Claims Board

shall fix a time and place for the hearing of the claim, and shall mail notices of the hearing to interested persons or agencies. At the hearing, the board shall receive recommendations from public safety or law enforcement agencies, and evidence showing all of the following:

(1) The nature of the crime committed by the apprehended criminal or prevented by the action of the private citizen, or the nature of the action of the private citizen in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, and the circumstances involved.

(2) That the actions of the private citizen substantially and materially contributed to the apprehension of a criminal, the prevention of a crime, or the rescuing of a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe.

(3) That as a direct consequence, the private citizen incurred personal injury or damage to property or died.

(4) The extent of the injury or damage for which the claimant is not compensated from any other source.

(5) Any other evidence that the board may require.

(b) If the board determines, on the basis of a preponderance of the evidence, that the state should indemnify the claimant for the injury, death, or damage sustained, it shall approve the claim for payment. In no event shall a claim be approved by the board under this article in excess of ten thousand dollars ($10,000).

(c) In addition to any award made under this chapter, the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award. No attorney shall charge, demand, receive, or collect for services rendered in connection with any proceedings under this chapter any amount other than that awarded as attorney's fees under this section. Claims approved under this chapter shall be paid from a separate appropriation made to the California Victim Compensation and Government Claims Board in the Budget Act and as the claims are approved by the board.

SEC. 260. Section 13974 of the Government Code is amended to read:

13974. The California Victim Compensation and Government Claims Board is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect this article.

SEC. 261. Section 13974.1 of the Government Code is amended to read:

13974.1. (a) The board shall utilize the provisions of this article, insofar as they may be made applicable, to establish a claim and reward procedure to reward persons providing information leading to the location

of any child listed in the missing children registry compiled pursuant to former Section 11114 of the Penal Code or maintained pursuant to the system maintained pursuant to Sections 14201 and 14202 of the Penal Code.

(b) Awards shall be made upon recommendation of the Department of Justice in an amount of not to exceed five hundred dollars ($500) to any one individual. However, as a condition to an award, in any particular case, an amount equal to or greater in nonstate funds shall have been first offered as a reward for information leading to the location of that missing child.

(c) The Missing Children Reward Fund is hereby created in the State Treasury and is continuously appropriated to the California Victim Compensation and Government Claims Board to make awards pursuant to this section.

SEC. 262. Section 14084 of the Government Code is amended to read:

14084. If at any time, in carrying out any agreement made pursuant to Section 14081, the required payment of reimbursements becomes a matter in dispute that cannot be resolved by the governing body and the director, it shall be brought before the California Victim Compensation and Government Claims Board, which shall conduct the necessary audits and interviews to determine the facts, hear both parties to the dispute, and make a final determination as to the reimbursement actually due.

SEC. 263. Section 14670.4 of the Government Code is amended to read:

14670.4. The Director of General Services may, subject to the approval of the State Public Works Board, enter into an agreement or agreements whereby the state will acquire all interest of its concessionaire at Squaw Valley, the Squaw Valley Improvement Corporation, in exchange for an approximately 400-acre portion of land at the former Stockton State Hospital farm declared surplus by the Legislature in 1953, the sale of an additional portion of the land, and an option to purchase the remaining portion for its fair market value.

SEC. 264. Section 14682 of the Government Code is amended to read:

14682. (a) Final determination of the use of existing state-owned and state-leased facilities that are currently under the jurisdiction of the Department of General Services by state agencies shall be made by the Department of General Services.

(b) A request of an agency that is required to be made to and approved by the Department of General Services to acquire new facilities through lease, purchase, or construction shall first consider the utilization of existing state-owned, state-leased, or state-controlled facilities before

considering the leasing of additional facilities on behalf of a state agency. If no available appropriate state facilities exist, the Department of General Services shall procure approved new facilities for the agency that meet the agency's needs using cost efficiency as a primary criterion, among other agency-specific criteria, as applicable.

(c) When tenant state agencies located in existing state-owned or state-leased facilities vacate their premises, they shall continue paying rent for the facilities unless and until a new tenant can be assigned or until the Department of General Services can negotiate a mutual termination of the lease. If the department generates the tenant's relinquishment, or if the tenant is vacating in accordance with the provisions of its lease agreement, the tenant shall not be obligated to pay rent after vacating the premises.

SEC. 265. Section 15202 of the Government Code is amended to read:

15202. (a) A county that is responsible for the cost of a trial or trials or any hearing of a person for the offense of homicide may apply to the Controller for reimbursement of the costs incurred by the county in excess of the amount of money derived by the county from a tax of 0.0125 of 1 percent of the full value of property assessed for purposes of taxation within the county.

(b) The Controller shall not reimburse any county for costs that exceed the California Victim Compensation and Government Claims Board's standards for travel and per diem expenses. The Controller may reimburse extraordinary costs in unusual cases if the county provides sufficient justification of the need for these expenditures. Nothing in this section shall permit the reimbursement of costs for travel in excess of 1,000 miles on any single round trip, without the prior approval of the Attorney General.

SEC. 266. Section 15492 of the Government Code is amended to read:

15492. (a) The Department of General Services shall assign one full-time position within the Office of Public School Construction to the performance of the following functions:

(1) Providing advisory assistance to school districts regarding the process of site acquisition for projects for which the State Allocation Board has approved funding under Chapter 1 (commencing with Section 17210) of Part 10.5 of the Education Code.

(2) Formulating recommendations for administrative or statutory revision to the manner in which school sites are acquired under Chapter 1 (commencing with Section 17210) of Part 10.5 of the Education Code, and submitting those recommendations to the State Allocation Board.

(b) The Department of General Services shall establish a screening unit or other mechanism within the Office of Public School Construction to ensure that the office responds in a timely manner to any inquiry regarding the status of an application for project funding under Chapter 1 (commencing with Section 17210) of Part 10.5 of the Education Code.

(c) The requirements set forth in this section shall not increase the staffing level of the Office of Public School Construction, as that staffing level existed on the operative date of this section.

SEC. 267. Section 15815 of the Government Code is amended to read:

15815. (a) The plans and specifications for any public building constructed pursuant to this part shall be prepared by the Department of General Services, and the board shall reimburse the department for the costs of its services from the funds available for that purpose. Any public building constructed under this part shall be constructed in accordance with the State Contract Act.

(b) Subdivision (a) does not apply to any public building constructed by, or on behalf of, the board for lease-purchase by the board to, or in connection with, a contract between the board and any of the following entities:

(1) The Regents of the University of California, if the public building is constructed under Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code.

(2) The Trustees of the California State University, if the public building is constructed under Chapter 2.5 (commencing with Section 10700) of Part 2 of Division 2 of the Public Contract Code.

(3) A community college district, if the building is constructed under Article 41 (commencing with Section 20650) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code.

(c) Subdivision (a) does not apply to any public building constructed with the Administrative Office of the Courts serving as the implementing agency under subdivision (b) of Section 70374.

SEC. 268. Section 15952 of the Government Code is amended to read:

15952. (a) Centralized administration of consolidated social service transportation services shall utilize, to the maximum extent possible, existing public and private administrative capabilities and expertise. Utilization of existing administrative capabilities and expertise shall not require employment of those public and private administrative personnel nor shall it preclude any consolidated agency from developing a necessary administrative organization.

(b) Efficient and continual use of all existing sources of funding, utilized prior to the enactment of this part for social service transportation

services, shall, to the maximum extent possible, be continued. Social service agencies participating in consolidation or coordination shall continue to maintain funding levels for consolidated services necessary to meet the transportation needs of their social service consumers. Rescinding or eliminating funding for consolidated services by any participating agency shall require cancellation of service to the agency's consumers by the consolidated agency. Cancellation of the service shall not be required if rescission or elimination of funding occurs because of a program change with respect to the source of funding.

(c) Consolidation of social service transportation services shall, to the maximum extent possible, utilize existing agency operating and maintenance personnel and expertise. Effective use of employees of participating agencies shall be achieved without mandating that the employees become directly employed by the designated consolidated agency.

(d) Consolidation of existing social service transportation services shall more appropriately be achieved if local elected officials are involved in the process. Local elected officials shall, to the maximum extent possible, be involved in the development of the action plans and other local actions necessary for the successful implementation of this part.

SEC. 269. Section 16302.1 of the Government Code is amended to read:

16302.1. (a) Whenever any person pays to any state agency pursuant to law an amount covering taxes, penalties, interest, license, or other fees, or any other payment, and it is subsequently determined by the state agency responsible for the collection thereof that this amount includes an overpayment of ten dollars ($10) or less of the amount due the state pursuant to the assessment, levy, or charge to which the payment is applicable, the amount of the overpayment may be disposed of in either of the following ways:

(1) The state agency responsible for the collection to which the overpayment relates may apply the amount of the overpayment as a payment by the person on any other taxes, penalties, interest, license, or other fees, or any other amount due the state from that person if the state agency is responsible by law for the collection to which the overpayment is to be applied as a payment.

(2) Upon written request of the state agency responsible for the collection to which the overpayment relates, the amount of the overpayment shall, on order of the Controller, be deposited as revenue in the fund in the State Treasury into which the collection, exclusive of overpayments, is required by law to be deposited.

(b) The California Victim Compensation and Government Claims Board may adopt rules and regulations to permit state agencies to retain

these overpayments where a demand for refund permitted by law is not made within six months after the refund becomes due, and the retained overpayments shall belong to the state.

(c) Except as provided in subdivision (b), this section shall not affect the right of any person making overpayment of any amount to the state to make a claim for refund of the overpayment, nor the authority of any state agency or official to make payment of any amount so claimed, if otherwise authorized by law.

SEC. 270. Section 16304.6 of the Government Code is amended to read:

16304.6. Within the time during which the appropriation is available for expenditure, the California Victim Compensation and Government Claims Board at the request of the director of the department concerned and with the approval of the Director of Finance, may authorize that unneeded funds in any appropriation for the support of an institution, school, or college or for family care or private home care or for parole supervision activities within any of the following departments shall be available and be deemed appropriated for the support of any institution, school, or college or for family care or private home care or for parole supervision activities within the same department:

(a) Department of Corrections and Rehabilitation.

(b) Department of the Youth Authority.

(c) State Department of Education.

(d) State Department of Mental Health.

SEC. 271. Section 16366.3 of the Government Code is amended to read:

16366.3. Federal block grant legislation provides that, for the first fiscal year, states have the option to accept or reject designated block grants. Consistent with this federal policy, the state shall, prior to July 1, 1982, accept only those block grants that meet all of the following criteria:

(a) The block grant includes programs and services that the state has previously administered.

(b) The block grant program, and funding, has been previously integrated into state and local service systems.

(c) The block grant program does not require increased state or local matching funds.

(d) There is a distinct advantage as a result of state assumption.

SEC. 272. Section 16383 of the Government Code is amended to read:

16383. Warrants may be drawn by the Controller against the General Cash Revolving Fund, to the extent of the amounts available, in accordance with demands audited pursuant to law and rules and

regulations prescribed from time to time by the California Victim Compensation and Government Claims Board, and also to meet other payments provided by law to be made from the General Fund. The Treasurer may pay from the General Cash Revolving Fund the warrants so drawn.

SEC. 273. Section 16431 of the Government Code is amended to read:

16431. (a) Notwithstanding any other provisions of this code, funds held by the state pursuant to a written agreement between the state and employees of the state to defer a portion of the compensation otherwise receivable by the state's employees and pursuant to a plan for that deferral as adopted by the state and approved by the California Victim Compensation and Government Claims Board, may be invested in the types of investments set forth in Sections 53601 and 53602, and may additionally be invested in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, annuities, mortgages, deeds of trust, or other security interests in real or personal property. Nothing in this section shall be construed to permit any type of investment prohibited by the California Constitution.

(b) Deferred compensation funds are public pension or retirement funds for the purposes of Section 17 of Article XVI of the California Constitution.

SEC. 274. Section 16585 of the Government Code is amended to read:

16585. (a) A city, county, or city and county may sell or transfer part or all of its accounts receivable to a private debt collector or private persons or entities, provided the city, county, or city and county notifies the debtor in writing at the address of record that the alleged accounts receivable debt will be turned over for private collection unless the debt is paid, or appealed within a time period, as determined by the city, county, or city and county providing the notice.

(b) No city, county, or city and county shall assign or sell any account receivable pursuant to subdivision (a) if the account receivable debt has been contested.

SEC. 275. Section 17051.5 of the Government Code is amended to read:

17051.5. A state agency shall notify the Treasurer not to pay a warrant drawn by the Controller upon that agency's request whenever that agency has reason to believe that the Controller has drawn or is about to draw his or her warrant without legal authority, for a larger amount than is owed by the state, or in a manner not in conformity with the regulations adopted by the California Victim Compensation and Government Claims Board for the presentation and audit of claims. Upon notification from

a state agency as described in this section, the Treasurer shall refuse payment of the subject warrant until he or she is otherwise directed by the agency or the Legislature.

SEC. 276. Section 17201 of the Government Code is amended to read:

17201. The California Victim Compensation and Government Claims Board may make rules and regulations governing the issuance and sale of registered warrants.

SEC. 277. Section 17520 of the Government Code is amended to read:

17520. "Special district" means any agency of the state that performs governmental or proprietary functions within limited boundaries. "Special district" includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area. "Special district" does not include a city, a county, a school district, or a community college district.

County free libraries established pursuant to Chapter 6 (commencing with Section 19100 of Part 11 of the Education Code, areas receiving county fire protection services pursuant to Section 25643 of the Government Code, and county road districts established pursuant to Chapter 7 (commencing with Section 1550) of Division 2 of the Streets and Highways Code shall be considered "special districts" for all purposes of this part.

SEC. 278. Section 17553 of the Government Code is amended to read:

17553. (a) The commission shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on those claims. The procedures shall do all of the following:

(1) Provide for presentation of evidence by the claimant, the Department of Finance, and any other affected department or agency, and any other interested person.

(2) Ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim, when a determination is made by the commission that a mandate exists. This deadline may be extended for up to six months upon the request of either the claimant or the commission.

(3) Permit the hearing of a claim to be postponed at the request of the claimant, without prejudice, until the next scheduled hearing.

(b) All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:

(1) A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate and shall include all of the following:

(A) A detailed description of the new activities and costs that arise from the mandate.

(B) A detailed description of existing activities and costs that are modified by the mandate.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(F) Identification of all of the following:

(i) Dedicated state funds appropriated for this program.

(ii) Dedicated federal funds appropriated for this program.

(iii) Other nonlocal agency funds dedicated for this program.

(iv) The local agency's general purpose funds for this program.

(v) Fee authority to offset the costs of this program.

(G) Identification of prior mandate determinations made by the California Victim Compensation and Government Claims Board or the Commission on State Mandates that may be related to the alleged mandate.

(2) The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

(A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

(B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

(C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

(3) (A) The written narrative shall be supported with copies of all of the following:

(i) The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate.

(ii) Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate.

(iii) Administrative decisions and court decisions cited in the narrative.

(B) State mandate determinations made by the California Victim Compensation and Government Claims Board and the Commission on State Mandates and published court decisions on state mandate determinations made by the Commission on State Mandates are exempt from this requirement.

(4) A test claim shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief. The date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address shall be included.

(c) If a completed test claim is not received by the commission within 30 calendar days from the date that an incomplete test claim was returned by the commission, the original test claim filing date may be disallowed, and a new test claim may be accepted on the same statute or executive order.

(d) In addition, the commission shall determine whether an incorrect reduction claim is complete within 10 days after the date that the incorrect reduction claim is filed. If the commission determines that an incorrect reduction claim is not complete, the commission shall notify the local agency and school district that filed the claim stating the reasons that the claim is not complete. The local agency or school district shall have 30 days to complete the claim. The commission shall serve a copy of the complete incorrect reduction claim on the Controller. The Controller shall have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the commission.

SEC. 279. Section 17556 of the Government Code is amended to read:

17556. The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to

implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision.

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

SEC. 280. Section 18708 of the Government Code is amended to read:

18708. The board shall cooperate with the Director of Finance, the Department of Personnel Administration, the California Victim Compensation and Government Claims Board, the Controller, and other state agencies, in matters not covered by this part, and not inconsistent with this part, to promote the efficient and economical administration of the state's business.

SEC. 281. Section 19583.5 of the Government Code is amended to read:

19583.5. (a) Any person, except for a current ward of the Division of Juvenile Facilities, a current inmate of the Department of Corrections and Rehabilitation, or a current patient of a facility operated by the State Department of Mental Health, with the consent of the board or the appointing power may file charges against an employee requesting that adverse action be taken for one or more causes for discipline specified in this article. Charges filed by a person who is a state employee shall not include issues covered by the state's employee grievance or other merit appeals processes. Any request of the board to file charges pursuant to this section shall be filed within one year of the event or events that led to the filing. The employee against whom the charges are filed shall have a right to answer as provided in this article. In all of these cases, a hearing shall be conducted in accord with this article and if the board finds that the charges are true it shall have the power to take any adverse action as in its judgment is just and proper. An employee who has sought to bring a charge or an adverse action against another employee using the grievance process, shall first exhaust that administrative process prior to bringing the case to the board.

(b) This section shall not be construed to supersede Section 19682.

SEC. 282. Section 19583.51 of the Government Code is amended to read:

19583.51. (a) Effective January 1, 1996, notwithstanding Section 19583.5, this section shall only apply to state employees in State Bargaining Unit 5. Any person, except for a current ward of the Division of Juvenile Facilities, a current inmate of the Department of Corrections and Rehabilitation, or a current patient of a facility operated by the State Department of Mental Health, with the consent of the board or the appointing power may file charges against an employee requesting that adverse action be taken for one or more causes for discipline specified in this article. Any request of the board to file charges pursuant to this section shall be filed within one year of the event or events that led to the filing. The employee against whom the charges are filed shall have a right to answer as provided in this article. In all of these cases, a hearing shall be conducted in accordance with this article and if the board finds that the charges are true it shall have the power to take any adverse action as in its judgment is just and proper.

(b) This section shall not be construed to supersede Section 19682.

(c) Any adverse action, as defined by Section 19576.1, that results from a request to file charges pursuant to this section, is subject to the appeal procedures in Section 19576.1.

SEC. 283. Section 19792.5 of the Government Code is amended to read:

19792.5. (a) In order to permit the public to track upward mobility and the impact of equal opportunities on persons, categorized by race, ethnicity, gender, and disability in state civil service, the State Personnel Board shall annually track, by incremental levels of ten thousand dollars ($10,000), the salaries of persons, categorized by race, ethnicity, gender, and disability, in state civil service. For purposes of this subdivision, "upward mobility" means the advancement of persons, categorized by race, ethnicity, gender, and disability, to better paying and higher level positions.

(b) The board shall report salary data collected pursuant to subdivision (a) to the Governor and the Legislature in its Annual Census of State Employees and Equal Employment Opportunity Report, as required in Section 19793, and shall include in this report information regarding the progress of individuals by race, ethnicity, gender, and disability in attaining high-level positions in state employment. The salary data shall be reported in annual increments of ten thousand dollars ($10,000) by job category, race, ethnicity, gender, and disability in a format easily understandable by the public.

SEC. 284. Section 19815.4 of the Government Code is amended to read:

19815.4. The director shall do all of the following:

(a) Be responsible for the management of the department.

(b) Administer and enforce the laws pertaining to personnel.

(c) Observe and report to the Governor on the conditions of the nonmerit aspects of personnel.

(d) Formulate, adopt, amend, or repeal rules, regulations, and general policies affecting the purposes, responsibilities, and jurisdiction of the department and that are consistent with the law and necessary for personnel administration.

All regulations relating to personnel administration heretofore adopted pursuant to this part by the State Personnel Board, California Victim Compensation and Government Claims Board, Department of General Services, and the Department of Finance, and in effect on the operative date of this part, shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed by the director.

(e) Hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to the department's jurisdiction.

(f) Act on behalf of the department and delegate powers to any authorized representative.

(g) Serve as the Governor's designated representative pursuant to Section 3517.

(h) Perform any other duties that may be prescribed by law, and any other administrative and executive duties that have by other provisions of law been previously imposed.

SEC. 285. Section 19816 of the Government Code is amended to read:

19816. (a) Except as provided by Section 19816.2, the department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the State Personnel Board with respect to the administration of salaries, hours, and other personnel-related matters, training, performance evaluations, and layoffs and grievances.

(b) The department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the California Victim Compensation and Government Claims Board and the Department of General Services with respect to the administration of miscellaneous employee entitlements.

(c) The department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the Department of Finance with respect to the administration of salaries of employees exempt from civil service and within range salary adjustments.

SEC. 286. Section 19816.4 of the Government Code is amended to read:

19816.4. The department shall have possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property real or personal held for the benefit or use by the State Personnel Board, the California Victim Compensation and Government Claims Board, the Department of General Services, and the Department of Finance in the performance of the duties, powers, purposes, responsibilities, and jurisdiction that are vested in the department by Section 19816.

SEC. 287. Section 19816.6 of the Government Code is amended to read:

19816.6. All officers and employees of the State Personnel Board, the California Victim Compensation and Government Claims Board, the Department of General Services, and the Department of Finance, who, on the operative date of this part, are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function vested in the department by Section 19816 shall be transferred to the department. The status, positions, and rights of these persons shall not be affected by the transfer and shall be retained by them as officers and employees of the department pursuant to the State Civil Service Act, except as to positions exempt from civil service.

SEC. 288. Section 19879.1 of the Government Code is amended to read:

19879.1. (a) For the purpose of this section, an eligible employee is an employee defined by Section 19858.3.

(b) Notwithstanding any other provision of this article, an eligible employee who has enrolled in the annual leave program under Article 2.5 (commencing with Section 19858.3) shall receive nonindustrial disability leave benefits in accordance with all of the following:

(1) A disabled employee shall be eligible to receive Nonindustrial Disability Insurance benefits in an amount equal to one-half full pay, 50 percent of gross salary.

(2) A disabled employee shall be eligible to receive Nonindustrial Disability Insurance benefits without being required to use any sick leave accrued under Article 3 (commencing with Section 19859) or annual leave accrued under Article 2.5 (commencing with Section 19858.3) unless the employee, in his or her sole discretion, elects to use sick leave or annual leave in lieu of receiving benefits.

(3) If the employee elects to use sick leave or annual leave credits prior to receiving Nonindustrial Disability Insurance payments, he or she shall not be required to exhaust the accrued leave balance.

(4) Following the start of Nonindustrial Disability Insurance payments, an employee may at any time change from the receipt of Nonindustrial Disability Insurance payments to the utilization of sick leave or annual leave. Once this election is made, the employee may not recommence receiving Nonindustrial Disability Insurance payments until that leave is exhausted.

(5) In accordance with the state's return to work policy, an employee who is eligible to receive Nonindustrial Disability Insurance benefits and who is medically certified as unable to return to his or her full-time work during the period of his or her disability, may, with medical approval, and at the discretion of his or her appointing power, work up to the number of hours, in hour increments, which when combined with his or her Nonindustrial Disability Insurance benefits will result in a salary that does not exceed 100 percent of his or her regular full pay.

(6) If an employee refuses to return to work in a position offered by the employer under the state's Injured State Worker Assistance Program, Nonindustrial Disability Insurance benefits shall be terminated effective as of the date of the offer.

(7) An employee may with his or her department head's approval elect to supplement Nonindustrial Disability Insurance benefits with sick or annual leave up to 100 percent of his or her regular full pay.

SEC. 289. Section 19999.2 of the Government Code is amended to read:

19999.2. (a) The Legislature hereby finds and declares that this chapter is intended to satisfy the requirements prescribed by the Omnibus Budget Reconciliation Act of 1990 (OBRA). Section 3121(b)(7)(F) of the Internal Revenue Code requires that state employees who are not members of the Public Employees' Retirement System must be covered by social security, or, in the alternative, be provided benefits through a qualified pension or annuity program, effective with compensated services rendered on or after July 2, 1991. Therefore, the Legislature hereby authorizes the development of a retirement program under the State's Deferred Compensation Plan, the Savings Plan, or any other acceptable defined contribution plan in which state employees can defer compensation at 7.5 percent of wages, as the term "wages" is defined for social security purposes.

(b) "State employees," as used in subdivision (a), includes the employees defined in Section 19815, as well as employees of the California State University, who are not covered by social security or by the Public Employees' Retirement System.

(c) This section shall not apply to employees of the California State University unless and until the trustees authorize their coverage in this retirement program.

(d) In the event that the retirement program authorized by this section is inconsistent with federal laws or rules or becomes unnecessary under the state or federal law, this section shall become inoperative.

SEC. 290. Section 20035.6 of the Government Code is amended to read:

20035.6. Notwithstanding Sections 20035 and 20037, "final compensation," for the purpose of determining any pension or benefit with respect to a member who retires or dies on or after July 1, 2003, who was a member of State Bargaining Unit 19, and whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to a memorandum of understanding entered during the 2003–04 fiscal year, means the highest annual compensation the member would have earned as of July 1, 2003, if that 5-percent reduction had not occurred. This section shall apply only if the period during which the member's salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of "final compensation" provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

SEC. 291. Section 20094 of the Government Code is amended to read:

20094. The counsel to the board shall notify each new member of the board upon his or her assumption of office and each member of the

board annually that he or she is subject to the gift provisions of Chapter 9.5 (commencing with Section 89500) of Title 9.

SEC. 292. Section 20163 of the Government Code is amended to read:

20163. (a) If more or less than the correct amount of contribution required of members, the state, or any contracting agency, is paid, proper adjustment shall be made in connection with subsequent payments, or the adjustments may be made by direct cash payments between the member, state, or contracting agency concerned and the board or by adjustment of the employer's rate of contribution. Adjustments to correct any other errors in payments to or by the board, including adjustments of contributions, with interest, that are found to be erroneous as the result of corrections of dates of birth, may be made in the same manner. Adjustments to correct overpayment of a retirement allowance may also be made by adjusting the allowance so that the retired person or the retired person and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled. Losses or gains resulting from error in amounts within the limits set by the California Victim Compensation and Government Claims Board for automatic writeoff, and losses or gains in greater amounts specifically approved for writeoff by the California Victim Compensation and Government Claims Board, shall be debited or credited, as the case may be, to the reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(b) No adjustment shall be made because less than the correct amount of normal contributions was paid by a member if the board finds that the error was not known to the member and was not the result of erroneous information provided by him or her to this system or to his or her employer. The failure to adjust shall not preclude action under Section 20160 correcting the date upon which the person became a member.

(c) The actuarial equivalent under this section shall be computed on the basis of the mortality tables and actuarial interest rate in effect under this system on December 1, 1970, for retirements effective through December 31, 1979. Commencing with retirements effective January 1, 1980, and at corresponding 10-year intervals thereafter, or more frequently at the board's discretion, the board shall change the basis for calculating actuarial equivalents under this article to agree with the interest rate and mortality tables in effect at the commencement of each 10-year or succeeding interval.

SEC. 293. Section 20462 of the Government Code is amended to read:

20462. The governing body of a public agency that has established a pension trust or retirement plan funded by individual or group life

insurance or annuity contracts may, notwithstanding any provision of this part to the contrary, enter into a contract to participate in this system making its employees members of this system, and continue the trust or plan with respect to service rendered prior to the contract date. A pension trust or retirement plan so continued shall be deemed not a local retirement, pension, or annuity fund or system for the purpose of this chapter. The public agency shall have all the rights of any other contracting agency to provide prior service benefits for its employees but may elect in the contract instead not to provide a benefit with respect to prior service, in which case the service rendered by its employees prior to the contract date shall be deemed not to be state service.

SEC. 294. Section 20805 of the Government Code is amended to read:

20805. As used in determining the state's contribution, "compensation paid" includes the compensation a member absent on military service would have received were it not for his or her absence in that service, if the normal contributions for the period of absence are made. The rate of his or her compensation shall be his or her compensation at the commencement of his or her absence. The percentages of state contribution specified in this chapter apply to all compensation upon the basis of which members' contributions are deducted after those percentages became or become effective, without regard to the time when the service was rendered for which the compensation is paid.

SEC. 295. Section 20808 of the Government Code is amended to read:

20808. (a) The actuary may, in determining contributions required of contracting agencies, establish a contribution with respect to industrial disability allowances, special death benefits, and any other death benefit, singly or in any combination, separate from and independent of the contribution required for other benefits under their contracts. The total contribution, in that case, for the agencies as a group shall be established and from time to time adjusted by actuarial valuation performed by the actuary of the liability for the benefit or benefits on account of the employees of all those agencies. Adjustments shall affect only future contributions and shall take into account the difference between contributions on hand and the amount required to fund the allowances or benefits for which entitlement has already been established as well as liability for future entitlements to benefits. The contribution as so established and adjusted from time to time shall be allocated between the agencies on a basis that, in the opinion of the board, after recommendation of the actuary, provides an equitable distribution between the agencies. However, the allocation shall not be based on

differences in the incidence of death or disability in the respective agencies.

(b) (1) Whenever the board, pursuant to subdivision (a), establishes a separate contribution, it shall maintain the contribution and any contributions required to be made by employees towards the cost of the benefit or benefits as a separate account, which shall be available only for payment of the benefit or benefits and shall not be a part of the accumulated contributions under this system of any of the employers or members included.

(2) All contributions in that account, irrespective of the agency from which they were received, shall be available for payment of the benefit or benefits with respect to the employees of any agency included. In the event of termination of any agency's participation in this system, the liability with respect to all those benefits to which the agency's employees have become entitled, after establishment of the rate and prior to the termination, shall be its contributions, as established under subdivision (a), that have become due and payable as of the date of termination.

SEC. 296. Section 21095 of the Government Code is amended to read:

21095. (a) Participation in the plan afforded by this article shall be made available to any employee who was included in the federal system and who was a member of this system prior to the effective date of the employer's contract amendment to be subject to this article. The election shall be irrevocable, shall be effective on the first day of the pay period following the member's election, and shall apply to all future service rendered by the member with that agency. Each contracting agency shall ensure each eligible member receives sufficient information to permit an informed election, is counseled regarding the benefits provided by this article, and receives an election document. The election document shall be filed with the contracting agency, and the contracting agency shall report the member's irrevocable election to the board.

(b) A member subject to this article shall be subject to all other provisions of this part. However, in the event of a conflict, this article shall supersede and prevail over other provisions contained in this part.

SEC. 297. Section 21223 of the Government Code is amended to read:

21223. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided under this system upon approval of the Director of the Department of Personnel Administration or the governing body of a contracting agency, as the case may be, under employment by any state or contracting agency in which he or she previously served while a member of this system, where

by reason of actual litigation, or a proceeding before the California Victim Compensation and Government Claims Board or the governing body of a contracting agency, as the case may be, or where the state or contracting agency desires to perpetuate testimony in connection with any anticipated litigation involving the state or contracting agency, and adverse interests, the services of the person are or may be necessary in preparing for trial or in testifying as to matters within or based upon his or her knowledge acquired while employed. He or she may be paid a per diem and actual and necessary traveling expenses, but he or she shall not be paid at a greater rate of compensation per diem than the rate ordinarily paid other persons by state agencies or the contracting agency for similar services. However, there shall be deducted from the per diem compensation sums equal to the retirement annuity allocable to the days of actual employment under this section.

SEC. 298. Section 21265 of the Government Code is amended to read:

21265. Retired members of this system, and beneficiaries who are entitled to receive allowances or benefits under this part, may authorize deductions to be made from their retirement allowance payments or from the allowances and benefits, respectively, or from either or both when both are being received in accordance with regulations established by the board for the payment of charitable contributions under any plan approved by the board. In lieu of approving individual plans, the board, at its discretion, may adopt by reference those plans approved by the California Victim Compensation and Government Claims Board under Section 13923. The board shall determine the additional cost involved in making deductions under this section, and the agency to receive the contributions shall pay the amount of the additional cost to the board for deposit in the retirement fund.

SEC. 299. Section 21752 of the Government Code is amended to read:

21752. (a) (1) In accordance with Section 21756, a member's annual retirement benefits, adjusted to the actuarial equivalent of a straight-life annuity if payable in a form other than a straight-life annuity or a qualified joint and survivor annuity as provided under Section 21460, and determined without regard to any employee contributions or rollover contributions, as defined in Sections 402(a)(5), 403(a)(4), and 408(d)(3) of Title 26 of the United States Code, otherwise payable to the member under Part 3 (commencing with Section 20000) and under any other defined benefit plan maintained by the employer that is subject to Section 415 of Title 26 of the United States Code, shall not exceed, in the aggregate, the dollar limit applicable pursuant to Section 415(b)(1)(A)

of Title 26 of the United States Code, as appropriately modified by Section 415(b)(2)(F) and (G) of Title 26 of the United States Code.

(2) However, the annual retirement benefit payable to a member shall be deemed not to exceed the limitations prescribed in paragraph (1) if the benefit does not exceed ten thousand dollars ($10,000) and the member has at no time participated in a tax qualified defined contribution plan maintained by the employer.

(b) These limitations shall be applied pursuant to Section 415(b)(10) of Title 26 of the United States Code.

(c) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

SEC. 300. Section 22100 of the Government Code is amended to read:

22100. (a) For all purposes under this part, the following group of employees shall constitute a separate coverage group: civilian employees of National Guard units of the state who are employed pursuant to Section 90 of the National Defense Act of June 3, 1916 (32 U.S.C. Sec. 42), and paid from funds allotted to those units by the Department of Defense.

(b) The Adjutant General may enter into an agreement with the board pursuant to Section 22203 for the purpose of obtaining coverage under the federal system for these employees.

SEC. 301. Section 26749 of the Government Code is amended to read:

26749. The sheriff shall receive expenses necessarily incurred in conveying insane persons to and from the state hospitals and in conveying persons to and from the state prisons or other state institutions, or to other destinations for the purpose of deportation to other states, or in advancing actual traveling expenses to any person committed to a state institution who is permitted to report to an institution without escort, which expenses shall be allowed as provided by Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 of the Penal Code for cases subject to that chapter, and, otherwise, by the California Victim Compensation and Government Claims Board and paid by the state.

SEC. 302. Section 29965 of the Government Code is amended to read:

29965. Unless prevented by petition protesting the passage of the ordinance, signed and filed with the board pursuant to Division 9 (commencing with Section 9000) of the Elections Code, the bonds shall be publicly canceled at the time and place fixed, and the clerk of the board of supervisors shall enter on the minutes of the board of supervisors a record of the bonds canceled sufficient to identify them and the fact and date of the cancellation.

SEC. 303. Section 31461.1 of the Government Code is amended to read:

31461.1. (a) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(b) Notwithstanding Sections 31460 and 31461, neither "compensation" nor "compensation earnable" shall include any of the following: cafeteria or flexible benefit plan contributions, transportation allowances, car allowances, or security allowances, as enumerated in a resolution adopted pursuant to subdivision (c).

(c) Except as provided in subdivision (d), this section shall not be operative until the board of supervisors, by resolution adopted by a majority vote, makes this section operative with respect to any employee who becomes a member after the effective date of the resolution.

(d) Regardless of whether it has acted pursuant to subdivision (c), at any time the board of supervisors, by separate resolution adopted by a majority vote, may make this section operative with respect to any member not represented by a certified employee organization who makes an irrevocable election to become subject to this section.

(e) Nothing in this section shall be construed to affect any determination made by the board of retirement, pursuant to Section 31461, prior to the effective date of this section.

(f) Nothing in this section shall be construed to affect the validity of any memorandum of understanding or similar agreement that has been executed prior to the effective date of this section.

SEC. 304. Section 31469 of the Government Code is amended to read:

31469. (a) "Employee" means any officer or other person employed by a county whose compensation is fixed by the board of supervisors or by statute and whose compensation is paid by the county, and any officer or other person employed by any district within the county.

(b) "Employee" includes any officer or attaché of any superior court that has been brought within the operation of this chapter.

(c) "Employee" includes any officer or other person employed by a district as defined in subdivision (c) of Section 31468 and whose compensation is paid from funds of the district.

(d) "Employee" includes any member paid from the county school service fund who elected pursuant to Section 1313 of the Education Code to remain a member of this system.

(e) "Employee" includes any person permanently employed by a local agency formation commission including the executive officer thereof.

SEC. 305. Section 31470.25 of the Government Code is amended to read:

31470.25. (a) All sheriffs, undersheriffs, assistant sheriffs, chief deputy sheriffs, captains, lieutenants, sergeants, jailers, turnkeys, deputy sheriffs, bailiffs, constables, deputy constables, motorcycle officers, aircraft pilots, detectives, and investigators in the office of the district attorney, and marshals and all regularly appointed deputy marshals, who are first so employed on or after the operative date of this section in a county, are eligible. This section is an alternative to Section 31470.2.

(b) This section shall apply only in a county of the second class, as defined by Sections 28020 and 28023, as amended by Chapter 1204 of the Statutes of 1971.

(c) This section shall not be operative in a county unless and until the board of supervisors, by resolution adopted by a majority vote, makes this section operative in that county.

SEC. 306. Section 31485.12 of the Government Code is amended to read:

31485.12. (a) Notwithstanding any other provision of law, in a county of the 16th class, as defined in Sections 28020 and 28037, or a county of the 22nd class, as defined in Sections 28020 and 28043, each as amended by Chapter 1204 of the Statutes of 1971, the board of supervisors may, by resolution, ordinance, contract, or contract amendment under this chapter, provide different retirement benefits for some safety member bargaining units within the safety member classification of a county retirement system.

(b) The resolution, ordinance, contract, or contract amendment described in subdivision (a) may provide a different formula for calculation of retirement benefits by making any section of this chapter that is applicable to different safety member bargaining units within the safety member classification applicable to service credit earned on and after the date specified in the resolution, which date may be earlier than the date the resolution is adopted. The terms of an agreement or memorandum of understanding reached with a recognized employee organization, pursuant to this subdivision, may be made applicable by the board of supervisors to any unrepresented group within the same or similar membership classification as the employees represented by the recognized employee organization or bargaining unit.

(c) A resolution, ordinance, contract, or contract amendment adopted pursuant to this section may require members to pay all or part of the contributions by a member or employer, or both, that would have been required if the section or sections specified in subdivision (b), as adopted by the board or governing body, had been in effect during the period of time designated in the resolution, ordinance, contract, or contract

amendment. The payment by a member shall become part of the accumulated contributions of the member. For those members who are represented by a bargaining unit, the payment requirement shall be approved in a memorandum of understanding executed by the board of supervisors and the employee representatives.

(d) This section shall only apply to members who retire on or after the effective date of the resolution, ordinance, contract, or contract amendment described in subdivision (a) or (b), or on or after the date provided in the memorandum of understanding described in subdivision (c).

(e) The board of supervisors, in the resolution, ordinance, contract, or contract amendment described in subdivision (a), shall not require that a bargaining unit be divided solely for the purpose of providing different retirement benefits. However, if the members of a bargaining unit within the same or similar membership classification so elect, retirement benefits may be separately negotiated with that bargaining unit.

(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. 307. Section 31585.1 of the Government Code is amended to read:

31585.1. When an employee paid from the county school service fund elects to remain a member of this retirement system as authorized by Section 1313 of the Education Code, the same appropriations, transfers, and disposition of funds shall be made as those required of the county by this article, and those charges are legal charges against the funds of the county school service fund.

SEC. 308. Section 31691 of the Government Code is amended to read:

31691. (a) The board of supervisors of any county by ordinance, or the governing body of any district under the County Employees Retirement Law, by ordinance or resolution, may provide for the contribution by the county or district from its funds and not from the retirement fund, toward the payment of all or a portion of the premiums on a policy or certificate of life insurance or disability insurance issued by an admitted insurer, or toward the payment of all or part of the consideration for any hospital service or medical service corporation, including any corporation lawfully operating under Section 9201 of the Corporations Code, contract, or for any combination thereof, for the benefit of any member heretofore or hereafter retired or his or her dependents. At least one of these plans shall include free choice of physician and surgeon.

(b) The benefits provided by this section are in addition to any other benefits provided by this chapter.

(c) The board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member for one year prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for the benefits enumerated herein from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board may provide for the benefits enumerated from like sources when the board of supervisors or the governing body of a district has elected to provide these benefits to its active employees, even though the benefits are not provided to those who have retired from the service of the county or district.

(d) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

SEC. 309. Section 31691.1 of the Government Code is amended to read:

31691.1. (a) In lieu of the benefits prescribed by subdivision (d) of Section 31691, the board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for an equivalent increase in allowance from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. Any benefit provided by this section shall be subject to Section 31692.

(b) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

SEC. 310. Section 45002 of the Government Code is amended to read:

45002. The system may include the librarian, secretary, and other officers and employees, except members of the board of trustees, of the public library established pursuant to Chapter 5 (commencing with Section 18900) of Part 11 of the Education Code.

SEC. 311. Section 54957.1 of the Government Code is amended to read:

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 312. Section 54999.5 of the Government Code is amended to read:

54999.5. Capital facilities fees paid by school districts for public utility facilities to serve school facilities for which an application for funding is filed on or after the effective date of this chapter may, for purposes of Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code, be included by the State Allocation Board as a "cost of project" within the meaning of subdivision (b) of Section 17702 of the Education Code.

SEC. 313. Section 65050 of the Government Code is amended to read:

65050. (a) As used in this article, the following phrases have the following meanings:

(1) "Military base" means a military base that is designated for closure or downward realignment where real property will be made available for disposal pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (P.L. 100-526), the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510), or any subsequent closure or realignment approved by the President of the United States without objection by the Congress.

(2) "Effective date of a base closure" means the date a base closure decision becomes final under the terms specified by federal law. These decisions become final 45 legislative days after the date the federal Base Closure Commission submits its recommendations to the President, he or she approves those recommendations, and the Congress does not disapprove those recommendations or adjourns.

(b) It is not the intent of the Legislature in enacting this section to preempt local planning efforts or to supersede any existing or subsequent authority invested in the Office of Military and Aerospace Support. It is the intent of this article to provide a means of conflict resolution between local agencies vying to seek recognition from the United States Department of Defense's Office of Economic Adjustment as a single base reuse entity.

(c) For the purposes of this article, a single local base reuse entity shall be recognized pursuant to the regulations of the United States Department of Defense's Office of Economic Adjustment.

(d) The following entities or their successors, including, but not limited to, separate airport or port authorities, are recognized by the United States Department of Defense's Office of Economic Adjustment as the single local reuse entity for the following military bases:

Military Base	Local Reuse Entity
George Air Force Base	Victor Valley Economic Development Authority
Hamilton Army Base	City of Novato
Mather Air Force Base	County of Sacramento
Norton Air Force Base	Inland Valley Development Authority
Presidio Army Base	City and County of San Francisco
Salton Sea Navy Base	Imperial County
Castle Air Force Base	County of Merced
Hunters Point Naval Annex	City and County of San Francisco
Long Beach Naval Station	City of Long Beach
MCAS Tustin	City of Tustin
Sacramento Army Depot	City of Sacramento
MCAS El Toro	Local redevelopment authority recognized by the United States Department of Economic Adjustment
March Air Force Base	March Joint Powers Authority
Mare Island Naval Shipyard	City of Vallejo
Naval Training Center, San Diego	City of San Diego
NS Treasure Island	City and County of San Francisco
NAS Alameda, San Francisco Bay Public Works Center, Alameda Naval Aviation Depot	Alameda Reuse and Redevelopment Authority
Oakland Military Complex	Oakland Base Reuse Authority

Fort Ord Army Base	Fort Ord Reuse Authority
Sierra Army Depot	County of Lassen

Any military base reuse authority created pursuant to Title 7.86 (commencing with Section 67800) that is recognized by the United States Department of Defense's Office of Economic Adjustment as the single local reuse entity for the specific military base.

(e) For any military base that is closed and not listed in subdivision (d), the United States Department of Defense's Office of Economic Adjustment will follow its established procedures in recognizing a single local reuse entity.

(f) If, after 60 days from the effective date of the base closure decision, a single local reuse entity cannot be recognized by the United States Department of Defense's Office of Economic Adjustment, the Director of the Office of Planning and Research, in consultation with the federal Office of Economic Adjustment, shall select a mediator, from a list submitted by the Office of Military and Aerospace Support containing no fewer than seven recommendations, to effect an agreement among the affected jurisdictions on a single local reuse entity acceptable to the federal Office of Economic Adjustment for recognition. In selecting a mediator, the director shall appoint a neutral person or persons, with experience in local land use issues, to facilitate communication between the disputants and assist them in reaching a mutually acceptable agreement prior to 120 days from the effective date of the base closure decision.

(g) As a last resort, and only if no recognition is made pursuant to the procedure specified in subdivisions (e) and (f) within 120 days after a base closure decision has become final or within 120 days after the date on which this section becomes operative, whichever date is later, the Office of Military and Aerospace Support shall hold public hearings, in consultation with the federal Office of Economic Adjustment, and recognize a single local base reuse entity for each closing base for which agreement is reached among the local jurisdictions with responsibility for complying with Chapter 3 (commencing with Section 65100) and Chapter 4 (commencing with Section 65800) on the base, or recommend legislation or action by the local agency formation commission if necessary to identify a single reuse entity that would be recognized by the federal Office of Economic Adjustment.

(h) In recognizing a single local reuse entity pursuant to subdivision (g), preference shall be given to existing entities and entities with responsibility for complying with Chapter 3 (commencing with Section 65100) and Chapter 4 (commencing with Section 65800).

(i) Any recognition of a single local reuse entity made pursuant to subdivision (f) or (g) shall be submitted by the Director of the Office of Planning and Research to the Governor, the Legislature, and the United States Department of Defense.

SEC. 314. Section 65852.9 of the Government Code is amended to read:

65852.9. (a) The Legislature recognizes that unused schoolsites represent a potentially major source of revenue for school districts and that current law reserves a percentage of unused schoolsites for park and recreational purposes. It is therefore the intent of the Legislature to ensure that unused schoolsites not leased or purchased for park or recreational purposes pursuant to Article 5 (commencing with Section 17485) of Chapter 4 of Part 10.5 of the Education Code can be developed to the same extent as is permitted on adjacent property. It is further the intent of the Legislature to expedite the process of zoning the property to avoid unnecessary costs and delays to the school district. However, school districts shall be charged for the administrative costs of this rezoning.

(b) If all of the public entities enumerated in Section 17489 of the Education Code decline a school district's offer to sell or lease school property pursuant to Article 5 (commencing with Section 17485 of Chapter 4 of Part 10.5 of the Education Code, the city or county having zoning jurisdiction over the property shall, upon request of the school district, zone the schoolsite as defined in Section 39392 of the Education Code, consistent with the provisions of the applicable general and specific plans and compatible with the uses of property surrounding the schoolsite. The schoolsite shall be given the same land use control treatment as if it were privately owned. In no event shall the city or county, prior to the school district's sale or lease of the schoolsite, rezone the site to open-space, park or recreation, or similar designation unless the adjacent property is so zoned, or if so requested or agreed to by the school district.

(c) A rezoning effected pursuant to this section shall be subject to any applicable procedural requirements of state law or of the city or county.

(d) A school district that requests a zoning change pursuant to this section shall, in the fiscal year in which the city or county incurs costs in effecting the requested zoning change, reimburse the city or county for the actual costs incurred by it.

SEC. 315. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district that operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is

located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district that will impair the normal functioning of educational programs, including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) (1) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

(2) The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

(3) If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

SEC. 316. Section 65973 of the Government Code is amended to read:

65973. As used in this chapter, the following terms have the following meanings:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" includes, but is not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will

be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

SEC. 317. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding that the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) (1) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

(2) Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

(3) Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code.

SEC. 318. Section 65979 of the Government Code is amended to read:

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

SEC. 319. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter, the following terms have the following meanings:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment

plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services, and community amenities.

SEC. 320. Section 66017 of the Government Code is amended to read:

66017. (a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner than 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare, and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

SEC. 321. Section 67401 of the Government Code is amended to read:

67401. The provisions of this interstate compact are as follows:

Western Interstate Nuclear Compact

Article I. Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with

the other resources of the region, can assist substantially in the industrial progress of the West and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the West and contribute to the individual and community well-being of the region's people.

Article II. The Board

(a) There is hereby created an agency of the party states to be known as the "Western Interstate Nuclear Board" (hereinafter called the board). The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions

or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

Article III. Finances

(a) The board shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under Article II(h) of this compact; provided, that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article II(h), the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions which are adequate to meet any such obligation.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board, and duly designated representatives of governments contributing to the board's support.

Article IV. Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article V. Powers

The board shall have power to:

(a) Encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the West with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, byproducts, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, byproducts, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the West.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any

such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, byproducts, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(*l*) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

(n) Cooperate with the Atomic Energy Commission, the National Aeronautics and Space Administration, the Office of Science and Technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact.

(p) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan

who shall coordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

However, the plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

Article VI. Mutual Aid

(a) Whenever a party state, or any state or local governmental authorities request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third

state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

Article VII. Supplementary Agreements

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed

by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions of this article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

Article VIII. Other Laws and Relations

Nothing in this compact shall be construed to have the following effect:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

Article IX. Eligible Parties, Entry Into Force and Withdrawal

(a) Any or all of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided, that it shall not become initially effective until enacted into law by five states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. However, such participation shall not include the furnishing or receipt of mutual aid pursuant to Article VI, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

Article X. Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

SEC. 322. Section 68058 of the Government Code is amended to read:

68058. Unless the context otherwise requires, the following definitions govern the construction of this title:

(a) "Annual operating revenue" means revenue and support from all sources except capital construction revenue, designated funds for capital needs, Fresno Metropolitan Projects Authority revenue, and in-kind revenue. Revenue from events, auxiliary programs, and special programs shall be net of expenses.

(b) "Authority" means the Fresno Metropolitan Projects Authority.

(c) "Board" means the Board of Directors of the Fresno Metropolitan Projects Authority.

(d) "Cultural facility or program" means a nonprofit institutional organization that meets the requirements of Section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, or program thereof

having as its primary purpose the advancement and preservation of art, music, history, literature, theater, or dance. This does not include any agency of local government, the state, any educational institution, any cable communications system, or any newspaper or magazine.

(e) "Multicultural facility and program" means a nonprofit institutional organization that meets the requirements of Section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, or program thereof having as its primary purpose advancement and preservation of the various ethnic populations of the area and the promotion of public education and understanding of those populations. This does not include any agency of local government, the state, any educational institution, any cable communications system, or any newspaper or magazine.

(f) "Paid attendance" means the total paid attendance at all programs as verified by annual audit reports.

(g) "Proceeds" means the revenues from the retail transactions and use taxes imposed pursuant to this title and remaining after payment of operating and administrative expenses, including charges by the State Board of Equalization for collection and distribution, not to exceed 3.5 percent of revenues.

(h) "Scientific facility and program" means a nonprofit institutional organization that meets the requirements of Section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, or program thereof having as its primary purpose the advancement and preservation of physical sciences, natural sciences, or natural history. This does not include any agency of local government, the state, any educational institution, any cable communications system, or any newspaper or magazine.

(i) "Public broadcast entity" means an on-the-air radio or television station operating under a noncommercial educational license granted by the Federal Communications Commission and that is not owned, operated, or controlled by any religious or political organization.

SEC. 323. Section 68059.15 of the Government Code is amended to read:

68059.15. Any action or proceeding in which the validity of the adoption of the retail transactions and use tax ordinance provided for in this title or any of the proceedings in relation thereto is contested, questioned, or denied, shall be commenced pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure within six months from the date of the election at which the ordinance is approved. Otherwise, the bonds and all proceedings in relation thereto, including the adoption and approval of the ordinance and the retail transactions and use tax provided for therein, shall be held to be valid and in every respect legal and incontestable.

SEC. 324. Section 68503 of the Government Code is amended to read:

68503. Members of committees appointed pursuant to Section 68501 shall receive no compensation from the state for their services. When called into session by the Chairperson of the Judicial Council, members shall receive their actual and necessary expenses for travel, board, and lodging, which shall be paid from the funds appropriated to the use of the council. These expenses shall be approved in the manner that the council directs, and shall be audited by the Controller in accordance with the rules of the California Victim Compensation and Government Claims Board.

SEC. 325. Section 68506 of the Government Code is amended to read:

68506. All salaries and expenses incurred by the council pursuant to this article, including the necessary expenses for travel, board, and lodging of the members of the council and its officers, assistants, and other employees incurred in the performance of the duties and business of the council, shall be paid from the funds appropriated for the use of the council. The salaries and expenses shall be approved in the manner that the council directs, and shall be audited by the Controller in accordance with the rules of the California Victim Compensation and Government Claims Board.

SEC. 326. Section 68511.3 of the Government Code is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide for all of the following:

(1) Standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of permission, a written statement detailing the reasons for denial and an evidentiary hearing if there is a substantial evidentiary conflict.

(2) Standard procedures to toll relevant time limitations when a pleading or other paper accompanied by the application is timely lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis.

(3) Proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system.

(4) The confidentiality of the financial information provided to the court by these litigants.

(5) That the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application.

(6) That permission to proceed in forma pauperis be granted to all of the following:

(A) Litigants who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200 to 12205, inclusive, of the Welfare and Institutions Code), the California Work Opportunity and Responsibility to Kids Act (CalWORKs) program (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the Food Stamp Program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code.

(B) Litigants whose monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of California Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended.

(C) Other persons when, in the court's discretion, this permission is appropriate because the litigant is unable to proceed without using money that is necessary for the use of the litigant or the litigant's family to provide for the common necessaries of life.

(b) (1) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision (a) shall declare under penalty of perjury that they are receiving the benefits, and may voluntarily provide the court with their date of birth and social security number or their Medi-Cal identification number to permit the court to verify the applicant's receipt of public assistance. The court may require any applicant, except a defendant in an unlawful detainer action, who chooses not to disclose his or her social security number for verification purposes to attach to the application documentation of benefits to support the claim and all other financial information on a form promulgated by the Judicial Council for this purpose.

(2) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of subdivision (a) shall file a financial statement under oath on a form promulgated by, and pursuant to rules adopted by, the Judicial Council.

(c) (1) The forms and rules adopted by the Judicial Council shall provide for the disclosure of the following information about the litigant:

(A) Current street address.

(B) Occupation and employer.

(C) Monthly income and expenses.

(D) Address and value of any real property owned directly or beneficially.

(E) Personal property with a value that exceeds five hundred dollars ($500).

(2) The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(d) (1) At any time after the court has granted a litigant permission to proceed in forma pauperis, and prior to final disposition of the case, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances that may enable the litigant to pay all or a portion of the fees and costs that had been waived. The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the person authorized to ascertain the validity of his or her indigent status. However, no litigant shall be required to appear more than once in any four-month period. A litigant proceeding in forma pauperis shall notify the court within five days of any settlement or monetary consideration received in settlement of this litigation and of any other change in financial circumstances that affects the litigant's ability to pay court fees and costs. After the litigant either (A) appears before and is examined by the person authorized to ascertain the validity of his or her indigent status, or (B) notifies the court of a change in financial circumstances, the court may then order the litigant to pay to the court the sum and in any manner the court believes is compatible with the litigant's financial ability.

(2) In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the court or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

(3) Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action. When an amount equal to the sum due and payable to the clerk has been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter, when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days, or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk, or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and

an additional fee for administering this section. The court shall establish a fee, not to exceed actual costs of administering this subdivision, and in no case exceeding twenty-five dollars ($25), that shall be added to the writ of execution.

(e) Notwithstanding subdivision (a), a person who is sentenced to imprisonment in the state prison or confined in a county jail and, during the period of imprisonment or confinement, files a civil action or notice of appeal of a civil action in forma pauperis shall be required to pay the full amount of the filing fee to the extent provided as follows:

(1) In addition to the form required by this section for filing in forma pauperis, an inmate shall file a copy of a statement of account for any sums due to the inmate for the six-month period immediately preceding the filing of the civil action or notice of appeal of a civil action. This copy shall be certified by the appropriate official of the Department of Corrections and Rehabilitation or a county jail.

(2) Upon filing the civil action or notice of appeal of a civil action, the court shall assess, and when funds exist, collect, as a partial payment of any required court fees, an initial partial filing fee of 20 percent of the greater of the following:

(A) The average monthly deposits to the inmate's account.

(B) The average monthly balance in the inmate's account for the six-month period immediately preceding the filing of the civil action or notice of appeal.

(3) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent of the preceding month's income credited to the inmate's account. The Department of Corrections and Rehabilitation 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.

(4) In no event shall the filing fee collected pursuant to this subdivision exceed the amount of fees permitted by law for the commencement of a civil action or an appeal of a civil action.

(5) In no event shall an inmate be prohibited from bringing a civil action or appeal of a civil action solely because the inmate has no assets and no means to pay the initial partial filing fee.

SEC. 327. Section 68543 of the Government Code is amended to read:

68543. The extra compensation and expenses for travel, board, and lodging of judges sitting in the Supreme Court and courts of appeal under assignments made by the Chairperson of the Judicial Council shall be paid by the state under the rules adopted by the California Victim Compensation and Government Claims Board that are applicable to

officers of the state provided for in Article VI of the California Constitution while traveling on official state business.

SEC. 328. Section 68543.5 of the Government Code is amended to read:

68543.5. (a) Whenever a judge who has retired under the Judges' Retirement System or the Judges' Retirement System II is assigned to serve in a court of record, the state shall pay the judge for each day of service in the court in the amount specified in Section 68543.7, without loss or interruption of retirement benefits, unless the judge waives compensation under this section. Whenever a retired judge of a justice court who is not a member of the Judges' Retirement System nor the Judges' Retirement System II is assigned to serve in a court of record, the state shall pay the judge for each day of service in the court in the amount specified in Section 68543.7, or the compensation specified in Section 68541, whichever is greater. The compensation shall be paid by the Judicial Council out of any appropriation for extra compensation of judges assigned by the Chairperson of the Judicial Council.

(b) If a judge who has retired under the Judges' Retirement System or the Judges' Retirement System II is assigned to serve in a court of record, the 8-percent difference between the compensation of the retired judge while so assigned and the compensation of a judge of the court to which the retired judge is assigned shall be paid to the Judges' Retirement Fund or the Judges' Retirement System II Fund, as applicable.

(c) During the period of assignment, a retired judge shall be allowed expenses for travel, board, and lodging incurred in the discharge of the assignment. When assigned to sit in the county in which he or she resides, the judge shall be allowed expenses for travel and board incurred in the discharge of the assignment. The expenses for travel, board, and lodging shall be paid by the state under the rules adopted by the California Victim Compensation and Government Claims Board that are applicable to officers of the state provided for in Article VI of the California Constitution while traveling on official state business.

(d) Notwithstanding subdivisions (a), (b), and (c) pertaining to compensation, a retired judge on senior judge status shall receive compensation from the state as provided in Sections 75028 and 75028.2, and shall be allowed expenses for travel, board, and lodging incurred in the discharge of the assignment as provided in this section.

SEC. 329. Section 68543.8 of the Government Code is amended to read:

68543.8. (a) The Legislature finds that there is a shortage of judicial officers available to provide temporary assistance to courts in rural counties, under assignment by the chief justice. When courts are unable to obtain temporary assistance, delay of both civil trials and case

settlements occur. The availability of an assigned judge can substantially reduce these delays. The purpose of this section is to make judicial assistance more available.

(b) The Judicial Council shall contract with up to 10 retired judges who shall be available to be assigned up to 110 court days each year by the Chairperson of the Judicial Council to courts in counties that have requested these judges for purposes of reducing delays in civil trials in those courts. If counties request more than 10 retired judges pursuant to this section, the Judicial Council shall give priority in assigning the retired judges to counties with fewer than 10 judges.

A judge under contract pursuant to this section shall serve as assigned during the period of the contract and waives any right to refuse assignment as otherwise provided by law. This section shall not be construed to limit the authority of the Chief Justice to make assignments to expedite judicial business and to equalize the workload of judges.

(c) Notwithstanding Section 68543.5, each judge under contract pursuant to this section shall receive one-half of the daily salary of a superior court judge for each day of service, in addition to any retirement benefits to which the judge may be entitled.

(d) The assigned judge's salary shall be paid by the state. A retired judge under contract pursuant to this section shall be allowed expenses for travel, board, and lodging incurred in the discharge of each assignment. When assigned to sit in the county in which he or she resides, the judge shall be allowed necessary and reasonable expenses for travel and board incurred in the discharge of the assignment. The expenses for travel, board, and lodging shall be paid by the state under the rules adopted by the California Victim Compensation and Government Claims Board that are applicable to officers of the state provided for in Article VI of the California Constitution while traveling on official state business.

SEC. 330. Section 68565 of the Government Code is amended to read:

68565. (a) The Judicial Council may establish a court interpreters advisory panel to assist the council in performing its duties under this article. The panel shall include a majority of court interpreters and may include judges and court administrators, members of the bar, and others interested in interpreter services in the courts. The panel shall develop operating guidelines and procedures for Judicial Council approval.

(b) The panel shall seek the advice of judges, attorneys, court administrators, court interpreters, providers of legal services, and individuals and organizations representing the interests of foreign language users.

(c) Panel members shall receive no compensation for their services but shall be allowed necessary expenses for travel, board, and lodging

incurred in the discharge of their duties under the rules adopted by the California Victim Compensation and Government Claims Board.

SEC. 331. Section 70622 of the Government Code is amended to read:

70622. (a) In addition to the uniform filing fee authorized pursuant to Section 70611, 70612, 70613, 70614, 70650, 70651, 70652, 70653, 70655, or 70670, after giving notice and holding a public hearing on the proposal, the Board of Supervisors of Riverside County may impose a surcharge not to exceed fifty dollars ($50) for the filing in superior court of any of the following:

(1) A complaint, petition, or other first paper in a civil or probate action or special proceeding.

(2) A first paper on behalf of any defendant, respondent, intervenor, or adverse party.

(3) A petition for dissolution of marriage, dissolution of domestic partnership, legal separation, or nullity of marriage.

(4) A response to such a petition.

(5) A first paper on behalf of any party in a proceeding under Section 98.2 of the Labor Code.

(b) The county shall notify in writing the Superior Court of Riverside County and the Administrative Office of the Courts of any change in a surcharge under this section.

(c) When a surcharge under this section is imposed on a filing fee, the distribution that would otherwise be made to the State Court Facilities Construction Fund under subdivision (c) of Section 68085.3 or subdivision (c) of Section 68085.4 shall be reduced as provided in Section 70603.

(d) The surcharge shall be in an amount determined to be necessary by the board of supervisors to cover the costs of the seismic stabilization, construction, and rehabilitation of the Riverside County Courthouse, the Indio Branch Courthouse, and the family law courthouse, and collection thereof shall terminate upon repayment of the amortized costs incurred. When the amortized costs have been repaid, the county shall notify in writing the Superior Court of Riverside County and the Administrative Office of the Courts.

SEC. 332. Section 75560.4 of the Government Code is amended to read:

75560.4. (a) A judge who retires for disability shall receive a retirement allowance in an amount equal to the lower of the following:

(1) The benefit factor under subdivision (d) of Section 75522 multiplied by the judge's final compensation on the effective date of the disability retirement, multiplied by the number of years of service the judge would have been credited if the judge's service had continued to

the age the judge would have first been eligible to retire under subdivision (a) of Section 75522.

(2) Sixty-five percent of the judge's final compensation on the effective date of the disability retirement.

(b) Notwithstanding subdivision (a), the retirement allowance of a judge who retires for disability shall equal 65 percent of the judge's final compensation on the effective date of the disability retirement regardless of the judge's age or length of service, if the Commission on Judicial Performance determines that the disability is predominantly a result of injury arising out of and in the course of judicial service.

SEC. 333. Section 77202 of the Government Code is amended to read:

77202. (a) The Legislature shall make an annual appropriation to the Judicial Council for the general operations of the trial courts based on the request of the Judicial Council. The Judicial Council's trial court budget request, which shall be submitted to the Governor and the Legislature, shall meet the needs of all trial courts in a manner that ensures a predictable fiscal environment for labor negotiations in accordance with the Trial Court Employment Protection and Governance Act, that promotes equal access to the courts statewide, and that promotes court financial accountability. The annual budget request shall include the following components:

(1) In order to ensure that trial court funding is not eroded and that sufficient funding is provided to trial courts to be able to accommodate increased costs without degrading the quantity or quality of court services, a base funding adjustment for operating costs shall be included that is computed based upon the year-to-year percentage change in the annual state appropriations limit. For purposes of this adjustment, operating costs include, but are not limited to, all expenses for court operations and court employee salaries and salary-driven benefits, but do not include the costs of compensation for judicial officers, subordinate judicial officers, or funding for the assigned judges program.

(2) Nondiscretionary costs necessitated by law or county government that exceed the annual state appropriations limit and other adjustments required to accommodate other operational and programmatic changes shall be separately identified and justified through the annual budget process.

(b) The Judicial Council shall allocate the appropriation to the trial courts in a manner that best ensures the ability of the courts to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost-saving measures in court operations, in order to guarantee access to justice to citizens of the state.

The Judicial Council shall ensure that its trial court budget request and the allocations made by it reward each trial court's implementation of efficiencies and cost-saving measures.

These efficiencies and cost-saving measures shall include, but not be limited to, the following:

(1) The sharing or merger of court support staff among trial courts across counties.

(2) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(3) The establishment of a separate calendar or division to hear a particular type of case.

(4) In rural counties, the use of all court facilities for hearings and trials of all types of cases and the acceptance of filing documents in any case.

(5) The use of alternative dispute resolution programs, such as arbitration.

(6) The development and use of automated accounting and case-processing systems.

(c) (1) The Judicial Council shall adopt policies and procedures governing practices and procedures for budgeting in the trial courts in a manner that best ensures the ability of the courts to carry out their functions and may delegate the adoption to the Administrative Director of the Courts. The Administrative Director of the Courts shall establish budget procedures and an annual schedule of budget development and management consistent with these rules.

(2) The Trial Court Policies and Procedures shall specify the process for a court to transfer existing funds between or among the budgeted program components to reflect changes in the court's planned operation or to correct technical errors. If the process requires a trial court to request approval of a specific transfer of existing funds, the Administrative Office of the Courts shall review the request to transfer funds and respond within 30 days of receipt of the request. The Administrative Office of the Courts shall respond to the request for approval or denial to the affected court, in writing, with copies provided to the Department of Finance, the Legislative Analyst's Office, the Legislature's budget committees, and the court's affected labor organizations.

(3) The Judicial Council shall circulate for comment to all affected entities any amendments proposed to the Trial Court Policies and Procedures as they relate to budget monitoring and reporting. Final changes shall be adopted at a meeting of the Judicial Council.

SEC. 334. Section 87102.6 of the Government Code is amended to read:

87102.6. (a) "Nongeneral legislation" means legislation as to which both of the following apply:

(1) It is reasonably foreseeable that the legislation will have direct and significant financial impact on one or more identifiable persons, or one or more identifiable pieces of real property.

(2) It is not reasonably foreseeable that the legislation will have a similar impact on the public generally or on a significant segment of the public.

(b) For purposes of this section and Section 87102.5, all of the following apply:

(1) "Legislation" means a bill, resolution, or constitutional amendment.

(2) "Public generally" includes an industry, trade, or profession.

(3) Any recognized subgroup or specialty of the industry, trade, or profession constitutes a significant segment of the public.

(4) A legislative district, county, city, or special district constitutes a significant segment of the public.

(5) More than a small number of persons or pieces of real property is a significant segment of the public.

(6) Legislation, administrative action, or other governmental action impacts in a similar manner all members of the public, or all members of a significant segment of the public, on which it has a direct financial effect, whether or not the financial effect on individual members of the public or the significant segment of the public is the same as the impact on the other members of the public or the significant segment of the public.

(7) The Budget Bill as a whole is not nongeneral legislation.

(8) Legislation that contains at least one provision that constitutes nongeneral legislation is nongeneral legislation, even if the legislation also contains other provisions that are general and do not constitute nongeneral legislation.

SEC. 335. Section 87104 of the Government Code, as added by Section 1 of Chapter 274 of the Statutes of 1994, is repealed.

SEC. 336. Section 89513 of the Government Code is amended to read:

89513. This section governs the use of campaign funds for the specific expenditures set forth in this section. It is the intent of the Legislature that this section guide the interpretation of the standard imposed by Section 89512 as applied to other expenditures not specifically set forth in this section.

(a) (1) Campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a

committee, or employees or staff of the committee or the elected officer's governmental agency for travel expenses and necessary accommodations except when these expenditures are directly related to a political, legislative, or governmental purpose.

(2) For the purposes of this section, payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.

(3) For the purposes of this section, payments or reimbursement for travel by the household of a candidate or elected officer when traveling to the same destination in order to accompany the candidate or elected officer shall be considered for the same purpose as the candidate's or elected officer's travel.

(4) Whenever campaign funds are used to pay or reimburse a candidate, elected officer, his or her representative, or a member of the candidate's household for travel expenses and necessary accommodations, the expenditure shall be reported as required by paragraph (7) of subdivision (j) of Section 84211.

(5) Whenever campaign funds are used to pay or reimburse for travel expenses and necessary accommodations, any mileage credit that is earned or awarded pursuant to an airline bonus mileage program shall be deemed personally earned by or awarded to the individual traveler. Neither the earning or awarding of mileage credit, nor the redeeming of credit for actual travel, shall be subject to reporting pursuant to Section 84211.

(b) (1) Campaign funds shall not be used to pay for or reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose.

(2) Expenditures by a committee to pay for professional services reasonably required by the committee to assist it in the performance of its administrative functions are directly related to a political, legislative, or governmental purpose.

(3) Campaign funds shall not be used to pay health-related expenses for a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or members of his or her household. "Health-related expenses" includes, but is not limited to, expenses for examinations by physicians, dentists, psychiatrists, psychologists, or counselors, expenses for medications, treatments, or medical equipment, and expenses for hospitalization, health club dues, and special dietary foods. However,

campaign funds may be used to pay employer costs of health care benefits of a bona fide employee or independent contractor of the committee.

(c) Campaign funds shall not be used to pay or reimburse fines, penalties, judgments, or settlements, except those resulting from either of the following:

(1) Parking citations incurred in the performance of an activity that was directly related to a political, legislative, or governmental purpose.

(2) Any other action for which payment of attorney's fees from contributions would be permitted pursuant to this title.

(d) Campaign funds shall not be used for campaign, business, or casual clothing except specialty clothing that is not suitable for everyday use, including, but not limited to, formal wear, if this attire is to be worn by the candidate or elected officer and is directly related to a political, legislative, or governmental purpose.

(e) (1) Except where otherwise prohibited by law, campaign funds may be used to purchase or reimburse for the costs of purchase of tickets to political fundraising events for the attendance of a candidate, elected officer, or his or her immediate family, or an officer, director, employee, or staff of the committee or the elected officer's governmental agency.

(2) Campaign funds shall not be used to pay for or reimburse for the costs of tickets for entertainment or sporting events for the candidate, elected officer, or members of his or her immediate family, or an officer, director, employee, or staff of the committee, unless their attendance at the event is directly related to a political, legislative, or governmental purpose.

(3) The purchase of tickets for entertainment or sporting events for the benefit of persons other than the candidate, elected officer, or his or her immediate family are governed by subdivision (f).

(f) (1) Campaign funds shall not be used to make personal gifts unless the gift is directly related to a political, legislative, or governmental purpose. The refund of a campaign contribution does not constitute the making of a gift.

(2) Nothing in this section shall prohibit the use of campaign funds to reimburse or otherwise compensate a public employee for services rendered to a candidate or committee while on vacation, leave, or otherwise outside of compensated public time.

(3) An election victory celebration or similar campaign event, or gifts with a total cumulative value of less than two hundred fifty dollars ($250) in a single year made to an individual employee, a committee worker, or an employee of the elected officer's agency, are considered to be directly related to a political, legislative, or governmental purpose. For purposes of this paragraph, a gift to a member of a person's immediate family shall be deemed to be a gift to that person.

(g) Campaign funds shall not be used to make loans other than to organizations pursuant to Section 89515, or, unless otherwise prohibited, to a candidate for elective office, political party, or committee.

SEC. 337. Section 92201 of the Government Code is amended to read:

92201. (a) The commission is authorized to acquire by deed, purchase, lease, contract, gift, devise, or otherwise, any real or personal property, structures, rights, rights-of-way, franchises, easements, and other interests in lands located within this state necessary or convenient for the construction or operation of a project, upon terms and conditions it deems advisable, and to lease, sell, or dispose of the property or interest therein in the manner that may be necessary or desirable to carry out the objects and purposes of this title.

(b) Nothing in this division shall authorize the commission to exercise the power of eminent domain.

SEC. 338. Section 92251 of the Government Code is amended to read:

92251. (a) At times that the commission desires to issue bonds, as defined in Section 92252, it shall adopt a resolution specifying the total amount of bonds proposed to be issued.

(b) The maximum aggregate principal amount of bonds that may be issued under the authority of this title is one billion two hundred fifty million dollars ($1,250,000,000) plus the amount of any indebtedness authorized by Section 92270.

(c) The limitation in subdivision (b) does not apply to bonds or other evidence of indebtedness, including bond anticipation notes and commercial paper, issued to refund bonds, bond anticipation notes, or commercial paper.

SEC. 339. Section 92268 of the Government Code is amended to read:

92268. Bonds issued pursuant to Section 92265 are subject to this title in the same manner and to the same extent as other bonds issued pursuant to this title.

SEC. 340. Section 92309 of the Government Code is amended to read:

92309. Notwithstanding any other provision of law:

(a) The commission and its revenues, amounts for administration expenses, and any other income shall be exempt from all taxes on, or measured by, income.

(b) Bonds issued by the commission shall be exempt from all property taxation, and the interest on the bonds shall be exempt from all taxes on income.

(c) All property owned by the commission shall be exempt from property taxes, assessments, and other public charges secured by liens.

(d) All interest of the participating party in the property of any project shall, for purposes of property taxation, be subject to Division 1 (commencing with Section 101) of the Revenue and Taxation Code, and the interests that constitute the tax base for property taxation is subject to assessments and charges on the same basis as other property.

(e) "Sale" and "purchase," for the purposes of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, do not include any lease or transfer of title of tangible personal property constituting any project or facility to the commission by a participating party, nor any lease or transfer of title of tangible personal property constituting any project or facility by the commission to a participating party, when the transfer or lease is made pursuant to this title.

SEC. 341. Section 72.4 of the Harbors and Navigation Code is amended to read:

72.4. An agreement or contract for a transfer pursuant to former Section 5823 of the Public Resources Code or a loan pursuant to former Section 5827 or 6499.5 of that code, executed prior to the effective date of this chapter, shall, for the purposes of this chapter, be considered as an agreement or contract executed pursuant to this chapter.

SEC. 342. Section 303 of the Harbors and Navigation Code is amended to read:

303. A person who willfully and maliciously burns, injures, or destroys any part of, or the whole of, a pile or raft of wood, plank, boards, or other lumber, or cuts loose or sets adrift the raft or part of the raft, that is the property of another, is guilty of a misdemeanor.

SEC. 343. Section 444 of the Harbors and Navigation Code is amended to read:

444. It shall be understood and agreed, and shall be the essence of an agreement under which services of the pilot are tendered to and are accepted by owners, agents, charterers, or operators, as follows:

(a) The vessel requesting pilotage services and its owners, agents, charterers, and operators covenant and agree not to assert a claim against the pilot, the pilot's employer, or other employees of the pilot's employer for damages, including any rights over, arising out of, or connected with, directly or indirectly, any damage, loss, or expense sustained by the vessel, its owners, agents, charterers, operators, or crew, and by any third parties, even though resulting in whole or in part from acts, omissions, or negligence of the pilot, the pilot's employer, or other employees of the pilot's employer. The vessel and its owners, agents, charterers, and operators further covenant and agree, subject to any limitation of liability to which they are entitled by reason of any contract, bill of lading, statute,

or other provision of law in force, to indemnify and hold harmless the pilot, the pilot's employer, and other employees of the pilot's employer with respect to liability arising from any and all claims, suits, or actions, by whomsoever asserted, resulting in whole or in part from acts, omissions, or negligence of the pilot, the pilot's employer, or other employees of the pilot's employer. These covenants and agreements do not apply to liability and rights that may arise from the willful misconduct or gross negligence of the pilot, the pilot's employer, or other employees of the pilot's employer.

(b) If any vessel on whose behalf pilotage services are requested is not owned by the person or entity ordering the services, that person or entity warrants its authority to bind the vessel and its owners, charterers, and operators to all the provisions contained in subdivision (a), and that person and entity agree to indemnify and hold harmless the pilot, the pilot's employer, and other employees of the pilot's employer with respect to all losses, damages, and expenses that may be suffered or incurred in consequence of the person or entity not having that authority.

(c) Pilotage services are voluntarily requested and are voluntarily rendered in reliance upon the terms specified in subdivisions (a) and (b).

(d) This article does not affect the rights of third parties against a vessel, its master, owners, agents, charterers, or operators, or a pilot, the pilot's employer, or other employees of a pilot's employer.

(e) This article does not preclude any pilot or pilot's employer from entering into contracts with the owners, agents, charterers, or operators of a vessel that contain additional pilotage terms and conditions.

SEC. 344. Section 504 of the Harbors and Navigation Code is amended to read:

504. (a) For vessels with a value determined to be one thousand five hundred dollars ($1,500) or less, the department shall promptly furnish the lienholder with the names and addresses of the registered and legal owners of record.

(b) The lienholder shall, immediately upon receipt of the names and addresses, send by mail, with return receipt requested, a completed notice of pending lien sale form, a blank declaration of opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, to any other person known to have a proprietary interest in the vessel, and to the department.

(c) Upon receipt of the notice, the department shall mark its records and thereafter notify any person having a proprietary interest in the vessel that there is a pending lien sale and that title will not be transferred until the lien is satisfied or released.

(d) All notices shall be signed under penalty of perjury and shall include all of the following information and statements:

(1) A description of the vessel, including make, identification number, and state of registration, to the extent available.

(2) The specific date, exact time, and place of sale, which shall be set not less than 35 days, but not more than 60 days, from the date of mailing.

(3) The names and addresses of the registered and legal owners of the vessel and any other person known to have an interest in the vessel.

(4) All of the following statements:

(A) The amount of the lien and the facts that give rise to the lien. The statement shall include, as a separate item, an estimate of any additional storage costs accruing pending the lien sale.

(B) The person has a right to a hearing in court.

(C) If a court hearing is desired, a declaration of opposition signed under penalty of perjury is required to be signed and returned to the department within 15 days of the date the notice of pending lien sale was mailed.

(D) If the declaration of opposition is signed and returned, the lienholder will be allowed to sell the vessel only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant.

(E) If a court action is filed, the declarant will be served by mail with legal process in the court proceedings at the address shown on the declaration of opposition and may appear to contest the claim.

(F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(e) If the department receives the completed declaration of opposition within the time provided, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 20 days of the notice and judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vessel.

(f) Service on the declarant by mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the declaration of opposition, shall be effective. Return of a declaration of opposition shall constitute consent by the declarant to service of legal process for the desired court hearing upon him or her in the foregoing manner. If the lienholder has attempted service upon the declarant by that method at the address shown on the declaration of opposition and the mail has been returned unclaimed, the lienholder may proceed with the sale.

SEC. 345. Section 508 of the Harbors and Navigation Code is amended to read:

508. A lien provided for in this article for repairs, labor, supplies, or materials for, or for storage or safekeeping of, a vessel may be assigned by written instrument accompanied by delivery of possession of the vessel subject to the lien, and the assignee may exercise the rights of a lienholder as provided in this article. A lienholder assigning a lien as authorized in this section shall at the time of assigning the lien give written notice of the assignment either by personal delivery or by certified mail, to the registered and legal owners of the vessel, indicating the name and address of the person to whom the lien is assigned.

SEC. 346. Section 773.2 of the Harbors and Navigation Code is amended to read:

773.2. As used in this article, the following definitions shall apply:

(a) "For-hire vessel" means a for-hire vessel as defined in Section 4661 of the Public Utilities Code, irrespective of the number of passengers carried.

(b) "Charter boat" means a for-hire vessel operating on navigable water of the state in the coastal zone, as defined in Section 30103 of the Public Resources Code, whether or not the vessel is licensed by the state. However, "charter boat" does not include any boat operating solely within a harbor, as defined in Section 34, or any boat licensed for point-to-point service while operating within the scope of that license.

(c) "Operator" means a person owning, controlling, operating, or managing a for-hire vessel.

(d) "Charterer" means a person who receives compensation for contracting with an operator to transport three or more passengers.

(e) "Coast Guard" means the United States Coast Guard.

(f) "Life preserver" means a life preserver approved and certified by the Coast Guard and capable of providing at least 90 percent of factory-rated flotation capacity.

(g) "Person" means any individual, firm, partnership, for-profit corporation, nonprofit corporation, limited liability company, company, association, joint stock association, trustee, receiver, assignee, or other similar entity or representative.

SEC. 347. Section 1176 of the Harbors and Navigation Code is amended to read:

1176. Pilots and inland pilots shall undergo physical examinations in accordance with standards prescribed by the board in conjunction with the renewal of their license. The examination shall designate that each pilot or inland pilot is fit to perform his or her duties as a pilot.

SEC. 348. Section 6037.4 of the Harbors and Navigation Code is amended to read:

6037.4. (a) The elections officials in charge of conducting the election shall cause a ballot pamphlet concerning the district formation

proposition to be voted on to be printed and mailed to each voter entitled to vote on the district formation question.

(b) The ballot pamphlet shall contain the following in the order prescribed:

(1) The complete text of the proposition.

(2) The impartial analysis of the proposition, prepared by the local agency formation commission.

(3) The argument for the proposed district formation.

(4) The argument against the proposed district formation.

(c) The elections officials shall mail a ballot pamphlet to each voter entitled to vote in the district formation election at least 10 days prior to the date of the election. The ballot pamphlet is "official matter" within the meaning of Section 13303 of the Elections Code.

SEC. 349. Section 1250.3 of the Health and Safety Code is amended to read:

1250.3. (a) As defined in Section 1250, "health facility" includes the following type: "Chemical dependency recovery hospital" means a health facility that provides 24-hour inpatient care for persons who have a dependency on alcohol or other drugs, or both alcohol and other drugs. This care shall include, but not be limited to, the following basic services: patient counseling, group therapy, physical conditioning, family therapy, outpatient services, and dietetic services. Each facility shall have a medical director who is a physician and surgeon licensed to practice in this state.

(b) The Legislature finds and declares that problems related to the inappropriate use of alcohol or other drugs, or both alcohol and other drugs, are widespread and adversely affect the general welfare of the people of the State of California. It is the intent of the Legislature that the chemical dependency recovery hospital will provide an innovative inpatient treatment program for persons who have a dependency on alcohol or drugs, or both alcohol and other drugs. The Legislature further finds and declares that significant cost reductions can be achieved by chemical dependency recovery hospitals when both of the following conditions exist:

(1) Architectural requirements established by the department encourage a flexible and open construction approach that significantly reduces capital construction costs.

(2) Programs are designed to provide comprehensive inpatient treatment while permitting substantial flexibility in the use of qualified personnel to meet the specific needs of the patients of the facility.

(c) Beds classified as chemical dependency recovery beds in a general acute care hospital or acute psychiatric hospital or a freestanding facility that is owned or leased by the general acute care hospital or the acute

psychiatric hospital, that is located on the same premises or adjacent premises thereof, not to exceed a 15-mile radius within the same health facility planning area, as defined January 1, 1981, by the Office of Statewide Health Planning and Development, and that is under the administrative control of the general acute care hospital or the acute psychiatric hospital, shall be used exclusively for alcohol or other drug dependency treatment, or both alcohol and other drug dependency treatment. No general acute care hospital or acute psychiatric hospital or a freestanding facility, as defined in this subdivision, shall, without fulfilling the requirements of the licensing laws and health planning laws, convert beds classified as chemical dependency recovery beds to any other bed classification or provide new chemical dependency recovery beds by increasing bed capacity.

(d) (1) Chemical dependency recovery services may be provided as a supplemental service in existing general acute care beds and acute psychiatric beds in a general acute care hospital or in existing acute psychiatric beds in an acute psychiatric hospital or in existing beds in a freestanding facility, as defined in subdivision (c). When providing chemical dependency recovery services as a supplemental service, the general acute care hospital, acute psychiatric hospital, or freestanding facility, as defined in subdivision (c), shall provide the supplemental services in a distinct part of the hospital or freestanding facility, if the distinct part satisfies the criteria established by law and regulation for approval as a chemical dependency recovery supplemental service.

(2) For purposes of this subdivision, "distinct part" means an identifiable unit of a hospital or a freestanding facility, as defined in subdivision (c), accommodating beds, and related services, including, but not limited to, contiguous rooms, a wing, a floor, or a building that is approved by the department for a specific purpose. Notwithstanding any other provisions of this subdivision, an acute psychiatric hospital that provides all of the basic services specified in subdivision (b) of Section 1250 may, subject to the approval of the department, have all of its licensed acute psychiatric beds approved for chemical dependency recovery services. Chemical dependency recovery services provided pursuant to this subdivision shall not require a separate license or reclassification of beds under the health planning laws.

(e) If the chemical dependency recovery hospital is not a supplemental service of a general acute care hospital, it shall have agreements with one or more general acute care hospitals providing for 24-hour emergency service and pharmacy, laboratory, and any other services that the department may require.

(f) Any reference in any statute to Section 1250 shall be deemed and construed to also be a reference to this section.

SEC. 350. Section 1267.19 of the Health and Safety Code is amended to read:

1267.19. Congregate living health facilities shall not be subject to architectural plan review by the Office of Statewide Health Planning and Development. As part of the application for licensure, the prospective licensee shall submit evidence of compliance with local building code requirements. In addition, the physical environment shall be adequate to provide for the level of care and service required by the residents of the facility, as determined by the department.

SEC. 351. Section 1276.8 of the Health and Safety Code is amended to read:

1276.8. Notwithstanding any other provision of law, including, but not limited to, Section 1276, the following shall apply:

(a) As used in this code, "respiratory care practitioner," "respiratory therapist," "respiratory therapy technician," and "inhalation therapist" mean a respiratory care practitioner certified under the Respiratory Care Practice Act (Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code).

(b) The definition of respiratory care services, respiratory therapy, inhalation therapy, or the scope of practice of respiratory care, shall be as described in Section 3702 of the Business and Professions Code.

(c) Respiratory care may be performed in hospitals, ambulatory or in-home care, and other settings where respiratory care is performed under the supervision of a medical director in accordance with the prescription of a physician and surgeon. Respiratory care may also be provided during the transportation of a patient, and under any circumstances where an emergency necessitates respiratory care.

(d) In addition to other licensed health care practitioners authorized to administer respiratory care, a certified respiratory care practitioner may accept, transcribe, and implement the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care.

SEC. 352. Section 1312 of the Health and Safety Code is amended to read:

1312. Before a person who is required to register as a sex offender under Section 290 of the Penal Code is released into a long-term health care facility, as defined in Section 1418, the Department of Corrections and Rehabilitation, the State Department of Mental Health, or any other official in charge of the place of confinement, shall notify the facility, in writing, that the sex offender is being released to reside at the facility.

SEC. 353. Section 1357.09 of the Health and Safety Code is amended to read:

1357.09. No plan shall be required to offer a health care service plan contract or accept applications for the contract pursuant to this article in the case of any of the following:

(a) To a small employer, if the small employer is not physically located in a plan's approved service areas, or if an eligible employee and dependents who are to be covered by the plan contract do not work or reside within a plan's approved service areas.

(b) (1) Within a specific service area or portion of a service area, if a plan reasonably anticipates and demonstrates to the satisfaction of the director that it will not have sufficient health care delivery resources to assure that health care services will be available and accessible to the eligible employee and dependents of the employee because of its obligations to existing enrollees.

(2) A plan that cannot offer a health care service plan contract to small employers because it is lacking in sufficient health care delivery resources within a service area or a portion of a service area may not offer a contract in the area in which the plan is not offering coverage to small employers to new employer groups with more than 50 eligible employees until the plan notifies the director that it has the ability to deliver services to small employer groups, and certifies to the director that from the date of the notice it will enroll all small employer groups requesting coverage in that area from the plan unless the plan has met the requirements of subdivision (d).

(3) Nothing in this article shall be construed to limit the director's authority to develop and implement a plan of rehabilitation for a health care service plan whose financial viability or organizational and administrative capacity has become impaired.

(c) Offer coverage to a small employer or an eligible employee as defined under paragraph (2) of subdivision (b) of Section 1357 that, within 12 months of application for coverage, disenrolled from a plan contract offered by the plan.

(d) (1) The director approves the plan's certification that the number of eligible employees and dependents enrolled under contracts issued during the current calendar year equals or exceeds either of the following:

(A) In the case of a plan that administers any self-funded health coverage arrangements in California, 10 percent of the total enrollment of the plan in California as of December 31 of the preceding year.

(B) In the case of a plan that does not administer any self-funded health coverage arrangements in California, 8 percent of the total enrollment of the plan in California as of December 31 of the preceding year. If that certification is approved, the plan shall not offer any health care service plan contract to any small employers during the remainder of the current year.

(2) If a health care service plan treats an affiliate or subsidiary as a separate carrier for the purpose of this article because one health care service plan is qualified under the federal Health Maintenance Organization Act (42 U.S.C. Sec. 300e et seq.) and does not offer coverage to small employers, while the affiliate or subsidiary offers a plan contract that is not qualified under the federal Health Maintenance Organization Act (42 U.S.C. Sec. 300e et seq.) and offers plan contracts to small employers, the health care service plan offering coverage to small employers shall enroll new eligible employees and dependents, equal to the applicable percentage of the total enrollment of both the health care service plan qualified under the federal Health Maintenance Organization Act (42 U.S.C. Sec. 300e et seq.) and its affiliate or subsidiary.

(3) (A) The certified statement filed pursuant to this subdivision shall state the following:

(i) Whether the plan administers any self-funded health coverage arrangements in California.

(ii) The plan's total enrollment as of December 31 of the preceding year.

(iii) The number of eligible employees and dependents enrolled under contracts issued to small employer groups during the current calendar year.

(B) The director shall, within 45 days, approve or disapprove the certified statement. If the certified statement is disapproved, the plan shall continue to issue coverage as required by Section 1357.03 and be subject to disciplinary action as set forth in Article 7 (commencing with Section 1386).

(e) A health care service plan that, as of December 31 of the prior year, had a total enrollment of fewer than 100,000 and 50 percent or more of the plan's total enrollment have premiums paid by the Medi-Cal program.

(f) A social health maintenance organization, as described in subdivision (a) of Section 2355 of the federal Deficit Reduction Act of 1984 (P.L. 98-369), that, as of December 31 of the prior year, had a total enrollment of fewer than 100,000 and has 50 percent or more of the organization's total enrollment premiums paid by the Medi-Cal program or Medicare programs, or by a combination of Medi-Cal and Medicare. In no event shall this exemption be based upon enrollment in Medicare supplement contracts, as described in Article 3.5 (commencing with Section 1358).

SEC. 354. Section 1399.811 of the Health and Safety Code is amended to read:

1399.811. Premiums for contracts offered, delivered, amended, or renewed by plans on or after January 1, 2001, shall be subject to the following requirements:

(a) The premium for new business for a federally eligible defined individual shall not exceed the following amounts:

(1) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that offer services through a preferred provider arrangement, the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 to 64 years, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(2) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 to 64 years, inclusive, the premium shall not exceed 170 percent of the standard premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(b) The premium for in force business for a federally eligible defined individual shall not exceed the following amounts:

(1) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that offer services through a preferred provider arrangement, the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64 years, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(2) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64 years, inclusive, the premium shall not exceed 170 percent of the standard

premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual. The premium effective on January 1, 2001, shall apply to in force business at the earlier of either the time of renewal or July 1, 2001.

(c) The premium applied to a federally eligible defined individual may not increase by more than the following amounts:

(1) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that offer services through a preferred provider arrangement, the average increase in the premiums charged to a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual.

(2) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, the increase in premiums charged to a nonfederally qualified individual who is of the same age and resides in the same geographic area as the federally defined eligible individual. The premium for an eligible individual may not be modified more frequently than every 12 months.

(3) For a contract that a plan has discontinued offering, the premium applied to the first rating period of the new contract that the federally eligible defined individual elects to purchase shall be no greater than the premium applied in the prior rating period to the discontinued contract.

SEC. 355. Section 1418.8 of the Health and Safety Code is amended to read:

1418.8. (a) If the attending physician and surgeon of a resident in a skilled nursing facility or intermediate care facility prescribes or orders a medical intervention that requires that informed consent be obtained prior to administration of the medical intervention, but is unable to obtain informed consent because the physician and surgeon determines that the resident lacks capacity to make decisions concerning his or her health care and that there is no person with legal authority to make those decisions on behalf of the resident, the physician and surgeon shall inform the skilled nursing facility or intermediate care facility.

(b) For purposes of subdivision (a), a resident lacks capacity to make a decision regarding his or her health care if the resident is unable to understand the nature and consequences of the proposed medical intervention, including its risks and benefits, or is unable to express a preference regarding the intervention. To make the determination regarding capacity, the physician shall interview the patient, review the patient's medical records, and consult with skilled nursing or intermediate care facility staff, as appropriate, and family members and friends of the resident, if any have been identified.

(c) For purposes of subdivision (a), a person with legal authority to make medical treatment decisions on behalf of a patient is a person designated under a valid Durable Power of Attorney for Health Care, a guardian, a conservator, or next of kin. To determine the existence of a person with legal authority, the physician shall interview the patient, review the medical records of the patient, and consult with skilled nursing or intermediate care facility staff, as appropriate, and with family members and friends of the resident, if any have been identified.

(d) The attending physician and the skilled nursing facility or intermediate care facility may initiate a medical intervention that requires informed consent pursuant to subdivision (e) in accordance with acceptable standards of practice.

(e) Where a resident of a skilled nursing facility or intermediate care facility has been prescribed a medical intervention by a physician and surgeon that requires informed consent and the physician has determined that the resident lacks capacity to make health care decisions and there is no person with legal authority to make those decisions on behalf of the resident, the facility shall, except as provided in subdivision (h), conduct an interdisciplinary team review of the prescribed medical intervention prior to the administration of the medical intervention. The interdisciplinary team shall oversee the care of the resident utilizing a team approach to assessment and care planning, and shall include the resident's attending physician, a registered professional nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs, and, where practicable, a patient representative, in accordance with applicable federal and state requirements. The review shall include all of the following:

(1) A review of the physician's assessment of the resident's condition.

(2) The reason for the proposed use of the medical intervention.

(3) A discussion of the desires of the patient, where known. To determine the desires of the resident, the interdisciplinary team shall interview the patient, review the patient's medical records, and consult with family members or friends, if any have been identified.

(4) The type of medical intervention to be used in the resident's care, including its probable frequency and duration.

(5) The probable impact on the resident's condition, with and without the use of the medical intervention.

(6) Reasonable alternative medical interventions considered or utilized and reasons for their discontinuance or inappropriateness.

(f) A patient representative may include a family member or friend of the resident who is unable to take full responsibility for the health care decisions of the resident, but who has agreed to serve on the interdisciplinary team, or other person authorized by state or federal law.

(g) The interdisciplinary team shall periodically evaluate the use of the prescribed medical intervention at least quarterly or upon a significant change in the resident's medical condition.

(h) In case of an emergency, after obtaining a physician and surgeon's order as necessary, a skilled nursing or intermediate care facility may administer a medical intervention that requires informed consent prior to the facility convening an interdisciplinary team review. If the emergency results in the application of physical or chemical restraints, the interdisciplinary team shall meet within one week of the emergency for an evaluation of the medical intervention.

(i) Physicians and surgeons and skilled nursing facilities and intermediate care facilities shall not be required to obtain a court order pursuant to Section 3201 of the Probate Code prior to administering a medical intervention which requires informed consent if the requirements of this section are met.

(j) Nothing in this section shall in any way affect the right of a resident of a skilled nursing facility or intermediate care facility for whom medical intervention has been prescribed, ordered, or administered pursuant to this section to seek appropriate judicial relief to review the decision to provide the medical intervention.

(k) No physician or other health care provider, whose action under this section is in accordance with reasonable medical standards, is subject to administrative sanction if the physician or health care provider believes in good faith that the action is consistent with this section and the desires of the resident, or if unknown, the best interests of the resident.

(*l*) The determinations required to be made pursuant to subdivisions (a), (e), and (g), and the basis for those determinations shall be documented in the patient's medical record and shall be made available to the patient's representative for review.

SEC. 356. Section 1451 of the Health and Safety Code is amended to read:

1451. (a) Except as otherwise provided in this section, the board shall not let the care, maintenance, or attendance of the indigent sick or dependent poor by contract to any person.

(b) The board may secure for the indigent sick, and other persons admissible to the county hospital, at an agreed rate, hospital service, or any portion thereof, from any public or private hospital, clinic, rest home, sanitarium, or other suitable facility, or from any corporation formed under Section 9201 of the Corporations Code or under Chapter 11A (commencing with Section 11491) of Part 2of Division 2 of the Insurance Code that operates in the state, in the following cases:

(1) Cases of unusual difficulty.

(2) Cases that require treatment, or hospital services, or the use of facilities not immediately available in the county hospital.

(3) Cases requiring emergency care or continued treatment after the emergency has ceased to exist.

(c) As used in this section, "hospital service" includes medical, surgical, radiological, laboratory, nursing service, convalescent care, and the furnishing of the necessary professional personnel, equipment, and facilities to manage the needs of patients on a continuing basis in accordance with accepted medical standards, with a staff of professional nursing personnel who are assigned and available under a clear and definite responsibility to the institution rendering the service for the provision of services to the patients, and any other care, service, or supplies that may be necessary for the treatment of the sick or injured.

(d) The county may also contract with licensed boarding homes for 24-hour care for dependent children under the age of 18 years when suitable facilities are not otherwise available in any institution or establishment maintained and operated by the county.

(e) The county may also contract for medical treatment of persons admissible to the county hospital with any licensed physician and surgeon, or a corporation operating under Section 9201 of the Corporations Code.

(f) The county may also contract for health care services when the board determines that the hospital services or any portion thereof rendered by the county hospital should be coordinated with those provided by any other source.

SEC. 357. Section 1531.1 of the Health and Safety Code is amended to read:

1531.1. (a) A residential facility licensed as an adult residential facility, group home, small family home, foster family home, or a family home certified by a foster family agency may install and utilize delayed egress devices of the time delay type.

(b) As used in this section, "delayed egress device" means a device that precludes the use of exits for a predetermined period of time. These devices shall not delay any resident's departure from the facility for longer than 30 seconds.

(c) Within the 30 seconds of delay, facility staff may attempt to redirect a resident who attempts to leave the facility.

(d) Any person accepted by a residential facility or family home certified by a foster family agency utilizing delayed egress devices shall meet all of the following conditions:

(1) The person shall have a developmental disability as defined in Section 4512 of the Welfare and Institutions Code.

(2) The person shall be receiving services and case management from a regional center under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

(3) An interdisciplinary team, through the Individual Program Plan (IPP) process pursuant to Section 4646.5 of the Welfare and Institutions Code, shall have determined that the person lacks hazard awareness or impulse control and requires the level of supervision afforded by a facility equipped with delayed egress devices, and that but for this placement, the person would be at risk of admission to, or would have no option but to remain in, a more restrictive state hospital or state developmental center placement.

(e) The facility shall be subject to all fire and building codes, regulations, and standards applicable to residential care facilities for the elderly utilizing delayed egress devices, and shall receive approval by the county or city fire department, the local fire prevention district, or the State Fire Marshal for the installed delayed egress devices.

(f) The facility shall provide staff training regarding the use and operation of the egress control devices utilized by the facility, protection of residents' personal rights, lack of hazard awareness and impulse control behavior, and emergency evacuation procedures.

(g) The facility shall develop a plan of operation approved by the State Department of Social Services that includes a description of how the facility is to be equipped with egress control devices that are consistent with regulations adopted by the State Fire Marshal pursuant to Section 13143.

(h) The plan shall include, but shall not be limited to, all of the following:

(1) A description of how the facility will provide training for staff regarding the use and operation of the egress control devices utilized by the facility.

(2) A description of how the facility will ensure the protection of the residents' personal rights consistent with Sections 4502, 4503, and 4504 of the Welfare and Institutions Code.

(3) A description of how the facility will manage the person's lack of hazard awareness and impulse control behavior.

(4) A description of the facility's emergency evacuation procedures.

(i) Delayed egress devices shall not substitute for adequate staff. The capacity of the facility shall not exceed six residents.

(j) Emergency fire and earthquake drills shall be conducted at least once every three months on each shift, and shall include all facility staff providing resident care and supervision on each shift.

SEC. 358. Section 1558 of the Health and Safety Code is amended to read:

1558. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person that shall notify the

excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense pursuant to Section 11506 of the Government Code by the excluded person to conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or prohibiting the excluded person's employment or presence in the facility, or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1550.

(h) (1) (A) In cases where the excluded person appealed the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 359. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature, in enacting this section, to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b)

has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit to the Department of Justice a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.082. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.082.

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to that resident only at the request of the resident. The department may define in regulations persons similar to those described in this subparagraph who may be exempt from this subdivision.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be

fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints, for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the

Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars ($100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right

to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence

to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 360. Section 1568.092 of the Health and Safety Code is amended to read:

1568.092. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, aided, or permitted the violation by any other person of this chapter or of any rules or regulations adopted under this chapter.

(2) Engaged in conduct that is inimical to the health, welfare, or safety of either an individual, in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1568.09.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the action of the department and of the right to an appeal of the excluded person. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person

fails to file a written appeal within the prescribed time, the action of the department shall be final.

(c) (1) The department may require the immediate removal of an executive director, a board member, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person that shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the

preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or prohibiting the excluded person's employment or presence in the facility, or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(h) (1) (A) In cases where the excluded person appealed the exclusion order and there is a decision and order of the department upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 361. Section 1569.58 of the Health and Safety Code is amended to read:

1569.58. (a) The department may prohibit any person from being a member of the board of directors, an executive director, a board member, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1569.17.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility the department shall serve an order of immediate exclusion upon the excluded person that shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee, or prohibiting the excluded person's employment or presence in the facility, or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(h) (1) (A) In cases where the excluded person appealed the exclusion order and there is a decision and order of the department upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 362. Section 1596.816 of the Health and Safety Code is amended to read:

1596.816. (a) The Community Care Licensing Division of the department shall regulate child care licensees through an organizational unit that is separate from that used to regulate all other licensing programs. The chief of the child care licensing branch shall report directly to the Deputy Director of the Community Care Licensing Division.

(b) All child care regulatory functions of the licensing division, including the adoption and interpretation of regulations, staff training, monitoring and enforcement functions, administrative support functions, and child care advocacy responsibilities shall be carried out by the child care licensing branch to the extent that separation of these activities can be accomplished without new costs to the department.

(c) Those persons conducting inspections of day care facilities shall meet qualifications approved by the State Personnel Board.

(d) The department shall notify the appropriate legislative committees whenever actual staffing levels of licensing program analysts within the

child care licensing branch drops more than 10 percent below authorized positions.

(e) The budget for the child care licensing branch shall be included as a separate entry within the budget of the department.

SEC. 363. Section 1596.847 of the Health and Safety Code is amended to read:

1596.847. (a) A child day care facility shall not use or have on the premises, on or after July 1, 1998, a full-size or non-full-size crib that is unsafe for any infant using the crib, as described in Article 1 (commencing with Section 24500) of Chapter 4.7 of Division 20. This subdivision shall not apply to any antique or collectible crib if it is not used by, or accessible to, any child in the child day care facility.

(b) The State Department of Social Services shall provide information and instructional materials regarding sudden infant death syndrome, explaining the medical effects upon infants and young children and emphasizing measures that may reduce the risk, free of charge to any child care facility licensed to provide care to children under the age of two years. This shall occur upon licensure and, on a one-time basis only, at the time of a regularly scheduled site visit.

(c) To the maximum extent practicable, the materials provided to child care facilities shall substantially reflect the information contained in materials approved by the State Department of Health Services for public circulation. The State Department of Health Services shall make available, to child care facilities, free of charge, information in camera-ready typesetting format. Nothing in this section prohibits the State Department of Social Services from obtaining free and suitable information from any other public or private agency. The information and instructional materials provided pursuant to this section shall focus upon the serious nature of the risk to infants and young children presented by sudden infant death syndrome.

(d) The requirement that informational and instructional materials be provided pursuant to this section applies only when those materials have been supplied to those persons or entities that are required to provide the materials. The persons or entities required to provide these materials shall not be subject to any legal cause of action whatsoever based on the requirements of this section.

(e) For persons or agencies providing these materials pursuant to this section, this section does not require the provision of duplicative or redundant informational and instructional materials.

SEC. 364. Section 1596.8865 of the Health and Safety Code is amended to read:

1596.8865. (a) When a local child protective agency, as defined in Section 11165 of the Penal Code, has a reasonable suspicion, as defined

in subdivision (a) of Section 11166 of the Penal Code, that the death or serious injury of a child occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the agency shall immediately notify the director.

(b) Within two working days of receipt of the evidence that the death or serious injury occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the department shall temporarily suspend the license, registration, or special permit of the facility, and shall immediately notify the licensee, registrant, or holder of the special permit of the temporary suspension and the effective date thereof and at the same time serve the provider with an accusation. The hearing shall be set and conducted in the manner provided in Section 1596.886, and the temporary suspension shall have the same effect and duration as provided in Section 1596.886.

(c) The director shall request that the city police, county sheriff, or other law enforcement agencies, and any other county agencies, investigating the death or serious injury of the child shall expedite and coordinate evidence gathering in the case, and, to the extent that providing the evidence will not adversely affect any criminal prosecution, make that evidence available as soon as possible for the purposes of the hearing on the temporary suspension.

(d) As used in this section, "serious injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

SEC. 365. Section 1596.8897 of the Health and Safety Code is amended to read:

1596.8897. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person that shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the employee or prospective employee pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to

make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, the executive director, or an officer of a licensee prohibiting the excluded person's employment or presence in the facility, or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(h) (1) (A) In cases where the excluded person appealed the exclusion order and there is a decision and order upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person

did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 366. Section 1765.145 of the Health and Safety Code is amended to read:

1765.145. (a) A licensee using mobile services pursuant to this chapter shall, at the department's option, be periodically inspected, in addition to any inspections required pursuant to the parent facility licensure requirements, by a duly authorized representative of the department. Reports of each inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the department and filed with the department. The inspection shall be for the purpose of ensuring that this chapter and the rules and regulations of the department adopted under this chapter are being followed.

(b) Any officer, employee, or agent of the department may enter and inspect any building, premises, or vehicle and may have access to and inspect any document, file, or other record, of a mobile unit or of a parent facility operating a mobile unit, at any reasonable time to assure compliance with, or to prevent violation of, this chapter.

(c) After the initial licensure, or the initial approval of the addition to existing licensure of a parent facility, the mobile unit shall be periodically reviewed for compliance. When approved as additions to the existing licensure of a parent facility, reviews shall be conducted as a part of the parent facility's regular inspection. When the mobile unit is an independently licensed clinic, it shall be reviewed in accordance with the licensing inspection schedule for clinics.

(d) Demonstration of a mock emergency drill shall be observed by department staff in the mobile unit on a site where patient mobility is limited.

SEC. 367. Section 4730.8 of the Health and Safety Code is amended to read:

4730.8. (a) Notwithstanding Sections 4730, 4730.1, and 4730.2, or any other provision of law, the governing board of a sanitation district in the County of Riverside that includes no territory within a city shall be the county board of supervisors.

(b) The sanitation district may include all or a part of the territory of one or more previously existing sanitary districts that lie within the unincorporated territory of the county.

(c) If the sanitation district includes any part of a sanitary district, the sanitation district shall not perform any of the functions of the sanitary district within the boundaries of the sanitary district if the sanitary district has performed that function within the 10 years immediately preceding January 1, 1994.

(d) The sanitation district may handle, treat, and manage solid waste, as defined pursuant to the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code), in the same manner as the County of Riverside is authorized pursuant to that act.

SEC. 368. Section 11162.1 of the Health and Safety Code is amended to read:

11162.1. (a) The prescription forms for controlled substances shall be printed with the following features:

(1) A latent, repetitive "void" pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermo-chromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7) (A) Six quantity check off boxes shall be printed on the form and the following quantities shall appear:

1-24
25-49
50-74
75-100
101-150
151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, and federal controlled substance registration number of the prescribing practitioner.

(10) A check box indicating the prescriber's order not to substitute.

(11) An identifying number assigned to the approved security printer by the Department of Justice.

(12) (A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by his or her name.

(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

(c) (1) A prescriber designated by a licensed health care facility, a clinic specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons may order controlled substance prescription forms for use by prescribers when treating patients in that facility without the information required in paragraph (9) of subdivision (a) or paragraph (3) of this subdivision.

(2) Forms ordered pursuant to this subdivision shall have the name, category of licensure, license number, and federal controlled substance registration number of the designated prescriber and the name, address, category of licensure, and license number of the licensed health care facility, the clinic specified in Section 1200, or the clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons, preprinted on the form.

(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number, and federal controlled substance registration number of the prescriber on the form.

(4) (A) Except as provided in subparagraph (B), the designated prescriber shall maintain a record of the prescribers to whom the controlled substance prescription forms are issued, that shall include the name, category of licensure, license number, federal controlled substance registration number, and quantity of controlled substance prescription forms issued to each prescriber. The record shall be maintained in the health facility for three years.

(B) Forms ordered pursuant to this subdivision that are printed by a computerized prescription generation system shall not be subject to

subparagraph (A) or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are printed by a computerized prescription generation system may contain the prescriber's name, category of professional licensure, license number, federal controlled substance registration number, and the date of the prescription.

(d) This section shall become operative on July 1, 2004.

SEC. 369. Section 11502 of the Health and Safety Code is amended to read:

11502. (a) All moneys, forfeited bail, or fines received by any court under this division shall as soon as practicable after the receipt thereof be deposited with the county treasurer of the county in which the court is situated. Amounts so deposited shall be paid at least once a month as follows: 75 percent to the State Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court to be deposited in the State Treasury on order of the State Controller; and 25 percent to the city treasurer of the city, if the offense occurred in a city, otherwise to the treasurer of the county in which the prosecution is conducted.

(b) Any money deposited in the State Treasury under this section that is determined by the State Controller to have been erroneously deposited therein shall be refunded by him or her, subject to the approval of the California Victim Compensation and Government Claims Board prior to the payment of the refund, out of any moneys in the State Treasury that are available by law for that purpose.

SEC. 370. Section 11571.1 of the Health and Safety Code is amended to read:

11571.1. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, which shall be based upon an arrest report or on another action or report by a regulatory or law enforcement agency, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 30 calendar days' written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose.

(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e).

(C) The notice to the tenant shall also include on the bottom of its front page, in at least 14-point bold type, the following:

"Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be filed in court against you for suspected drug activity, as described above. You should call (insert name and telephone number of the city attorney or prosecutor pursuing the action) or legal aid to stop the eviction action if any of the following is applicable:

(i) You are not the person named in this notice.

(ii) The person named in the notice does not live with you.

(iii) The person named in the notice has permanently moved.

(iv) You do not know the person named in the notice.

(v) You have any other legal defense or legal reason to stop the eviction action.

A list of legal assistance providers is attached to this notice. Some provide free legal help if you are eligible."

(D) The owner shall, within 30 calendar days of the mailing of the written notice, either provide the city prosecutor or city attorney with all relevant information pertaining to the unlawful detainer case, or provide a written explanation setting forth any safety-related reasons for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring an unlawful detainer action against the tenant.

(E) The assignment shall be on a form provided by the city prosecutor or city attorney and may contain a provision for costs of investigation, discovery, and reasonable attorney's fees, in an amount not to exceed six hundred dollars ($600).

(F) If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain all other rights and duties, including the handling of the tenant's personal property, following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

(2) Upon the failure of the owner to file an action pursuant to this section, or to respond to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney may file and prosecute the action, and join the owner as a defendant in the action. This action shall have precedence over any similar proceeding thereafter brought by the owner, or to one previously brought by the owner and not prosecuted diligently and in good faith. Service of the

summons and complaint upon the defendant owner shall be in accordance with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) Nothing in this article shall prevent a local governing body from adopting and enforcing laws, consistent with this article, relating to drug abatement. Where local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this article shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises.

(c) For the purposes of this section, "controlled substance purpose" means the manufacture, cultivation, importation into the state, transportation, possession, possession for sale, sale, furnishing, administering, or giving away, or providing a place to use or fortification of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled substance, in a violation of subdivision (a) of Section 11350, Section 11351, 11351.5, 11352, or 11359, subdivision (a) of Section 11360, or Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383, if the offense occurs on the subject real property and is documented by the observations of a peace officer.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than 30 calendar days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall only apply to the following courts:

(1) In the County of Los Angeles, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Los Angeles or in the City of Long Beach.

(2) In the County of San Diego, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of San Diego.

(3) In the County of Alameda, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Oakland.

(g) (1) The city attorney and city prosecutor of each participating jurisdiction shall provide to the Judicial Council the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) The number of cases filed by an owner, upon notice.

(C) The number of assignments executed by owners to the city attorney or city prosecutor.

(D) The number of three-day, 30-day, or 60-day notices issued by the city attorney or city prosecutor.

(E) The number of cases filed by the city attorney or city prosecutor.

(F) The number of times that an owner is joined as a defendant pursuant to this section.

(G) As to each case filed by an owner, the city attorney, or the city prosecutor, the following information:

(i) The number of judgments ordering an eviction or partial eviction (specify whether default, stipulated, or following trial).

(ii) The number of cases, listed by separate categories, in which the case was withdrawn or in which the tenant prevailed.

(iii) The number of other dispositions (specify disposition).

(iv) The number of defendants represented by counsel.

(v) Whether the case was a trial by the court or a trial by a jury.

(vi) Whether an appeal was taken, and, if so, the result of the appeal.

(vii) The number of cases in which partial eviction was requested, and the number of cases in which the court ordered a partial eviction.

(H) As to each case in which a notice was issued, but no case was filed, the following information:

(i) The number of instances in which a tenant voluntarily vacated the unit.

(ii) The number of instances in which a tenant vacated a unit prior to the providing of the notice.

(iii) The number of cases in which the notice provided pursuant to subdivision (a) was erroneously sent to the tenant. (List reasons, if known, for the erroneously sent notice, such as reliance on information on the suspected controlled substance law violator's name or address that was incorrect; clerical error; or any other reason.)

(iv) The number of other resolutions (specify resolution).

(2) (A) Information compiled pursuant to this section shall be reported annually to the Judicial Council on or before January 30 of each year.

(B) The Judicial Council shall thereafter submit a brief report to the Senate and Assembly Committees on the Judiciary once on or before April 15, 2007, and once on or before April 15, 2009, summarizing the information collected pursuant to this section and evaluating the merits of the pilot programs established by this section.

(h) This section shall remain in effect only until January 1, 2010, and as of that date is repealed unless a later enacted statute deletes or extends that date.

SEC. 371. Section 12701 of the Health and Safety Code is amended to read:

12701. A person is guilty of a separate offense for each day during which he or she commits, continues, or permits a violation of this part, or any order or regulation issued pursuant to this part.

SEC. 372. Section 13052 of the Health and Safety Code is amended to read:

13052. (a) The public entity rendering the service may present a claim to the public entity liable therefor. If the claim is approved by the head of the fire department, if any, in the public entity to which the claim is presented, and by its governing body, it shall be paid in the same manner as other charges and if the claim is not paid, an action may be brought for its collection.

(b) Notwithstanding any other provision of this section, any claims against the state shall be presented to the California Victim Compensation and Government Claims Board in accordance with Part 3 (commencing

with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

SEC. 373. Section 17021.6 of the Health and Safety Code is amended to read:

17021.6. (a) The owner of any employee housing who has qualified or intends to qualify for a permit to operate pursuant to this part may invoke this section.

(b) Any employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be deemed an agricultural land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing that is not required of any other agricultural activity in the same zone. The permitted occupancy in employee housing in an agricultural zone shall include agricultural employees who do not work on the property where the employee housing is located.

(c) Except as otherwise provided in this part, employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other agricultural activities in the same zone are not likewise subject. Nothing in this subdivision shall be construed to forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other agricultural activities in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee to the owner, operator, or any resident for enforcing fire inspection regulation pursuant to state law or regulation or local ordinance, with respect to employee housing that serves 12 or fewer persons.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be considered an agricultural use of property, notwithstanding any disclaimers to the contrary. For purposes of this section, "employee housing" includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development

and use of sufficient numbers and types of employee housing facilities as are commensurate with local need. This section shall apply equally to any charter city, general law city, county, city and county, district, and any other local public entity.

(f) If any owner who invokes the provisions of this section fails to maintain a permit to operate pursuant to this part throughout the first 10 consecutive years following the issuance of the original certificate of occupancy, both of the following shall occur:

(1) The enforcement agency shall notify the appropriate local government entity.

(2) The public agency that has waived any taxes, fees, assessments, or charges for employee housing pursuant to this section may recover the amount of those taxes, fees, assessments, or charges from the landowner, less 10 percent of that amount for each year that a valid permit has been maintained.

(g) Subdivision (f) shall not apply to an owner of any prospective, planned, or unfinished employee housing facility who has applied to the appropriate state and local public entities for a permit to construct or operate pursuant to this part prior to January 1, 1996.

SEC. 374. Section 18080.5 of the Health and Safety Code is amended to read:

18080.5. (a) A numbered report of sale, lease, or rental form issued by the department shall be submitted each time the following transactions occur by or through a dealer:

(1) Whenever a manufactured home, mobilehome, or commercial coach previously registered pursuant to this part is sold, leased with an option to buy, or otherwise transferred.

(2) Whenever a manufactured home, mobilehome, or commercial coach not previously registered in this state is sold, rented, leased, leased with an option to buy, or otherwise transferred.

(b) The numbered report of sale, lease, or rental forms shall be used and distributed in accordance with the following terms and conditions:

(1) A copy of the form shall be delivered to the purchaser.

(2) All fees and penalties due for the transaction that were required to be reported with the report of sale, lease, or rental form shall be paid to the department within 10 calendar days from the date the transaction is completed, as specified by subdivision (e). Penalties due for noncompliance with this paragraph shall be paid by the dealer. The dealer shall not charge the consumer for those penalties.

(3) Notice of the registration or transfer of a manufactured home or mobilehome shall be reported pursuant to subdivision (d).

(4) The original report of sale, lease, or rental form, together with all required documents to report the transaction or make application to

register or transfer a manufactured home, mobilehome, or commercial coach, shall be forwarded to the department. Any application shall be submitted within 10 calendar days from the date the transaction was required to be reported, as defined by subdivision (e).

(c) A manufactured home, mobilehome, or commercial coach displaying a copy of the report of sale, lease, or rental may be occupied without registration decals or registration card until the registration decals and registration card are received by the purchaser.

(d) In addition to the other requirements of this section, every dealer upon transferring by sale, lease, or otherwise any manufactured home or mobilehome shall, not later than the 10th calendar day thereafter, not counting the date of sale, give written notice of the transfer to the assessor of the county where the manufactured home or mobilehome is to be installed. The written notice shall be upon forms provided by the department containing any information that the department may require, after consultation with the assessors. Filing of a copy of the notice with the assessor in accordance with this section shall be in lieu of filing a change of ownership statement pursuant to Sections 480 and 482 of the Revenue and Taxation Code.

(e) For purposes of this section, a transaction by or through a dealer shall be deemed completed and consummated and any fees and the required report of sale, lease, or rental are due when any of the following occurs:

(1) The purchaser of any commercial coach has signed a purchase contract or security agreement or paid any purchase price, the lessee of a new commercial coach has signed a lease agreement or lease with an option to buy or paid any purchase price, or the lessee of a used commercial coach has either signed a lease with an option to buy or paid any purchase price, and the purchaser or lessee has taken physical possession or delivery of the commercial coach.

(2) For sales subject to Section 18035, when all the amounts other than escrow fees and amounts for uninstalled or undelivered accessories are disbursed from the escrow account.

(3) For sales subject to Section 18035.2, when the installation has been completed and a certificate of occupancy has been issued.

SEC. 375. Section 19161 of the Health and Safety Code is amended to read:

19161. (a) Each city, city and county, or county, may assess the earthquake hazard in its jurisdiction and identify buildings subject to its jurisdiction as being potentially hazardous to life in the event of an earthquake. Potentially hazardous buildings include the following:

(1) Unreinforced masonry buildings constructed prior to the adoption of local building codes requiring earthquake resistant design of buildings

that are constructed of unreinforced masonry wall construction and exhibit any of the following characteristics:

(A) Exterior parapets or ornamentation that may fall.

(B) Exterior walls that are not anchored to the floors or roof.

(C) Lack of an effective system to resist seismic forces.

(2) Woodframe, multiunit residential buildings constructed before January 1, 1978, where the ground floor portion of the structure contains parking or other similar open floor space that causes soft, weak, or open-front wall lines, as provided in a nationally recognized model code relating to the retrofit of existing buildings or substantially equivalent standards.

(b) Structural evaluations made pursuant to this section shall be made by an architect as defined in Section 5500 of the Business and Professions Code, or a civil or structural engineer registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or staff of the enforcing agency, as described in Section 17960, supervised by an architect or civil or structural engineer authorized by this subdivision to make the structural evaluations.

SEC. 376. Section 19165 of the Health and Safety Code is amended to read:

19165. Any city, city and county, or county adopting an ordinance establishing building seismic retrofit standards for seismically hazardous buildings shall file for informational purposes with the Department of Housing and Community Development a copy of those standards and all subsequent amendments.

SEC. 377. Section 19982 of the Health and Safety Code is amended to read:

19982. (a) The department by rule and regulation shall establish a schedule of fees to pay the costs incurred by the department for the work related to the administration and enforcement of this part. Notwithstanding Section 13340 of the Government Code, the fees collected shall be placed in the Mobilehome-Manufactured Home Revolving Fund established by Section 18016.5, and are continuously appropriated to the department for expenditure in carrying out this part.

(b) The total amount of money collected pursuant to this part and contained in the Mobilehome-Manufactured Home Revolving Fund on June 30 of each fiscal year shall not exceed the amount needed for operating expenses for one year for the enforcement of this part. If the total amount of money collected pursuant to this part in the fund exceeds this amount, the department shall make appropriate reductions in the schedule of fees authorized by this section.

SEC. 378. Section 25159.12 of the Health and Safety Code is amended to read:

25159.12. For purposes of this article, the following definitions apply:

(a) "Annulus" means the space between the outside edge of the injection tube and the well casing.

(b) "State board" means the State Water Resources Control Board.

(c) "Compatibility" means that waste constituents do not react with each other, with the materials constituting the injection well, or with fluids or solid geologic media in the injection zone or confining zone in a manner as to cause leaching, precipitation of solids, gas or pressure buildup, dissolution, or any other effect that will impair the effectiveness of the confining zone or the safe operation of the injection well.

(d) "Confining zone" means the geological formation, or part of a formation, that is intended to be a barrier to prevent the migration of waste constituents from the injection zone.

(e) "Constituent" means an element, chemical, compound, or mixture of compounds that is a component of a hazardous waste or leachate and that has the physical or chemical properties that cause the waste to be identified as hazardous waste by the department pursuant to this chapter.

(f) "Discharge" means to place, inject, dispose of, or store hazardous wastes into, or in, an injection well owned or operated by the person who is conducting the placing, disposal, or storage.

(g) "Drinking water" has the same meaning as "potential source of drinking water," as defined in subdivision (t) of Section 25208.2.

(h) "Facility" means the structures, appurtenances, and improvements on the land, and all contiguous land, that are associated with an injection well and are used for treating, storing, or disposing of hazardous waste. A facility may consist of several waste management units, including, but not limited to, surface impoundments, landfills, underground or aboveground tanks, sumps, pits, ponds, and lagoons that are associated with an injection well.

(i) "Groundwater" means water, including, but not limited to, drinking water, below the land surface in a zone of saturation.

(j) "Hazardous waste" means any hazardous waste specified as hazardous waste or extremely hazardous waste, as defined in this chapter. Any waste mixture formed by mixing any waste or substance with a hazardous waste shall be considered hazardous waste for the purposes of this article.

(k) "Hazardous waste facilities permit" means a permit issued for an injection well pursuant to Sections 25200 and 25200.6.

(*l*) "Injection well" or "well" means any bored, drilled, or driven shaft, dug pit, or hole in the ground the depth of which is greater than the circumference of the bored hole and any associated subsurface appurtenances, including, but not limited to, the casing. For the purposes of this article, injection well does not include either of the following:

(1) Wells exempted pursuant to Section 25159.24.

(2) Wells that are regulated by the Division of Oil and Gas in the Department of Conservation pursuant to Division 3 (commencing with Section 3000) of the Public Resources Code and Subpart F (commencing with Section 147.250) of Subchapter D of Chapter 1 of Part 147 of Title 40 of the Code of Federal Regulations and are in compliance with that division and Subpart A (commencing with Section 146.1) of Part 147 of Subchapter D of Chapter 1 of Title 40 of the Code of Federal Regulations.

(m) "Injection zone" means that portion of the receiving formation that has received, is receiving, or is expected to receive, over the lifetime of the well, waste fluid from the injection well. "Injection zone" does not include that portion of the receiving formation that exceeds the horizontal and vertical extent specified pursuant to Section 25159.20.

(n) "Owner" means a person who owns a facility or part of a facility.

(o) "Perched water" means a localized body of groundwater that overlies, and is hydraulically separated from, an underlying body of groundwater.

(p) "pH" means a measure of a sample's acidity expressed as a negative logarithm of the hydrogen ion concentration.

(q) "Qualified person" means a person who has at least five years of full-time experience in hydrogeology and who is a professional geologist registered pursuant to Section 7850 of the Business and Professions Code, or a registered petroleum engineer registered pursuant to Section 6762 of the Business and Professions Code. "Full-time experience" in hydrogeology may include a combination of postgraduate studies in hydrogeology and work experience, with each year of postgraduate work counted as one year of full-time work experience, except that not more than three years of postgraduate studies may be counted as full-time experience.

(r) "Receiving formation" means the geologic strata that are hydraulically connected to the injection well.

(s) "Regional board" means the California regional water quality control board for the region in which the injection well is located.

(t) "Report" means the hydrogeological assessment report specified in Section 25159.18.

(u) "Safe Drinking Water Act" means Subchapter XII (commencing with Section 300f) of Chapter 6A of Title 42 of the United States Code.

(v) "Strata" means a distinctive layer or series of layers of earth materials.

(w) "Waste management unit" means that portion of a facility used for the discharge of hazardous waste into or onto land, including all

containment and monitoring equipment associated with that portion of the facility.

SEC. 379. Section 25200.6 of the Health and Safety Code is amended to read:

25200.6. (a) The department shall not issue a hazardous waste facilities permit for an injection well or for the discharge of hazardous waste into an injection well unless all of the following conditions are met:

(1) A hydrogeological assessment report has been approved pursuant to Section 25159.18.

(2) The groundwater monitoring required by Section 25159.16 is included as a permit condition.

(3) The department finds that the hazardous wastes to be discharged cannot be reasonably and adequately reduced, treated, or disposed of by an alternative method other than well injection. This finding shall be in writing and shall be supported by evidence citing specific evidence presented to the department or evidence that is otherwise made available to the department. The department shall provide public notice and opportunity for comment before making this finding.

(4) The horizontal and vertical extent of the permitted injection zone specified pursuant to Section 25159.20 is included as a permit condition.

(5) The permit complies with and incorporates as a permit condition any waste discharge requirements issued by the state board or a regional board and the permit is consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and with the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and any amendments made to these plans, policies, or requirements. The department may also include any more stringent requirement that the department determines is necessary or appropriate to protect water quality.

(b) Notwithstanding the requirement to submit a hydrogeological assessment report before application for a hazardous waste facility permit under Section 25159.18, or notwithstanding the requirement to have a hazardous waste facility permit or an approved hydrogeological assessment report before application for an exemption pursuant to subdivision (b) of Section 25159.15, the department shall process any applications for a hazardous waste facility permit to construct a new injection well from any person who has applied between May 15, 1984, and December 31, 1984, for an underground injection control permit from the federal Environmental Protection Agency pursuant to the Safe

Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and who has received that permit by July 1, 1986, in the following manner:

(1) The department shall accept a concurrent filing of the hydrogeological assessment report required pursuant to Section 25159.18, the application for the hazardous waste facilities permit filed pursuant to this section, and an application for an exemption filed pursuant to subdivision (b) of Section 25159.15.

(2) The department shall grant or deny the hazardous waste facilities permit within six months of the concurrent filing of a completed application as specified in paragraph (1). However, the department shall grant the hazardous waste facilities permit only if the conditions in subdivision (a) are met.

SEC. 380. Section 25205.1 of the Health and Safety Code is amended to read:

25205.1. For purposes of this article, the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any units or other structures, and all contiguous land, used for the treatment, storage, disposal, or recycling of hazardous waste, for which a permit or a grant of interim status has been issued by the department for that activity pursuant to Article 9 (commencing with Section 25200).

(c) "Large storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large storage facility" means a storage facility that stores 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(d) "Large treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large treatment facility" means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(e) "Generator" means a person who generates hazardous waste at an individual site commencing on or after July 1, 1988. A generator includes, but is not limited to, a person who is identified on a manifest as the generator and whose identification number is listed on that manifest, if that identifying information was provided by that person or by an agent or employee of that person.

(f) "Ministorage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, "ministorage facility" means a storage facility that stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(g) "Minitreatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, "minitreatment facility, means a treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(h) "Site" means the location of an operation that generates hazardous wastes and is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which it is not so provided, "small storage facility" means a storage facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(j) "Small treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which this is not provided, "small treatment facility" means a treatment facility that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current reporting period commencing on or after July 1, 1991.

(k) "Unit" means a hazardous waste management unit, as defined in regulations adopted by the department. If an area is designated as a hazardous waste management unit in a permit, it shall be conclusively presumed that the area is a "unit."

(*l*) "Class 1 modification," "class 2 modification," and "class 3 modification" have the meanings provided in regulations adopted by the department.

(m) "Hazardous waste" has the meaning provided in Section 25117. The total tonnage of hazardous waste, unless otherwise provided by law, includes the hazardous substance as well as any soil or other substance that is commingled with the hazardous substance.

(n) "Land treat" means to apply hazardous waste onto or incorporate it into the soil surface for the sole and express purpose of degrading, transforming, or immobilizing the hazardous constituents.

(o) "Treatment," "storage," and "disposal" mean only that treatment, storage, or disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment, storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

(1) "Disposal" includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

(2) "Storage" does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments.

SEC. 381. Section 25208.2 of the Health and Safety Code is amended to read:

25208.2. For purposes of this article, the following definitions apply:

(a) "Active life of the facility" means that period of time when the facility has the potential to adversely affect the waters of the state, but if the owner enters into an agreement with the board to properly close the impoundment on a specified date, the active life of the facility means that period of time up to that specified date.

(b) "Background water quality" means the level of concentration of indicator parameters in groundwater that is not, or has not been, affected by any hazardous waste, hazardous waste constituent, or hazardous waste leachate emanating from a particular waste management unit.

(c) "Board" or "state board" means the State Water Resources Control Board.

(d) "Close the impoundment" means the permanent termination of all hazardous waste discharge operations at a waste management unit and any operations necessary to prepare that waste management unit for

postclosure maintenance that are conducted pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), and the regulations adopted by the state board and the department concerning the closure of surface impoundments.

(e) "Constituent" means an element, chemical compound, or mixture of compounds that is a component of a hazardous waste or leachate and has the physical or chemical properties that cause the waste to be identified as hazardous waste by the department.

(f) "Discharge" means to place, dispose of, or store liquid hazardous wastes or hazardous wastes containing free liquids into or in a surface impoundment owned or operated by the person who is conducting the placing, disposal, or storage.

(g) "Emergency containment dike" means a berm that is located around a tank solely for the purpose of containing any emergency spills from the tank and does not contain any liquid hazardous waste or hazardous wastes containing free liquids for longer than 48 hours.

(h) "Facility" means the structures, appurtenances, and improvements on the land, and all contiguous land, that are used for treating, storing, or disposing of hazardous waste. A facility may consist of several waste management units.

(i) "Free liquids" means liquids that readily separate from the solid portion of a hazardous waste under ambient temperature and pressure.

(j) "Groundwater" means water below the land surface in a zone of saturation.

(k) "Hazardous waste" means a waste that is a hazardous waste, as specified in this chapter.

(*l*) "Indicator parameters" means the measureable physical or chemical characteristics in groundwater or soil-pore moisture that are likely to be affected by hazardous waste disposal operations and are used, for comparison purposes, to assess the result of hazardous waste disposal operations at a particular waste management unit on the waters of the state.

(m) "Landfill" means a facility or part of a facility where hazardous waste is placed in or on land for disposal and that is not a land farm, surface impoundment, or an injection well.

(n) "Leachate" means any fluid, including any constituents in the liquid, that has percolated through, migrated from, or drained from, a hazardous waste management unit.

(o) "Owner" means a person who owns a facility or part of a facility.

(p) "Perched water" means a localized body of groundwater that overlies, and is hydraulically separated from, an underlying body of groundwater.

(q) "pH" means a measure of a sample's acidity expressed as a negative logarithm of the hydrogen ion concentration.

(r) "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for the purpose of treatment or storage.

(s) "Pollution" has the same meaning as defined in Section 13050 of the Water Code.

(t) "Potential source of drinking water" means either water that is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses and is potable, or water that is located in water-bearing strata, is an underground source of drinking water, as defined in Section 146.3 of Title 40 of the Code of Federal Regulations, and does not meet the criteria for an exempted aquifer, pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations.

(u) "Qualified person" means a person who has at least five years of full-time experience in hydrogeology and who is a certified engineering geologist certified pursuant to Section 7842 of the Business and Professions Code, a professional geologist registered pursuant to Section 7850 of the Business and Professions Code, or a registered civil engineer registered pursuant to Section 6762 of the Business and Professions Code. "Full-time experience" in hydrogeology may include a combination of postgraduate studies in hydrogeology and work experience, with each year of postgraduate work counted as one year of full-time work experience, except that not more than three years of postgraduate studies may be counted as full-time experience.

(v) "Regional board" means the California regional water quality control board for the region in which the surface impoundment is located.

(w) "Report" means the hydrogeological assessment report specified in Section 25208.8.

(x) "Surface impoundment" or "impoundment" means a waste management unit or part of a waste management unit that is a natural topographic depression, artificial excavation, or diked area formed primarily of earthen materials, although it may be lined with artificial materials, that is designed to hold an accumulation of liquid hazardous wastes or hazardous wastes containing free liquids, including, but not limited to, holding, storage, settling, or aeration pits, evaporation ponds, percolation ponds, other ponds, and lagoons. Surface impoundment does not include a landfill, a land farm, a pile, an emergency containment dike, a tank, or an injection well.

(y) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, that is constructed primarily of nonearthen materials, such as fiberglass, steel, or plastic to provide

structural support, and has been issued a permit pursuant to Section 25284.

(z) "Vadose zone" means the zone between the land surface and the water table.

(aa) "Waste management unit" means that portion of a facility used for the discharge of hazardous waste into or onto land, including all containment and monitoring equipment associated with that portion of the facility.

SEC. 382. Section 25208.8 of the Health and Safety Code is amended to read:

25208.8. A person who receives a notice from a regional board pursuant to Section 25208.7 or who files an application for an exemption pursuant to Section 25208.5 or 25208.13, shall submit a hydrogeological assessment report to the regional board. A qualified person shall be responsible for the preparation of the report and shall certify its completeness and accuracy. The report shall contain, for each surface impoundment, any information required by the state board or the regional board, and all of the following information:

(a) A description of the surface impoundment, including its physical characteristics, its age, the presence or absence of a liner, a description of the liner, the liner's compatibility with the hazardous wastes discharged to the impoundment, and the design specifications of the impoundment.

(b) A description of the volume and concentration of hazardous waste constituents placed in the surface impoundment, based on a representative chemical analysis of the specific hazardous waste type and accounting for variance in hazardous waste constituents over time.

(c) A map showing the distances, within the facility, to the nearest surface water bodies and springs, and the distances, within one mile from the facility's perimeter, to the nearest surface water bodies and springs.

(d) Tabular data for each surface water body and spring shown on the map specified in subdivision (c) that indicate its flow and a representative water analysis. The report shall include an evaluation and characterization of seasonal changes and, if substantive changes result from season to season, the tabular data shall reflect these seasonal changes.

(e) A map showing the location of all wells within the facility and the locations of all wells within one mile of the facility's perimeter. The report shall include, for each well, a description of the present use of the well, a representative water analysis from the well, and, when possible, the water well driller's report or well log.

(f) An analysis of the vertical and lateral extent of the perched water and water-bearing strata that could be affected by leachate from the surface impoundment, and the confining beds under and adjacent to the surface impoundment. This analysis shall include all of the following:

(1) Maps showing contours of equal elevation of the water surface for perched water, unconfined water, and confined groundwater required to be analyzed by this subdivision.

(2) An estimate of the groundwater flow, direction of the perched water, and all water-bearing strata on both the maps and the subsurface geologic cross sections.

(3) An estimate of the transmissivity, permeability, and storage coefficient for each perched zone of water and water-bearing strata identified on the maps specified in paragraph (1).

(4) A determination of the rate of groundwater flow.

(5) A determination of the water quality of each zone of the water-bearing strata and perched water that is identified on the maps specified in paragraph (1) and is under, or adjacent to, the facility. This determination shall be conducted by taking samples either from upgradient of the surface impoundment or from another location that has not been affected by leakage from the surface impoundment.

(g) An indication as to whether the groundwater is contiguous with regional bodies of groundwater and the depth measured to the groundwater, including the depth measured to perched water and water-bearing strata identified on the maps specified in paragraph (1) of subdivision (f).

(h) The following climatological information:

(1) A map showing the contours for the mean annual long-term precipitation for the surrounding region within 10 miles of the surface impoundment.

(2) Calculations estimating the maximum 24-hour precipitation and maximum and minimum annual precipitation at the facility based upon direct measurement at the facility or upon measured values of precipitation from a nearby climatologically similar station.

(3) The projected volume and pattern of runoff for any streams that, in a 100-year interval, could affect the facility, including peak stream discharges associated with storm conditions.

(i) A description of the composition of the vadose zone beneath the surface impoundment. This description shall include a chemical and hydrogeological characterization of both the consolidated and unconsolidated rock material underlying the surface impoundment, and an analysis for pollutants, including those constituents discharged into the surface impoundment. This description shall also include soil moisture readings from a representative number of points around the surface

impoundment's perimeter and at the maximum depth of the surface impoundment. If the regional board determines that the use of suction type soil sampling devices is infeasible due to climate, soil hydraulics, or soil texture, the regional board may authorize the use of alternative devices. The report shall arrange all monitoring data in a tabular form so that the data, the constituents, and the concentrations are readily discernible.

(j) A measurement of the chemical characteristics of the soil made by collecting a soil sample upgradient from the impoundment or from an area that has not been affected by seepage from the surface impoundment and is in a hydrogeologic environment similar to the surface impoundment. The measurement shall be analyzed for the same pollutants analyzed pursuant to subdivision (i).

(k) A description of the existing monitoring being conducted to detect leachate, including vadose zone monitoring, the number and positioning of the monitoring wells, the monitoring wells' distances from the surface impoundment, the monitoring wells' design data, the monitoring wells' installation, the monitoring development procedures, the sampling methodology, the sampling frequency, the chemical constituents analyzed, and the analytical methodology. The design data of the monitoring wells shall include the monitoring wells' depth, the monitoring wells' diameters, the monitoring wells' casing materials, the perforated intervals within the well, the size of the perforations, the gradation of the filter pack, and the extent of the wells' annular seals.

(*l*) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage before the hazardous waste constituents enter the waters of the state. This documentation shall include, but is not limited to, substantiation of each of the following:

(1) The monitor wells are located close enough to the surface impoundment to identify lateral and vertical migration of any constituents discharged to the impoundment.

(2) The monitoring wells are not located within the influence of any adjacent pumping wells that might impair their effectiveness.

(3) The monitor wells are only screened in the aquifer to be monitored.

(4) The chosen casing material does not interfere with, or react to, the potential contaminants of major concern at the facility.

(5) The casing diameter allows an adequate amount of water to be removed during sampling and allows full development of the monitor well.

(6) The annular seal prevents pollutants from migrating down the monitor well.

(7) The methods of water sample collection require that the sample is collected after at least five well volumes have been removed from the

well and that the samples are transported and handled in accordance with the United States Geological Survey's "National Handbook of Recommended Methods for Water-Data Acquisition," which provides guidelines for collection and analysis of groundwater samples for selected unstable constituents. If the wells are low-yield wells, in that the wells are incapable of yielding three well volumes during a 24-hour period, the methods of water sample collection shall ensure that a representative sample is obtained from the well.

(8) The hazardous waste constituents selected for analysis are specific to the facility, taking into account the chemical composition of hazardous wastes previously placed in the surface impoundment. The monitoring data shall be arranged in tabular form so that the date, the constituents, and the concentrations are readily discernible.

(9) The frequency of monitoring is sufficient to give timely warning of leachate so that remedial action can be taken prior to any adverse changes in the quality of the groundwater.

(10) A written statement from the qualified person preparing the report indicating whether any constituents have migrated into the vadose zone, surface water bodies, perched water, or water-bearing strata.

(11) A written statement from the qualified person preparing the report indicating whether any migration of leachate into the vadose zone, surface water bodies, perched water, or water-bearing strata is likely or not likely to occur within five years, and any evidence supporting that statement.

SEC. 383. Section 25208.17 of the Health and Safety Code is amended to read:

25208.17. (a) Except as provided in subdivision (g), a person specified in subdivision (h) is exempt from filing the report required by Section 25208.7 if the surface impoundment has been closed, or will be closed before January 1, 1988, in accordance with Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Code of Regulations, and it has only been used for the discharge of economic poisons, as defined in Section 12753 of the Food and Agricultural Code, and if the person submits an application for exemption to the regional board on or before February 1, 1987, pursuant to subdivision (b) and an initial hydrogeological site assessment report to the regional board on or before July 1, 1987. A qualified person shall be responsible for the preparation of the hydrogeological site assessment report and shall certify its completeness and accuracy.

(b) A person seeking exemption from Section 25208.7 shall file an application for exemption with the regional board on or before February 1, 1987, together with an initial filing fee of three thousand dollars ($3,000). The application shall include the names of persons who own or operate each surface impoundment for which the exemption is sought

and the location of each surface impoundment for which an exemption is sought.

(c) Notwithstanding Section 25208.3, each person filing an application for exemption pursuant to subdivision (b) shall pay only the application fee provided in subdivision (b) and any additional fees assessed by the state board to recover the actual costs incurred by the state board and regional boards to administer this section. The person is not liable for fees assessed pursuant to Section 25208.3, except that, if the person is required to comply with Section 25208.7 or 25208.6, the fees assessed under this section shall include the costs of the regional board and state board to administer those sections.

(d) If a person fails to pay the initial filing fee by February 1, 1987, or fails to pay any subsequent additional assessment pursuant to subdivision (c), the person shall be liable for a penalty of not more than 100 percent of the fees due and unpaid, but in an amount sufficient to deter future noncompliance, as based upon that person's past history of noncompliance and ability to pay, and upon additional expenses incurred by the regional board and state board as a result of this noncompliance.

(e) Notwithstanding Section 25208.3, after the regional board has made a determination pursuant to subdivision (g), a final payment or refund of fees specified in subdivision (c) shall be made so that the total fees paid by the person shall be sufficient to cover the actual costs of the state board and the regional board in administering this section.

(f) The hydrogeological site assessment report shall contain, for each surface impoundment, all of the following information:

(1) A description of the surface impoundment, including its physical characteristics, its age, the presence or absence of a liner, a description of the liner, the liner's compatibility with the hazardous wastes discharged to the impoundment, and the design specifications of the impoundment.

(2) A description of the volume and concentration of hazardous waste constituents placed in the surface impoundment, based on a representative chemical analysis of the specific hazardous waste type and accounting for variance in hazardous waste constituents over time.

(3) An analysis of surface and groundwater on, under, and within one mile of the surface impoundment to provide a reliable indication of whether or not hazardous constituents or leachate is leaking or has been released from the surface impoundment.

(4) A chemical characterization of soil-pore liquid in areas that are likely to be affected by hazardous constituents or leachate released from the surface impoundment, as compared to geologically similar areas near the surface impoundment that have not been affected by releases from

the surface impoundment. This characterization shall include both of the following:

(A) A description of the composition of the vadose zone beneath the surface impoundment. This description shall include a chemical and hydrogeological characterization of both the consolidated and unconsolidated geologic materials underlying the surface impoundment, and an analysis for pollutants, including those constituents discharged into the surface impoundment. This description shall also include soil moisture readings from a representative number of points around the surface impoundment's perimeter and at the maximum depth of the surface impoundment. If the regional board determines that the use of suction type soil sampling devices is infeasible due to climate, soil hydraulics, or soil texture, the regional board may authorize the use of alternative devices. The initial report shall contain all data in tabular form so that data, constituents, and concentrations are readily discernible.

(B) A determination of the chemical characteristics of the soil made by collecting a soil sample upgradient from the impoundment or from an area that has not been affected by seepage from the surface impoundment and that is in a hydrogeologic environment similar to the surface impoundment. The determinations shall be analyzed for the same pollutants analyzed pursuant to subparagraph (A).

(5) A description of current groundwater and vadose zone monitoring being conducted at the surface impoundment for leak detection, including detailed plans and equipment specifications and a technical report that provides the rationale for the spatial distribution of groundwater and vadose zone monitoring points for the design of monitoring facilities, and for the selection of monitoring equipment. This description shall include:

(A) A map showing the location of monitoring facilities with respect to each surface impoundment.

(B) Drawings and design data showing construction details of groundwater monitoring facilities, including all of the following:

(i) Casing and hole diameter.

(ii) Casing materials.

(iii) Depth of each monitoring well.

(iv) Size and position of perforations.

(v) Method for joining sections of casing.

(vi) Nature and gradation of filter material.

(vii) Depth and composition of annular seals.

(viii) Method and length of time of development.

(ix) Method of drilling.

(C) Specifications, drawings, and data for the location and installation of vadose zone monitoring equipment.

(D) Discussion of sampling frequency and methods and analytical protocols used.

(E) Justification of indicator parameters used.

(6) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage before the hazardous waste constituents enter the waters of the state. This documentation shall include, but is not limited to, substantiation of each of the following:

(A) The monitoring facilities are located close enough to the surface impoundment to identify lateral and vertical migration of any constituents discharged to the impoundment.

(B) The groundwater monitoring wells are not located within the influence of any adjacent pumping water wells that might impair their effectiveness.

(C) The groundwater monitoring wells are screened only in the zone of groundwater to be monitored.

(D) The casing material in the groundwater monitoring wells does not interfere with, or react to, the potential contaminants of major concern at the impoundment.

(E) The casing diameter allows an adequate amount of water to be removed during sampling and allows full development of each well.

(F) The annular seal of each groundwater monitoring well prevents pollutants from migrating down the well.

(G) The water samples are collected after at least five well volumes have been removed from the well and that the samples are collected, preserved, transported, handled, analyzed, and reported in accordance with guidelines for collection and analysis of groundwater samples that provide for preservation of unstable indicator parameters and prevent physical or chemical changes that could interfere with detection of indicator parameters. If the wells are low-yield wells, in that the wells are incapable of yielding three well volumes during a 24-hour period, the methods of water sample collection shall ensure that a representative sample is obtained from the well.

(H) The hazardous waste constituents selected for analysis are specific to the facility, taking into account the chemical composition of hazardous wastes previously placed in the surface impoundment.

(I) The frequency of monitoring is sufficient to give timely warning of any leakage or release of hazardous constituents or leachate so that remedial action can be taken prior to any adverse changes in the quality of the groundwater.

(7) A written statement from the qualified person preparing the report indicating whether any hazardous constituents or leachate has migrated into the vadose zone, water-bearing strata, or waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(8) A written statement from the qualified person preparing the report indicating whether any migration of hazardous constituents or leachate into the vadose zone, water-bearing strata, or waters of the state is likely or not likely to occur within five years, and any evidence supporting that statement.

(g) The regional board shall complete a thorough analysis of each hydrogeological site assessment report submitted pursuant to subdivision (b) within one year after submittal. If the regional board determines that a hazardous waste constituent from the surface impoundment is polluting or threatening to pollute, as defined in subdivision (*l*) of Section 13050 of the Water Code, both of the following shall occur:

(1) The regional board shall issue a cease and desist order or a cleanup and abatement order that prohibits any discharge into the surface impoundment and requires compliance with Section 25208.6.

(2) The person shall file a report pursuant to Section 25208.7 within nine months after the regional board makes the determination pursuant to subdivision (g). In making any determination under this subdivision, the regional board shall state the factual basis for the determinations.

(h) For purposes of this section, "person" means only the following:

(1) Pest control operators and businesses licensed pursuant to Section 11701 of the Food and Agricultural Code.

(2) Local governmental vector control agencies who have entered into a cooperative agreement with the department pursuant to Section 116180.

SEC. 384. Section 25215.4 of the Health and Safety Code is amended to read:

25215.4. The department shall, within 30 days after June 27, 1988, notify all manufacturers of lead acid batteries sold by dealers to consumers in this state of the requirements set forth in Sections 25215.2, 25215.3, and 25215.5.

SEC. 385. Section 25283.1 of the Health and Safety Code is amended to read:

25283.1. This chapter does not prohibit any county from entering into a joint powers agreement with other counties for the purposes of enforcing this chapter.

SEC. 386. Section 25370 of the Health and Safety Code is amended to read:

25370. "Board," as used in this article, means the California Victim Compensation and Government Claims Board.

SEC. 387. Section 33080.7 of the Health and Safety Code is amended to read:

33080.7. For purposes of compliance with subdivision (c) of Section 33080.1 and in addition to the requirements of Section 33080.4, the

description of the agency's activities shall identify the amount of excess surplus, as defined in Section 33334.10, which has accumulated in the agency's Low and Moderate Income Housing Fund. Of the total excess surplus, the description shall also identify the amount that has accrued to the Low and Moderate Income Housing Fund during each fiscal year. This component of the annual report shall also include any plan required to be reported by subdivision (c) of Section 33334.10.

SEC. 388. Section 33320.4 of the Health and Safety Code is amended to read:

33320.4. (a) The unblighted territory that is described in paragraphs (1) and (2) is contiguous to an existing redevelopment project area within the City of Sanger, California. If all of that unblighted territory is annexed to the City of Sanger, the planning agency within the City of Sanger may, with the approval of the redevelopment agency, include that territory in a proposed project area, or the redevelopment agency may amend the redevelopment plan to include that territory within an existing contiguous project area, if the planning agency or the redevelopment agency, as the case may be, determines that the inclusion of that territory is necessary for effective redevelopment of the project area. If either, or both, of those determinations are made, the territory shall be conclusively presumed necessary for effective redevelopment within the proposed or existing project area. Any actions taken by the planning agency or redevelopment agency in accordance with this section shall comply with all of the other requirements of this part.

(1) All that portion of Fresno County, California, within the City of Sanger in Sections 26 and 25, Township 14 South, Range 22 East, Mount Diablo Base and Meridian, according to the United States Government Township Plat thereof, described as follows:

Beginning at the southwest corner of the northwest quarter of Section 26; thence along the existing city limits line of Sanger as follows, N. 89 47´ E., a distance of 2638.53 feet to the southeast corner of the northwest quarter of Section 26; thence N. 0 03´ W., along the west line of the northeast quarter of that Section, a distance of 345.52 feet to the northerly right-of-way line of the Garfield Ditch; thence northeasterly along northerly right-of-way line, a distance of 913.00 feet, a little more or less, to a point on the westerly right-of-way line of the Centerville and Kingsburg Canal; thence along the easterly right-of-way line of the Centerville and Kingsburg Canal as follows: N. 09 52´28″ E., 708.50 feet; N. 09 26´ 40″ E., 297.07 feet; N. 07 14´16″ E., 549.23 feet; and N. 09 15´10″ E., a distance of 539.47 feet to a point on a line 30. 00 feet south of the north line of the northeast quarter of Section 26; thence leaving the westerly right-of-way line, N.89 43´ E., along that line 30.00 feet south of and parallel with the north line of the northeast quarter of

Section 26 and the easterly prolongation thereof, a distance of 1860.41 feet; thence S. 0 14´ E., 1151.07 feet; thence S. 73 01´ W., 357.58 feet; thence S. 55 46´ W., 985.00 feet; thence S. 40 46´ W., 218.00 feet; thence S. 24 31´ W., 364. 00 feet; thence N. 75 44´ W., 312.87 feet to a point on the west line of the southeast quarter of the northeast quarter of Section 26; thence S. 0 17´12″ E., along said west line, 413.31 feet to the southwest corner thereof; thence S. 0 16´28″ E., along the west line of the northeast quarter of the southeast quarter of Section 26, 1332.38 feet to the southwest corner thereof; thence leaving the existing city limits line of Sanger, N. 89 06´46″ W., along the north line of the south half of the southeast quarter of Section 26, 592.10 feet to the northeast corner of that parcel of land conveyed to Archie Mekealian and Verlene Mekealian by deed dated February 23, 1944, and recorded in Book 2157 at Page 119, Fresno County records, with the corner being 742.00 feet east of the northwest corner of the south half of the southeast quarter of Section 26; thence S. 4 36´52″ W., along the east line to the parcel, 1330.31 feet to the southeast corner thereof and to a point on the south line of the southeast quarter of Section 26; thence N. 88 44´19″ W., along the south line, 619.00 feet, more or less to the southwest corner of the southeast quarter of Section 26; thence S. 89 51´20″ W., along the south line of the southwest quarter of Section 26, 2639.90 feet to the southwest corner thereof; thence north, along the west line of the southwest quarter of Section 26, 2643.60 feet to the northwest corner thereof and the point of beginning. This territory contains a little more or less than 316.58 acres.

(2) All that portion of Fresno County, California, within the City of Sanger, in the northeast quarter of Section 15 in Township 14 South, Range 22 East, Mount Diablo Base and Meridian, according to the United States Government Township Plat thereof, described as follows:

Commencing at the northeast corner of the northeast quarter of the northeast quarter of Section 15, thence southerly along the east line of the northeast quarter of Section 15 992.05 feet to the existing city limits line of Sanger, then continuing south along the east line of the northeast quarter of Section 15 475.01 feet, that being contiguous with the existing city limit of Sanger, for a total of 1467.06 feet, thence westerly, along a line 1180.15 feet 15, 880.90 feet, more or less to the easterly right-of-way line of the Southern Pacific Railroad Company's right-of-way; thence leaving the existing city limits line of Sanger, northwesterly, along the easterly right-of-way line of the railroad as the same is shown on the Map of Mountain View Addition to Sanger, recorded February 18, 1891, in Book 4 of Plats, Page 66, Fresno County Records, to the point of intersection with the north line of the northeast quarter of Section 15; thence easterly along the north line, 2191.00 feet

to the point of commencement. This territory contains a little more or less than 50.13 acres.

(b) The conclusive presumption that the unblighted territory described in subdivision (a) is necessary for effective redevelopment applies only to territory within the City of Sanger.

SEC. 389. Section 33333.6 of the Health and Safety Code is amended to read:

33333.6. The limitations of this section shall apply to every redevelopment plan adopted on or before December 31, 1993.

(a) The effectiveness of every redevelopment plan to which this section applies shall terminate at a date that shall not exceed 40 years from the adoption of the redevelopment plan or January 1, 2009, whichever is later. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness, to comply with Section 33333.8 and to enforce existing covenants, contracts, or other obligations.

(b) Except as provided in subdivisions (f) and (g), a redevelopment agency may not pay indebtedness or receive property taxes pursuant to Section 33670 after 10 years from the termination of the effectiveness of the redevelopment plan pursuant to subdivision (a).

(c) (1) If plans that had different dates of adoption were merged on or before December 31, 1993, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan. If an amendment to a redevelopment plan added territory to the project area on or before December 31, 1993, the time limitations required by this section shall commence, with respect to the redevelopment plan, from the date of the adoption of the redevelopment plan, and, with respect to the added territory, from the date of the adoption of the amendment.

(2) If plans that had different dates of adoption are merged on or after January 1, 1994, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan.

(d) (1) Unless a redevelopment plan adopted prior to January 1, 1994, contains all of the limitations required by this section and each of these limitations does not exceed the applicable time limits established by this section, the legislative body, acting by ordinance on or before December 31, 1994, shall amend every redevelopment plan adopted prior to January 1, 1994, either to amend an existing time limit that exceeds the applicable time limit established by this section or to establish time limits that do not exceed the provisions of subdivision (b) or (c).

(2) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance required by this section, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(e) (1) If a redevelopment plan adopted prior to January 1, 1994, contains one or more limitations required by this section, and the limitation does not exceed the applicable time limit required by this section, this section shall not be construed to require an amendment of this limitation.

(2) (A) A redevelopment plan adopted prior to January 1, 1994, that has a limitation shorter than the terms provided in this section may be amended by a legislative body by adoption of an ordinance on or after January 1, 1999, but on or before December 31, 1999, to extend the limitation, provided that the plan as so amended does not exceed the terms provided in this section. In adopting an ordinance pursuant to this subparagraph, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans.

(B) On or after January 1, 2002, a redevelopment plan may be amended by a legislative body by adoption of an ordinance to eliminate the time limit on the establishment of loans, advances, and indebtedness required by this section prior to January 1, 2002. In adopting an ordinance pursuant to this subparagraph, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans, except that the agency shall make the payment to affected taxing entities required by Section 33607.7.

(C) When an agency is required to make a payment pursuant to Section 33681.9, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to subdivisions (a) and (b) by one year by adoption of an ordinance. In adopting an ordinance pursuant to this subparagraph, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans, including, but not limited to, the requirement to make the payment to affected taxing entities required by Section 33607.7.

(D) When an agency is required pursuant to Section 33681.12 to make a payment to the county auditor for deposit in the county's Educational

Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to subdivisions (a) and (b) by the following:

(i) One year for each year in which a payment is made, if the time limit for the effectiveness of the redevelopment plan established pursuant to subdivision (a) is 10 years or less from the last day of the fiscal year in which a payment is made.

(ii) One year for each year in which a payment is made, if both of the following apply:

(I) The time limit for the effectiveness of the redevelopment plan established pursuant to subdivision (a) is more than 10 years but less than 20 years from the last day of the fiscal year in which a payment is made.

(II) The legislative body determines in the ordinance adopting the amendment that, with respect to the project, the agency is in compliance with Section 33334.2 or 33334.6, as applicable, has adopted an implementation plan in accordance with the requirements of Section 33490, is in compliance with subdivisions (a) and (b) of Section 33413, to the extent applicable, and is not subject to sanctions pursuant to subdivision (e) of Section 33334.12 for failure to expend, encumber, or disburse an excess surplus.

(iii) This subparagraph shall not apply to any redevelopment plan if the time limit for the effectiveness of the redevelopment plan established pursuant to subdivision (a) is more than 20 years after the last day of the fiscal year in which a payment is made.

(3) (A) The legislative body by ordinance may adopt the amendments provided for under this paragraph following a public hearing. Notice of the public hearing shall be mailed to the governing body of each affected taxing entity at least 30 days prior to the public hearing and published in a newspaper of general circulation in the community at least once, not less than 10 days prior to the date of the public hearing. The ordinance shall contain a finding of the legislative body that funds used to make a payment to the county's Educational Revenue Augmentation Fund pursuant to Section 33681.12 would otherwise have been used to pay the costs of projects and activities necessary to carry out the goals and objectives of the redevelopment plan. In adopting an ordinance pursuant to this paragraph, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans.

(B) The time limit on the establishment of loans, advances, and indebtedness shall be deemed suspended and of no force or effect but only for the purpose of issuing bonds or other indebtedness the proceeds of which are used to make the payments required by Section 33681.12 if the following apply:

(i) The time limit on the establishment of loans, advances, and indebtedness required by this section prior to January 1, 2002, has expired and has not been eliminated pursuant to subparagraph (B).

(ii) The agency is required to make a payment pursuant to Section 33681.12.

(iii) The agency determines that in order to make the payment required by Section 33681.12, it is necessary to issue bonds or incur other indebtedness.

(iv) The proceeds of the bonds issued or indebtedness incurred are used solely for the purpose of making the payments required by Section 33681.12 and related costs.

The suspension of the time limit on the establishment of loans, advances, and indebtedness pursuant to this subparagraph shall not require the agency to make the payment to affected taxing entities required by Section 33607.7.

(4) (A) A time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project shall not prevent an agency from incurring debt to be paid from the agency's Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's affordable housing obligations, as defined in paragraph (1) of subdivision (a) of Section 33333.8.

(B) A redevelopment plan may be amended by a legislative body to provide that there shall be no time limit on the establishment of loans, advances, and indebtedness paid from the agency's Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's affordable housing obligations, as defined in paragraph (1) of subdivision (a) of Section 33333.8. In adopting an ordinance pursuant to this subparagraph, neither the legislative body nor the agency is required to comply with Section 33345.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans, and the agency shall not make the payment to affected taxing entities required by Section 33607.7.

(f) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit the allocation of taxes to an agency to the extent required to comply with Section 33333.8. In the event of a conflict between these limitations and the obligations under

Section 33333.8, the limitations established in the ordinance shall be suspended pursuant to Section 33333.8.

(g) (1)This section does not effect the validity of any bond, indebtedness, or other obligation, including any mitigation agreement entered into pursuant to Section 33401, authorized by the legislative body, or the agency pursuant to this part, prior to January 1, 1994.

(2) This section does not affect the right of an agency to receive property taxes, pursuant to Section 33670, to pay the bond, indebtedness, or other obligation.

(3) This section does not affect the right of an agency to receive property taxes pursuant to Section 33670 to pay refunding bonds issued to refinance, refund, or restructure indebtedness authorized prior to January 1, 1994, if the last maturity date of these refunding bonds is not later than the last maturity date of the refunded indebtedness and the sum of the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds is less than the sum of the total net interest cost to maturity on the refunded indebtedness plus the principal amount of the refunded indebtedness.

(h) A redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670, with respect to a redevelopment plan adopted prior to January 1, 1994, after the date identified in subdivision (b) or the date identified in the redevelopment plan, whichever is earlier, except as provided in paragraph (2) of subdivision (e), in subdivision (g), or in Section 33333.8.

(i) The Legislature finds and declares that the amendments made to this section by Chapter 942 of the Statutes of 1993 are intended to add limitations to the law on and after January 1, 1994, and are not intended to change or express legislative intent with respect to the law prior to that date. It is not the intent of the Legislature to affect the merits of any litigation regarding the ability of a redevelopment agency to sell bonds for a term that exceeds the limit of a redevelopment plan pursuant to law that existed prior to January 1, 1994.

(j) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by Section 33333.2.

SEC. 390. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, lower income households, as defined by Section 50079.5, very low income households,

as defined in Section 50105, and extremely low income households, as defined by Section 50106, that is occupied by these persons and families, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low- or moderate-income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency

submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city, county, or city and county shall be current, and shall have been determined by the department pursuant to Section 65585 to be in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to, and occupied by, persons and families of low or moderate income and very low income households is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and that the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e).

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on the provisions of this paragraph. Agencies that make this finding after June

30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or

preservation of affordable housing for extremely low, very low, low- and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) (A) Improve real property or building sites with onsite or offsite improvements, but only if both (i) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (ii) the agency requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

(B) If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, extremely low income households, as defined by Section 50106, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the Department of Housing and Community Development has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to, and occupied by, low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to, and occupied by, low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to, and occupied by, low- or moderate-income persons.

(iii) The units in the development that are affordable to, and occupied by, low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) This section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) (1) (A) An action to compel compliance with the requirement of Section 33334.3 to deposit not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 in the Low and Moderate Income Housing Fund shall be commenced within 10 years of the alleged violation. A cause of action for a violation accrues on the last day of the fiscal year in which the funds were required to be deposited in the Low and Moderate Income Housing Fund.

(B) An action to compel compliance with the requirement of this section or Section 33334.6 that money deposited in the Low and Moderate Income Housing Fund be used by the agency for purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost shall be commenced within 10 years of the alleged violation. A cause of action for a violation accrues on the date of the actual expenditure of the funds.

(C) An agency found to have deposited less into the Low and Moderate Income Housing Fund than mandated by Section 33334.3 or to have spent money from the Low and Moderate Income Housing Fund for purposes other than increasing, improving, and preserving the

community's supply of low- and moderate-income housing, as mandated, by this section or Section 33334.6 shall repay the funds with interest in one lump sum pursuant to Section 970.4 or 970.5 of the Government Code or may do either of the following:

(i) Petition the court under Section 970.6 for repayment in installments.

(ii) Repay the portion of the judgment due to the Low and Moderate Income Housing Fund in equal installments over a period of five years following the judgment.

(2) Repayment shall not be made from the funds required to be set aside or used for low- and moderate-income housing pursuant to this section.

(3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of paragraph (1), all costs, including reasonable attorney's fees if included in the judgment, are due and shall be paid upon entry of judgment or order.

(4) Except as otherwise provided in this subdivision, Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 of the Government Code for the enforcement of a judgment against a local public entity applies to a judgment against a local public entity that violates this section.

(5) This subdivision applies to actions filed on and after January 1, 2006.

(6) The limitations period specified in subparagraphs (A) and (B) of paragraph (1) does not apply to a cause of action brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 391. Section 33334.22 of the Health and Safety Code is amended to read:

33334.22. (a) The Legislature finds and declares that in order to avoid serious economic hardships and accompanying blight, it is necessary to enact this section for the purpose of providing housing assistance to very low, lower, and moderate-income households. This section applies to any redevelopment agency located within Santa Cruz County, the Contra Costa County Redevelopment Agency, and the Monterey County Redevelopment Agency.

(b) Notwithstanding Section 50052.5, any redevelopment agency to which this section applies may make assistance available from its low- and moderate-income housing fund directly to a home buyer for the purchase of an owner-occupied home, and for purposes of that assistance and this section, "affordable housing cost" shall not exceed the following:

(1) For very low income households, the product of 40 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 40 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that the affordable housing cost not exceed 40 percent of the gross income of the household.

(3) For moderate income households, affordable housing cost shall not exceed the product of 40 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 40 percent of the gross income of the household.

(c) Any agency that provides assistance pursuant to this section shall include in the annual report to the Controller, pursuant to Sections 33080 and 33080.1, all of the following information:

(1) The sale prices of homes purchased with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2007, inclusive, for agencies in Santa Cruz County and for 2006 and 2007 for the Contra Costa County Redevelopment Agency and the Monterey County Redevelopment Agency.

(2) The sale prices of homes purchased and rehabilitated with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2007, inclusive, for agencies in Santa Cruz County and for 2006 and 2007 for the Contra Costa County Redevelopment Agency and the Monterey County Redevelopment Agency.

(3) The incomes, and percentage of income paid for housing costs, of all households that purchased, and that purchased and rehabilitated, homes with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2007, inclusive, for agencies in Santa Cruz County and for 2006 and 2007 for the Contra Costa County Redevelopment Agency and the Monterey County Redevelopment Agency.

(d) Except as provided in subdivision (b), all provisions of Section 50052.5, including any definitions, requirements, standards, and

regulations adopted to implement those provisions, shall apply to this section.

(e) By April 1, 2007, the Controller shall furnish a compilation of the information described in subdivision (c) to the Legislature and the director.

(f) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 392. Section 33446 of the Health and Safety Code is amended to read:

33446. The governing board of any school district may enter into an agreement with an agency under which the agency shall construct, or cause to be constructed, a building or buildings to be used by the district upon a designated site within a project area and, pursuant to the agreement, the district may lease the buildings and site. The agreement shall provide that the title to the building or buildings and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building or buildings and the site shall vest in the district prior to the expiration of the lease, and shall contain other terms and conditions that the governing board of the district deems to be in the best interest of the district. The agreements and leases may be entered into by the governing board of any school district without regard to bidding, election, or any other requirement of Article 2 (commencing with Section 17400) of Chapter 4 of Part 10.5 of the Education Code.

SEC. 393. Section 33476 of the Health and Safety Code is amended to read:

33476. Notwithstanding any other provision of this article, except Section 33471.5, for the purpose of allocating taxes pursuant to Section 33670 that are subject to this article, redevelopment project areas under the jurisdiction of the redevelopment agency of the City of San Bernardino designated Meadowbrook/Central City, Central City East, and Central City South, are hereby merged into one contiguous project areas designated Central City. Each constituent project area so merged shall continue under its own redevelopment plan for the longest term of the three plans, but, except as otherwise provided in this article, taxes attributable to each project area merged pursuant to this section that are allocated to the redevelopment agency pursuant to Section 33670 shall be allocated, as provided in subdivision (b) of that section, to the entire merged project area for the purpose of paying the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, incurred by the redevelopment agency

to finance or refinance, in whole or in part, the merged redevelopment project.

SEC. 394. Section 33492.78 of the Health and Safety Code is amended to read:

33492.78. (a) Section 33607.5 shall not apply to an agency created pursuant to this article. For purposes of Sections 42238, 84750, and 84751 of the Education Code, funds allocated pursuant to this section shall be treated as if they were allocated pursuant to Section 33607.5.

(1) This section shall apply to each redevelopment project area created pursuant to a redevelopment plan that contains the provisions required by Section 33670 and is created pursuant to this article. All the amounts calculated pursuant to this section shall be calculated after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted from the total amount of tax-increment funds received by the agency in the applicable fiscal year.

(2) The payments made pursuant to this section shall be in addition to any amounts the school district or districts and community college district or districts receive pursuant to subdivision (a) of Section 33670. The agency shall reduce its payments pursuant to this section to an affected school or community college district by any amount the agency has paid, directly or indirectly, pursuant to Section 33445, 33445.5, or 33446, or any provision of law other than this section for, or in connection with, a public facility owned or leased by that affected school or community college district.

(3) (A) Of the total amount paid each year pursuant to this section to school districts, 43.9 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 56.1 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(B) Of the total amount paid each year pursuant to this section to community college districts, 47.5 percent shall be considered to be property taxes for the purposes of Section 84750 of the Education Code, and 52.5 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(C) Of the total amount paid each year pursuant to this section to county offices of education, 19 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 81 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(D) Of the total amount paid each year pursuant to this section to special education, 19 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 81 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(4) Local education agencies that use funds received pursuant to this section for educational facilities shall spend these funds at schools that are any one of the following:

(A) Within the project area.

(B) Attended by students from the project area.

(C) Attended by students generated by projects that are assisted directly by the redevelopment agency.

(D) Determined by a local education agency to be of benefit to the project area.

(b) Commencing with the first fiscal year in which the agency receives tax increments, and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency created pursuant to this article shall pay to each affected school and community college district an amount equal to the product of 25 percent times the percentage share of total property taxes collected that are allocated to each affected school or community college district, including any amount allocated to each district pursuant to Sections 97.03 and 97.035 of the Revenue and Taxation Code times the total of the tax increments received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund has been deducted.

(c) Commencing with the 11th fiscal year in which the agency receives tax increments and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency created pursuant to this article shall pay to each affected school and community college district, in addition to the amounts paid pursuant to subdivision (b), an amount equal to the product of 21 percent times the percentage share of total property taxes collected that are allocated to each affected school or community college district, including any amount allocated to each district pursuant to Sections 97.03 and 97.035 of the Revenue and Taxation Code times the total of the first adjusted tax increments received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund has been deducted. The first adjusted tax increments received by the agency shall be calculated by applying the tax rate against the amount of assessed value by which the current year assessed value exceeds the first adjusted base year assessed value. The first adjusted base year assessed value is the assessed value of the

project area in the 10th fiscal year in which the agency receives tax increment.

(d) Commencing with the 31st fiscal year in which the agency receives tax increments and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency shall pay to the affected school and community college districts, in addition to the amounts paid pursuant to subdivisions (b) and (c), an amount equal to 14 percent times the percentage share of total property taxes collected that are allocated to each affected school or community college district, including any amount allocated to each district pursuant to Sections 97.03 and 97.035 of the Revenue and Taxation Code times the total of the second adjusted tax increments received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund has been deducted. The second adjusted tax increments received by the agency shall be calculated by applying the tax rate against the amount of assessed value by which the current year assessed value exceeds the second adjusted base year assessed value. The second adjusted base year assessed value is the assessed value of the project area in the 30th fiscal year in which the agency receives tax increments.

(e) (1) The Legislature finds and declares both of the following:

(A) The payments made pursuant to this section are necessary in order to alleviate the financial burden and detriment that affected school and community college districts may incur as a result of the adoption of a redevelopment plan, and payments made pursuant to this section will benefit redevelopment project areas.

(B) The payments made pursuant to this section are the exclusive payments that are required to be made by a redevelopment agency to affected school and community college districts during the term of a redevelopment plan.

(2) Notwithstanding any other provision of law, a redevelopment agency shall not be required, either directly or indirectly, as a measure to mitigate a significant environmental effect or as part of any settlement agreement or judgment brought in any action to contest the validity of a redevelopment plan pursuant to Section 33501, to make any other payments to affected school or community college districts, or to pay for public facilities that will be owned or leased to an affected school or community college district.

(f) As used in this section, a "local education agency" includes a school district, a community college district, or a county office of education.

SEC. 395. Section 33492.86 of the Health and Safety Code is amended to read:

33492.86. (a) This section shall apply to a redevelopment project area the territory of which includes March Air Force Base, that is adopted pursuant to a redevelopment plan that contains the provisions required by Section 33670, and that is adopted pursuant to this chapter. The redevelopment agency shall make the payments to affected school districts and community college districts required by subdivision (a) of Section 33607.5, except that each of the time periods governing the payments shall be calculated from the date the county auditor makes the certification to the Director of Finance pursuant to Section 33492.9 instead of from the first fiscal year in which the agency receives tax-increment revenue.

(b) (1) Pursuant to Section 33492.3, the March Air Force Base Project Area adopted pursuant to this article may include all, or any portion of, property within the military base that the federal Base Closure and Realignment Commission has voted to realign when that action has been sustained by the President and the Congress of the United States, regardless of the percentage of urbanized land, as defined in Section 33320.1, within the military base.

(2) (A) Pursuant to Section 33492.3, the March Air Force Base Project Area may include territory outside the military base. The project area shall be entirely contained within a one-mile perimeter of the boundaries of March Air Force Base, as those boundaries exist on January 1, 1995. At no time shall the aggregate acreage of the project area outside the boundaries of March Air Force Base, as those boundaries exist on January 1, 1995, exceed 2 percent of the total acreage contained within that one-mile perimeter, and these areas may only be included in the project area upon a finding of benefit to the March Air Force Base Project Area and with the concurrence of the legislative bodies of the County of Riverside, the City of Moreno Valley, the City of Perris, and the City of Riverside.

(B) The agency for the March Air Force Base Project Area may, with the concurrence of the relevant legislative body pursuant to subparagraph (B), pay for all or a part of the value of land and the cost of the installation and construction of any structure or facility or other improvement that is publicly owned outside the jurisdiction of the agency, if the legislative body of the agency determines all of the following:

(i) That the structure, facility, or other improvement is of benefit to the project area.

(ii) That no other reasonable means of financing the facilities, structures, or improvements are available to the community.

(iii) That the payment of funds for the acquisition of land or the cost of facilities, structures, or other improvements will assist in the elimination of one or more blight conditions, as identified pursuant to

Section 33492.83, inside the project area, or provide housing for low- or moderate-income persons.

(C) Concurrence of the relevant legislative body shall be demonstrated by the adoption of an ordinance by the community where the structure, facility, or other improvement is to be located that authorizes the redevelopment of the area within its territorial limits by the redevelopment agency for the March Air Force Base Project Area.

(D) All projects authorized by this subdivision shall be within communities that are contiguous to the March Air Force Base Project Area.

(c) Notwithstanding subdivision (a) of Section 33492.15 or any other provision of law, the March Joint Powers Redevelopment Agency shall not be obligated to make any payments required by subdivision (a) of Section 33492.15 to the County of Riverside, the County Free Library Fund, and the County Fire Fund. Instead, the March Joint Powers Redevelopment Agency shall be required to make those payments required under the Cooperative Agreement entered into among the County of Riverside, the March Joint Powers Authority, and the March Joint Powers Redevelopment Agency dated August 20, 1996, as that agreement may be amended from time to time.

SEC. 396. Section 35816 of the Health and Safety Code is amended to read:

35816. (a) The secretary shall adopt regulations applicable to all persons who are in the business of originating residential mortgage loans in this state, including, but not limited to, insurers, mortgage bankers, investment bankers, and credit unions and who are not depository institutions within the meaning of subsection (2) of Section 2802 of Title 12 of the United States Code. The regulations for residential mortgage loans shall impose substantially the same reporting requirements by geographic area and loan product as are imposed by the federal Home Mortgage Disclosure Act of 1975, as amended (12 U.S.C. Sec. 2801 et seq.).

(b) This section does not apply to subsidiaries of depository institutions or subsidiaries of depository institution holding companies that are currently reporting to a federal or state regulatory agency as provided by the Home Mortgage Disclosure Act of 1975, as amended (12 U.S.C. Sec. 2801 et seq.) or are subject to substantially the same reporting requirements by geographic area and loan product pursuant to an act of a federal or state regulatory agency.

SEC. 397. Section 38012 of the Health and Safety Code is amended to read:

38012. The Department of General Services shall review and approve contracts in accordance with Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 398. Section 39941 of the Health and Safety Code is amended to read:

39941. The state board shall establish an advisory group to make recommendations to the state board regarding the design and implementation of the pilot program.

(a) The advisory group shall consist of an even number of members, not to exceed 14, as determined by the boards of the South Coast Air Quality Management District and the Sacramento Metropolitan Air Quality Management District.

(b) The advisory group shall consist of recognized experts in the field of remote sensing and locomotive engine technology, and representatives of citizen community groups, representatives of the South Coast Air Quality Management District, and representatives of the Sacramento Metropolitan Air Quality Management District. The advisory committee may also include representatives of the Union Pacific Railroad and the Burlington Northern Santa Fe Railway.

(c) The advisory group shall be appointed by the South Coast Air Quality Management District and the Sacramento Metropolitan Air Quality Management District. If the Union Pacific Railroad and Burlington Northern Santa Fe Railway choose to participate, 50 percent of the members of the advisory group shall be appointed by the Union Pacific Railroad and Burlington Northern Santa Fe Railway and 50 percent shall be appointed by the South Coast Air Quality Management District and the Sacramento Metropolitan Air Quality Management District.

SEC. 399. Section 40440.2 of the Health and Safety Code is amended to read:

40440.2. In addition to, and notwithstanding the requirements of, Section 39616, all of the following shall be implemented as part of the south coast district's market-based incentive program, the Regional Clean Air Incentives Market, also known as RECLAIM:

(a) (1) On or before July 1, 1998, the south coast district staff shall provide to the south coast district board a progress report based on the annual audits specified in subdivision (c). The progress report shall meet all of the following requirements:

(A) The data in the report for the nitrogen oxides RECLAIM program shall be aggregated by three-digit SIC code and facility emission rate to the extent feasible. The categories of emission rates shall be under 4, 4 to 10, inclusive, 11 to 100, inclusive, and over 100 tons per year.

(B) The data in the report for the sulfur oxides RECLAIM program shall be aggregated by three-digit SIC code only to the extent feasible.

(C) In preparing the report, the south coast district shall publish in an appendix all final data and model outputs, except that it shall keep confidential any facility-specific information that is obtained by either the south coast district, or any independent contractor retained by the south coast district, in the course of preparing the report.

(D) Any publication of the data obtained from facilities by the south coast district shall be in aggregate form only, as specified in this subdivision. The south coast district board shall make the raw data available to the public.

(2) The south coast district board shall receive public comment on the progress report.

(3) The south coast district shall not lower the emission threshold for mandatory participation in the RECLAIM program for nitrogen oxides and sulfur oxides from the threshold that was established on October 15, 1993, until the progress report is completed and a public hearing on the report has been held, unless the south coast district board finds, after a public hearing, that there will be no adverse environmental or economic effects resulting from a lowered emission threshold.

(b) On or before July 1, 1997, an advisory committee shall be selected by the south coast district board. The advisory committee shall serve for a maximum of one year, or until the report required by subdivision (d) is made to the south coast district board, whichever is later. The advisory committee shall be composed of the following members:

(1) One representative from each of the following:

(A) A facility that participates in one or both of the market-based incentive programs and emits more than 100 tons of nitrogen oxides or sulfur oxides annually.

(B) A facility that emits from 11 to 100 tons, inclusive, of nitrogen oxides or sulfur oxides annually.

(C) A facility that emits less than 10 tons of nitrogen oxides or sulfur oxides annually.

(2) One representative from the south coast district staff, one representative from the state board, and one representative from the Environmental Protection Agency.

(3) One representative from a financial institution.

(4) One representative from an academic institution.

(5) One representative from a market commodities or securities trading institution.

(6) One representative from an economic analysis research institution.

(7) Two representatives from environmental organizations.

(8) One representative from each of the investor-owned energy utilities serving the south coast district, and one representative from a municipal energy utility representing the City of Los Angeles.

(9) One representative from a technical contractor specializing in installation and certification of emissions monitoring equipment.

(10) One representative from an oil company.

(11) One representative from the aerospace industry.

(c) In addition to any other information required by subdivision (e) of Section 39616, the south coast district shall annually perform a detailed assessment of the program audit findings specified in paragraph (1) of subdivision (b) of south coast district Rule 2015, as adopted October 15, 1993.

(d) The advisory committee shall conduct a peer review of the progress report to the south coast district board required pursuant to subdivision (a). The advisory committee shall present its peer review conclusions to the south coast district board as an independent report concurrently with the staff progress report. The advisory committee may request staff support from the south coast district in conducting its peer review and preparing the report.

SEC. 400. Section 40717.6 of the Health and Safety Code is amended to read:

40717.6. (a) No district or other local or regional agency shall impose any requirement on any private entity, including any requirement in any congestion management program adopted pursuant to Section 65089 of the Government Code, except as specifically provided in Section 65089.1 of the Government Code, to reduce shopping trips or to require the imposition of parking charges or the elimination of existing parking spaces at retail facilities.

(b) Notwithstanding subdivision (a), nothing in this section shall be construed to prevent a city or county from doing any of the following:

(1) Requiring retailers to make available to customers information concerning alternative transportation systems serving the retail site.

(2) Imposing requirements on new development as a condition of development for the purpose of mitigation pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) Enacting requirements on retailers as a result of a voter imposed growth management initiative.

(c) Nothing in this section shall be construed as a limitation on the land use authority of cities and counties.

SEC. 401. Section 42840 of the Health and Safety Code is amended to read:

42840. (a) Participants shall utilize the reporting procedures described in this section to establish a greenhouse gas emissions baseline. Participants shall report their certified emissions for the most recent year for which they have complete energy use and fuel consumption data as specified in this chapter. Participants that have complete energy use or fuel consumption data for earlier years that can be certified may establish their baseline as any year beginning on or after January 1, 1990. After establishing baseline emissions, participants shall report their certified emissions results in each subsequent year in order to show changes in emissions levels with respect to their baseline year. Participants may report annual emission results without establishing an emissions baseline. Participants shall also report using industry-specific metrics once the registry adopts an industry-specific metric for the industry in question.

(b) (1) Participants shall report direct emissions and indirect emissions separately. Direct emissions are those emissions from applicable sources that are under management control of a participating entity, including onsite combustion, fugitive noncombustion emissions, and vehicles owned and operated by the participant. Indirect emissions that are required to be reported by participants are those emissions embodied in net electricity and steam imports, including offsite steam generation and district heating and cooling. Participants are encouraged, but are not required, to report other indirect emissions based on guidance that is adopted by the registry.

(2) On or after January 1, 2004, the registry board, in coordination with the State Energy Resources Conservation and Development Commission, may revise the scope of indirect emission source types that are required to be reported by participants specified in paragraph (1) after a public workshop and review process conducted by the registry if all of the following requirements have been met.

(A) The State Energy Resources Conservation and Development Commission has approved that revision at a public hearing following a public workshop.

(B) Prior to approving that proposed revision, the commission determines all of the following:

(i) A reasonable and generally accepted methodology exists that will enable participants to accurately estimate and report the emissions for the indirect source type in question.

(ii) The proposed revision will not create an unreasonable reporting burden on the participants.

(iii) The proposed revision is necessary to achieve the purposes listed in Section 42810.

(C) The registry, at any time it acts to revise the scope of indirect emission source types that are required to be reported by participants,

establishes a timeframe for the phasein of the revised scope so that participants shall have at least four months before the start of the next annual reporting cycle that incorporates the revised scope.

(3) In cases of joint ownership, emissions are reported by the managing entity, unless the owners decide to report emissions on a pro rata basis.

(4) Participants shall not be required to report emissions of any greenhouse gas that is de minimis in quantity, when summed up across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry a definition of de minimis emissions that reasonably accounts for differences in the size, activities, and sources of direct and indirect baseline emissions of participants, and is consistent with the goals and intent of subdivision (f) of Section 42801.

(c) (1) All participants shall report direct and indirect carbon dioxide (CO_2) emissions that are material to their operations.

(2) The registry shall also encourage participants to monitor and report emissions of the following gases:

(A) Hydrofluorocarbons (HFCs).

(B) Methane (CH_4).

(C) Nitrous Oxide (N_2O).

(D) Perfluorocarbons (PFCs).

(E) Sulfur hexafluoride (SF_6).

(3) The report of information specified in paragraph (2) is optional for three years after a participant joins the registry. After participating in the registry for a total of three years, participants shall report emissions required by both paragraphs (1) and (2).

(4) Emissions of all gases under this subdivision shall be reported in mass units.

(d) The basic unit of participation in the registry shall be an entity in its entirety such as a corporation or other legally constituted body, any city or county, and each state government agency. The registry shall not record emissions baselines and reductions for individual facilities or projects, except to the extent they are included in an entity's emissions reporting.

(1) Corporations may report emissions baselines and annual emissions results from subsidiaries if the parent corporation is clearly defined.

(2) Participants shall report emissions results from all of their applicable sources in the state when they initially register.

(3) Participants may, and are encouraged to, at any time, register emissions from all applicable sources based in the United States, so long as this reporting meets all the other requirements established by this chapter. Those participants with emissions in other states that report

California emissions only may not be able to receive equal consideration for their emissions records in future national or international regulatory regimes relating to greenhouse gas emissions. In addition, participants with operations outside of the United States are encouraged to register their total worldwide emissions baselines and annual emissions results. Within three years, the registry shall review and report to the Legislature with a recommendation on whether the registry should require, rather than encourage, participants to report all of their greenhouse gas emissions in the United States, not just California emissions.

(4) To ensure that reported emissions reflect actual emissions, participants that outsource production or services shall report emissions associated with the outsourced activity, and remove these emissions from their emissions baseline. The subcontracted entity, if it voluntarily chooses to participate in the registry shall report emissions associated with the outsourced activities it has taken over. Participants shall attest at least once each year that the entity has not outsourced any emissions, or that if it has, that all emissions associated with the outsourced activity have been reported and subtracted from the entity's baseline emissions.

(5) To prevent changes in vertical integration within corporations from leading to apparent emissions reductions when in fact no reductions have occurred, the registry shall treat mergers, acquisitions, and divestitures as follows:

(A) The emissions baselines of any merged or acquired entity shall be added together, and the registry shall treat the resulting entity as if it had been one corporation from the beginning.

(B) In divestitures, the emissions baselines of the affected corporations shall be split, with the effect that the registry shall treat them as if they had been separate corporations from the beginning. If the divested corporation is purchased by another firm, the registry shall treat that purchase as a merger with the purchasing corporation. If the divested corporation remains a separate entity after the divestiture, its registry baseline shall reflect the emissions associated with the entity's operations before the divestiture. Corporations that divest operations may allocate certified emissions results achieved prior to the divestiture among the divesting and the divested entities, and the registry shall adjust their baselines accordingly.

(C) Any adjustments for changes in vertical integration shall be verified in the annual emissions certifications required for recordation of emissions results.

(6) If a participant changes from statewide to national reporting under this program, changes to its baseline will be treated in a similar manner as changes in vertical integration as described in paragraph (5).

(7) To ensure that reported emissions accurately reflect shifts in operations to or from other states, the registry shall adopt, in consultation with the State Energy Resources Conservation and Development Commission, at a public meeting and following at least one public workshop, reporting procedures for participants that choose to report greenhouse emissions on a statewide basis that require participants to show both of the following:

(A) Changes in a participant's operations, such as a facility startup or shutdown, that result in a significant and long-term shift of greenhouse gas emissions from California to other states or from other states to California.

(B) The corresponding change in the participant's baseline.

SEC. 402. Section 43200.1 of the Health and Safety Code is amended to read:

43200.1. (a) The Legislature finds and declares that since 1998, the state board has imposed smog index label specifications on new passenger cars and light-duty trucks that are sold and registered in the state to inform consumers about emissions of air pollutants from the use of new vehicles.

(b) (1) (A) The state board, not later than July 1, 2007, shall revise the regulations adopted pursuant to Section 43200 to rename the existing label required by those regulations, and to require the renamed label to include, for model year 2009 and subsequent model year motor vehicles, information on the emissions of global warming gases from motor vehicles for the same model year.

(B) This subdivision applies to, at a minimum, all passenger cars and light-duty trucks with a gross vehicle weight of 8,500 pounds or less, and to all motor vehicles subject to regulation pursuant to Section 43018.5.

(C) Emissions of global warming gases shall include emissions, as determined by the state board, from vehicle operation and upstream emissions.

(2) The label shall include all of the following:

(A) A smog index that contains quantitative information presented in a continuous, easy-to-read scale, unless the state board determines, after at least one public workshop, that an alternative graphical representation will more effectively convey the information to consumers, and that compares the emissions from the vehicle with the average projected emissions from all vehicles of the same model year sold in the state for which a label is required. For reference purposes, the index shall also identify the emissions from the vehicle model of that same model year that has the lowest smog-forming emissions.

(B) A global warming index that contains quantitative information presented in a continuous, easy-to-read scale, unless the state board determines, after at least one public workshop, that an alternative graphical representation will more effectively convey the information to consumers, and that compares the emissions of global warming gases from the vehicle with the average projected emissions of global warming gases from all vehicles of the same model year sold in the state for which a label is required. For reference purposes, the index shall also identify the emissions of global warming gases from the vehicle model of that same model year that has the lowest emissions of global warming gases.

(C) A brief explanation, prepared by the state board, of the indices required by this section, including the identification of motor vehicle usage as a primary cause of global warming, and how emissions of those gases from motor vehicles may be reduced.

(D) The use of at least one color ink, as determined by the state board, in addition to black.

(c) In order to ensure that the label is useful and informative to consumers, the state board shall, to the extent feasible within its existing resources, do both of the following in designing the label:

(1) Seek input from automotive consumers, graphic design professionals, and persons with expertise in environmental labeling.

(2) Consider other relevant label formats consistent with paragraph (2) of subdivision (b).

(d) The indices included in the label pursuant to paragraph (2) of subdivision (b) shall be updated as determined necessary by the state board to ensure that the differences in emissions among vehicles are readily apparent to the consumer.

(e) The state board, in consultation with other agencies as appropriate, may recommend to the Legislature additional sources of air pollution that emit significant amounts of global warming gases for which the disclosure of information regarding those emissions would be an effective means of educating the public about the sources of global warming and its impacts.

(f) The state board shall, as it determines appropriate and to the extent feasible within its existing resources, incorporate information from the label into existing programs designed to educate motor vehicle consumers about emissions of global warming gases and other air pollutants.

(g) The state board may accept donations or grants of funds from any person for the purposes of the program established pursuant to this section, and shall deposit amounts received from donations or grants into the Air Pollution Control Fund. The source of any funds received pursuant to this section shall be disclosed at all public hearings and workshops to implement this section. Donations, grants, or other

commitments of money to the fund may be dedicated for specific purposes consistent with the goals of this section.

(h) For the purposes of this section, the following definitions apply:

(1) "Global warming gases" has the same meaning as greenhouse gases given in subdivision (h) of Section 42801.1.

(2) "Upstream emissions" means emissions of global warming gases that occur during the extraction, refining, transport, and local distribution of motor vehicle fuels as determined by the state board.

SEC. 403. Section 43812 of the Health and Safety Code is amended to read:

43812. For the purposes of this article, the following definitions apply:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Energy-efficient vehicle" means either of the following:

(1) A vehicle that meets California's super ultra-low emission vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations.

(2) A hybrid vehicle or an alternative fuel vehicle that meets California's advanced technology partial zero-emission vehicle (AT PZEV) standard for criteria pollutant emissions.

(d) "Local agency" means any governmental subdivision, district, public and quasi-public corporation, joint powers agency, public agency or public service corporation, authority, agency, board, commission, town, city, county, city and county, fire district, special district, school district, public utility, community college, or municipal corporation, whether incorporated or not or whether chartered or not, or any other public entity.

(e) "State agency" means any department, division, board, bureau, commission, or other authority of the State of California, the University of California, or the California State University.

SEC. 404. Section 43867 of the Health and Safety Code is amended to read:

43867. For the purposes of this article, the following terms have the following meanings:

(a) "Alternative fuel" means a nonpetroleum fuel, including electricity, ethanol, biodiesel, hydrogen, methanol, or natural gas that, when used in vehicles, has been demonstrated, to the satisfaction of the state board, to have the ability to meet applicable vehicular emission standards. For the purpose of this section, alternative fuel may also include petroleum fuel blended with nonpetroleum constituents, such as E85 or B20.

(b) "Full fuel-cycle assessment" means evaluating and comparing the full environmental and health impacts of each step in the life cycle of a fuel, including, but not limited to, all of the following:

(1) Feedstock extraction, transport, and storage.

(2) Fuel production, distribution, transport, and storage.

(3) Vehicle operation, including refueling, combustion or conversion, and evaporation.

SEC. 405. Section 44037 of the Health and Safety Code is amended to read:

44037. (a) The department shall compile and maintain records, using the sampling methodology necessary to ensure their scientific validity and reliability, of tests and repairs performed by qualified smog check technicians at licensed smog check stations pursuant to this chapter on all of the following information:

(1) The motor vehicle identification information and the test data collected at the station.

(2) The number of maintenance and repair operations performed on motor vehicles that fail to pass a test conducted pursuant to this chapter.

(3) The correlation between maintenance and repairs recommended by the department pursuant to Section 44016 and maintenance and repairs performed.

(4) The charges assessed for the service and repairs and the correlation between the amount charged for repairs and the amount of emission reduction.

(5) Data received and compiled through the use of the centralized computer database and computer network to be established pursuant to Section 44037.1, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions.

(6) The frequency of specific smog check stations issuing a passing certificate for vehicles that have failed a previous inspection at other smog check stations within the preceding 30 days.

(b) A written summary of the information specified in subdivision (a) shall be available annually for the technicians and smog check stations in each district and to the public upon request.

SEC. 406. Section 44090 of the Health and Safety Code is amended to read:

44090. For purposes of this article, the following terms have the following meanings:

(a) "Account" means the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 44091.

(b) "High polluter" means a high-emission motor vehicle, including, but not limited to, a gross polluter.

SEC. 407. Section 44366 of the Health and Safety Code is amended to read:

44366. In order to verify the accuracy of any information submitted by facilities pursuant to this part, a district or the state board may proceed in accordance with Section 41510.

SEC. 408. Section 50660.5 of the Health and Safety Code is amended to read:

50660.5. (a) It is the intent of the Legislature to encourage local governments to assist residents to repair and rebuild housing in a cost-efficient and expeditious manner following a disaster. To this end, the Legislature recognizes that local governments may enact ordinances following disasters to expedite the permit process. These ordinances may include, but not be limited to, ordinances waiving fees and streamlining requirements affecting disaster-related repairs.

(b) The Legislature finds and declares that homeowners and owners of rental housing who apply for assistance pursuant to Sections 50662.7, 50671.5, and 50671.6 may be unable to utilize expedited procedures or liberalized standards because loan approval and repair may occur after the expiration of the local ordinance. It is, therefore, the intent of the Legislature to encourage local governments to extend the application of these local ordinances to homeowners and owners of rental housing who are utilizing disaster assistance programs, including the respective loan programs authorized by Sections 50662.7, 50671.5, and 50671.6, so that housing can be repaired or rebuilt in a cost-efficient and expeditious manner.

SEC. 409. Section 50896 of the Health and Safety Code is amended to read:

50896. The Legislature hereby finds and declares all of the following:

(a) The Cranston-Gonzalez National Affordable Housing Act of 1990 (P.L. 101-625) was enacted to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American.

(b) Title II of that law establishes the HOME Investment Partnership Act, otherwise referred to as HOME, to do all of the following:

(1) Expand the supply of decent, safe, and affordable housing with primary attention to low-income rental housing.

(2) Strengthen the abilities of states and local governments to design and implement affordable housing strategies.

(3) Provide both federal financial and technical assistance to support state and local efforts.

(c) HOME, as administered by the United States Department of Housing and Urban Development, allocates funds by formula among

the eligible states and units of local government that shall use HOME funds to carry out multiyear housing strategies through acquisition, rehabilitation, and new construction of housing and tenant-based rental assistance.

(d) It is the intent of the Legislature in enacting this chapter to complement federal law and regulations by prescribing more precisely state priorities and procedures for expending the state's allocation under the HOME program, providing technical assistance and coordination of HOME activities within the State of California, and maximizing and fully utilizing all financial resources for housing.

SEC. 410. Section 50896.1 of the Health and Safety Code is amended to read:

50896.1. The Department of Housing and Community Development shall be the state agency responsible for both of the following:

(a) The administration of the state's allocation of HOME funds in accordance with the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, federal regulations, and this chapter.

(b) The provision of technical assistance and coordination of the HOME activities as may be requested by local governments or community housing development organizations receiving allocations of HOME funds.

SEC. 411. Section 50896.2 of the Health and Safety Code is amended to read:

50896.2. As used in this chapter:

(a) "HOME" means the HOME Investment Partnership Act as enacted in Title II of the Cranston-Gonzalez National Affordable Housing Act.

(b) "Local agency," as defined in Section 50077, shall also mean "units of local government," as defined in Section 92.2, Subpart A of Part 92 of Subtitle A of Title 24 of the Code of Federal Regulations.

(c) "Community housing development organizations" means the nonprofit organizations described in Section 92.300, Subpart G of Part 92 of Subtitle A of Title 24 of the Code of Federal Regulations.

(d) "Housing sponsor" shall have the same meaning as defined in Section 50074.

SEC. 412. Section 51504 of the Health and Safety Code is amended to read:

51504. (a) The agency shall administer a downpayment assistance program that includes, but is not limited to, all of the following:

(1) Downpayment assistance shall include, but not be limited to, a deferred-payment, low-interest, junior mortgage loan to reduce the principal and interest payments and make financing affordable to first-time low- and moderate-income home buyers.

(2) (A) Except as provided in subparagraph (B) or (C), the amount of downpayment assistance shall not exceed 3 percent of the home sale price.

(B) The amount of downpayment assistance for a new home within an infill opportunity zone, as defined in Section 65088.1 of the Government Code, a transit village development district, as defined in Section 65460.4 of the Government Code, or a transit-oriented development specific plan area, as defined in paragraph (6), shall not exceed 5 percent of the purchase price or the appraised value, whichever amount is less, of the new home. The borrower of the downpayment assistance shall provide the lender originating the loan with a certification from the local government agency administering the infill opportunity zone, the transit village development district, or the transit-oriented development specific plan area that states that the property involved in the loan transaction is within the boundaries of either the infill opportunity zone, the transit village development district, or the transit-oriented development specific plan area.

(C) Notwithstanding paragraph (1), the agency may, but is not required to, provide downpayment assistance that does not exceed 6 percent of the home sale price to first-time low-income home buyers who, as documented to the agency by a nonprofit organization that is certified and funded to provide home ownership counseling by a federally funded national nonprofit corporation, are purchasing a residence in a community revitalization area targeted by the nonprofit organization as a neighborhood in need of economic stimulation, renovation, and rehabilitation through efforts that include increased home ownership opportunities for low-income families. The agency shall not use more than six million dollars ($6,000,000) in funds made available pursuant to Section 53533 for the purposes of this paragraph.

(3) The amount of the downpayment assistance shall be secured by a deed of trust in a junior position to the primary financing provided. The term of the loan for the downpayment assistance shall not exceed the term of the primary loan.

(4) The amount of the downpayment assistance shall be due and payable at the end of the term or upon sale of or refinancing of the home. The borrower may refinance the mortgages on the home provided that the principal and accrued interest on the junior mortgage loan securing the downpayment assistance are repaid in full. All repayments shall be made to the agency to be reallocated for the purposes of this chapter.

(5) The agency may use up to 5 percent of the funds appropriated by the Legislature for purposes of this chapter to administer this program.

(6) For the purposes of this section, "transit-oriented development specific plan area" means a specific plan that meets the criteria set forth

in Section 65451 of the Government Code, is centered around a rail or light-rail station, ferry terminal, bus hub, or bus transfer station, and is intended to achieve a higher density use of land that facilitates use of the transit station.

(b) In addition to the downpayment assistance program authorized by subdivision (a), the agency may, at its discretion, use not more than seventy-five million dollars ($75,000,000) of the funds available pursuant to this chapter to finance the acquisition of land and the construction and development of for-sale residential structures, through short-term loans pursuant to its authority pursuant to Section 51100. However, the agency shall make downpayment assistance provided pursuant to paragraph (1), subparagraphs (A) and (B) of paragraph (2), and paragraphs (3) to (5), inclusive, of subdivision (a) the priority use for these funds. A loan made pursuant to this section is not subject to Article 4 (commencing with Section 51175) of Chapter 5.

SEC. 413. Section 52020 of the Health and Safety Code is amended to read:

52020. (a) For purposes of a home financing program authorized by this part, a city or county has the following powers and duties:

(1) To acquire, contract, and enter into advance commitments to acquire home mortgages made or owned by lending institutions at the purchase prices and upon the other terms and conditions as shall be determined by the city or county or other person as it may designate as its agent, to make and execute contracts with lending institutions for the origination and servicing of home mortgages, and to pay the reasonable value of services rendered under those contracts. Prior to executing any contract with a lending institution, a city or county shall adopt regulations establishing criteria for qualification of lending institutions eligible to originate and service home mortgages under home financing programs authorized by this part and shall, with respect to each home financing program, permit each qualified lending institution that transacts business in the city or county the opportunity to participate in the program on an equitable basis with other participating lending institutions. Two or more cities in the same county, a county and one or more cities within the county, or two or more adjacent counties and any number of cities within those counties may enter into an agreement to join or cooperate with one another in the exercise jointly, or otherwise, of any or all of their powers for the purpose of financing home mortgages pursuant to this part with respect to property within the boundaries of any one or more of the entities.

(2) To make loans to lending institutions under terms and conditions that, in addition to other provisions as determined by the city or county, require the lending institutions to use all of the net proceeds thereof,

directly or indirectly, for the making of home mortgages in an aggregate principal amount equal to the amount of the net proceeds.

(3) To establish, by rules or regulations, in resolutions relating to any issuance of bonds, or in any documents relating to the issuance, standards and requirements applicable to the purchase of home mortgages or the making of loans to lending institutions as the city or county deems necessary or desirable to effectuate the purposes of this part, which may include without limitation any of the following:

(A) The time within which lending institutions are required to make commitments and disbursements for home mortgages.

(B) The location and other characteristics of homes to be financed by home mortgages.

(C) The terms and conditions of home mortgages to be acquired.

(D) The amounts and types of any insurance coverage required on homes, home mortgages, and bonds.

(E) The representations and warranties of lending institutions confirming compliance with the standards and requirements.

(F) Restrictions as to interest rate and other terms of home mortgages or the return realized therefrom by lending institutions.

(G) The type and amount of collateral security to be provided to assure repayment of any loans from the city or county and to assure repayment of bonds.

(H) Any other matters related to the purchase of home mortgages or the making of loans to lending institutions as deemed relevant by the city or county.

(4) To require from each lending institution from which home mortgages are purchased or to which loans are made the submission of evidence satisfactory to the city or county of the ability and intention of the lending institution to make home mortgages, and the submission, within the time specified by the city or county for making disbursements for home mortgages, of evidence satisfactory to the city or county of the making of home mortgages and of compliance with any standards and requirements established by it.

(b) Each city or county that finances housing pursuant to this part shall designate a person or entity to administer the program.

(c) Each city or county that finances housing pursuant to this part shall adopt regulations establishing criteria for qualification of persons and families, which may differ among different cities or counties to reflect varying economic and housing conditions. In developing these criteria, factors similar to the following shall be taken into consideration:

(1) The amount of the income of the person or family that is available for housing needs.

(2) The size of the household.

(3) The costs and condition of available housing.

(4) The eligibility of the persons or families for federal housing assistance of any type.

(d) (1) Criteria for qualification of persons and families pursuant to this section shall include a maximum household income, which maximum shall not exceed the following:

(A) One hundred twenty percent of the median household income for mortgages made for improving a home or for homes where the purchaser will be the first occupant. Upon the resale of a home for which financing was originally provided under this paragraph, the maximum income of persons and families shall also be 120 percent of the median household income.

(B) One hundred twenty percent of the median household income for mortgages where the purchaser will not be the first occupant. However, the city or county shall ensure that no less than 50 percent of the funds allocated for home mortgages where the purchaser will not be the first occupant shall be for households whose income does not exceed 80 percent of that median household income. However, the legislative body of the city or county may, by resolution, increase this income limitation to 90 percent of median household income if the legislative body finds that there are insufficient numbers of creditworthy persons whose income does not exceed 80 percent of median household income. The resolution is final and conclusive as to the findings required by this paragraph.

(C) One hundred fifty percent of the median household income for mortgages made for improving a home or for homes where the purchaser will be the first occupant in any city, the entire area of which, or in any county in which a portion of the county, is designated by the United States Department of Commerce, Economic Development Administration as a special impact area within a Title IV redevelopment area, pursuant to Section 401 of the federal Public Works and Economic Development Act of 1965, as amended, and that is eligible for Urban Development Action Grant funds under the current distress standards established for cities and counties by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 119 of the Housing and Community Development Act of 1974, if the homes purchased or improved are situated within the boundaries of a special impact area as defined by the Economic Development Administration, and that designation is in effect on the date of sale of revenue bonds issued under this part.

(2) As used in this subdivision, "median household income" means the highest of (A) statewide median household income, (B) countywide median household income, or (C) median family income for an area, as determined by the United States Department of Housing and Urban

Development, with respect to either a standard metropolitan statistical area or an area outside of a standard metropolitan statistical area.

(e) (1) Subdivision (d) shall not apply with respect to home finance programs funded with amounts made available by the issuance of revenue bonds that, for federal tax law purposes, are bonds refunding qualified mortgage bonds issued before January 1, 1987, and that satisfy the requirements of subdivision (a) of Section 1313 of the federal Tax Reform Act of 1986. With respect to these programs, the maximum household income for qualification of persons and families pursuant to this section shall be the following:

(A) One hundred fifty percent of the median household income for mortgages made for improving a home or for homes where the purchaser will be the first occupant. Upon the resale of a home for which financing was originally provided under this paragraph, the maximum income of persons and families shall also be 150 percent of the median household income. For purposes of this paragraph, a mortgage made for improving a home includes a home improvement loan as defined in Section 143 of Title 26 of the United States Code.

(B) One hundred twenty percent of the median household income where the purchaser will not be the first occupant. However, the city or county shall ensure that no less than 20 percent of the funds allocated for home mortgages where the purchaser will not be the first occupant shall be for households whose income does not exceed 110 percent of that median household income. However, the legislative body of the city or county may, by resolution, increase this income limitation to 120 percent of the median household income if the legislative body finds that there are insufficient numbers of creditworthy persons whose income does not exceed 110 percent of the median household income. The resolution is final and conclusive as to the findings required by this paragraph. However, the finding shall not be made by the legislative body before six months from the date mortgages were first made under the program and only if participating lenders have entered into an agreement with the city, county, or city and county that lenders will advertise at least monthly the availability of funds and will forfeit one-quarter of their origination fees if they are unable to use 20 percent of the funds to make mortgages to households whose income does not exceed 110 percent of the median income.

(C) One hundred fifty percent of the median household income for mortgages made for improving a home or for homes where the purchaser will be the first occupant in any city, the entire area of which, or in any county in which a portion of the county, is designated by the United States Department of Commerce, Economic Development Administration as a special impact area within a Title IV redevelopment area, pursuant

to Section 401 of the federal Public Works and Economic Development Act of 1965, as amended, and that is eligible for Urban Development Action Grant funds under the current distress standards established for cities and counties by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 119 of the Housing and Community Development Act of 1974, if the homes purchased or improved are situated within the boundaries of a special impact area as defined by the Economic Development Administration, and that designation is in effect on the date of sale of revenue bonds issued under this part.

(2) As used in this subdivision, "median household income" means the highest of (A) statewide median household income, (B) countywide median household income, or (C) median family income for an area, as determined by the United States Department of Housing and Urban Development, with respect to either a standard metropolitan statistical area or an area outside of a standard metropolitan statistical area.

(f) Each city or county that finances housing pursuant to this part shall require each mortgagor under the program to certify his or her intention to occupy the home for a minimum of two years after receiving a home mortgage, with appropriate exceptions in hardship cases determined by the city or county.

(g) Each city and county may do any and all things necessary to carry out the purposes and exercise the powers expressly granted by this part.

SEC. 414. Section 53533 of the Health and Safety Code is amended to read:

53533. (a) Moneys deposited in the fund from the sale of bonds pursuant to this part shall be allocated for expenditure in accordance with the following schedule:

(1) Nine hundred ten million dollars ($910,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, except for the following:

(A) Fifty million dollars ($50,000,000) shall be transferred to the Preservation Opportunity Fund and, notwithstanding Section 13340 of the Government Code, is continuously appropriated without regard to fiscal years for the preservation of at-risk housing pursuant to Chapter 5 (commencing with Section 50600) of Part 2.

(B) Twenty million dollars ($20,000,000) shall be used for nonresidential space for supportive services, including, but not limited to, job training, health services, and child care within, or immediately proximate to, projects to be funded under the Multifamily Housing Program. This funding shall be in addition to any applicable per-unit or project loan limits and may be in the form of a grant. Service providers

shall ensure that services are available to project residents on a priority basis over the general public.

(C) Twenty-five million dollars ($25,000,000) shall be used for matching grants to local housing trust funds pursuant to Section 50843.

(D) Fifteen million dollars ($15,000,000) shall be used for student housing through the Multifamily Housing Program, subject to the following provisions:

(i) The department shall give first priority for projects on land owned by a University of California or California State University campus. Second priority shall be given to projects located within one mile of a University of California or California State University campus that is suffering from a severe shortage of housing and limited availability of developable land as determined by the department. Those determinations shall be set forth in the Notice of Funding Availability and shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(ii) All funds shall be matched on a one-to-one basis from private sources or by the University of California or California State University. For the purposes of this subparagraph, "University of California" includes the Hastings College of the Law.

(iii) Occupancy for the units shall be restricted to students enrolled on a full-time basis in the University of California or California State University.

(iv) Income eligibility pursuant to the Multifamily Housing Program shall be established by verification of the combined income of the student and his or her family.

(v) Any funds not used for this purpose within 24 months of the date that the funds are made available shall be awarded pursuant to subdivision (a) for the Downtown Rebound Program as set forth in paragraph (1) of subdivision (c) of Section 50898.2.

(E) Any funds not encumbered for the purposes set forth in this paragraph, except subparagraph (D), within 30 months of availability shall revert to the Housing Rehabilitation Loan Fund created by Section 50661 for general use in the Multifamily Housing Program.

(2) One hundred ninety-five million dollars ($195,000,000) shall be transferred to the Emergency Housing and Assistance Fund to be expended for the Emergency Housing and Assistance Program authorized by Chapter 11.5 (commencing with Section 50800) of Part 2.

(3) One hundred ninety-five million dollars ($195,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for supportive housing projects under the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2,

to serve individuals and households moving from emergency shelters or transitional housing or those at risk of homelessness.

(4) Two hundred million dollars ($200,000,000) shall be transferred to the Joe Serna, Jr. Farmworker Housing Grant Fund to be expended for farmworker housing programs authorized by Chapter 3.2 (commencing with Section 50517.5) of Part 2, except for the following:

(A) Twenty-five million dollars ($25,000,000) shall be used for projects that serve migratory agricultural workers as defined in subdivision (i) of Section 7602 of Title 25 of the California Code of Regulations. If, after July 1, 2003, funds remain after the approval of all feasible applications, the department shall be deemed an eligible recipient for the purposes of reconstructing migrant centers operated through the Office of Migrant Services pursuant to Chapter 8.5 (commencing with Section 50710) that would otherwise be scheduled for closure due to health or safety considerations or are in need of significant repairs to ensure the health and safety of the residents. Of the dollars allocated by this subparagraph, the department shall receive fifteen million dollars ($15,000,000) for these purposes subject to the following conditions and requirements:

(i) The amount available to the department as a recipient shall be limited to ten million seven hundred thousand dollars ($10,700,000) prior to September 1, 2006. The department may receive up to four million three hundred thousand dollars ($4,300,000) in additional funds after that date and prior to July 1, 2007, to the extent that unencumbered funds are available.

(ii) The department shall make at least eight million one hundred fifty-nine thousand dollars ($8,159,000) available for flexible loans and grants for projects that serve migratory agricultural workers pursuant to subdivision (a) of Section 50517.10. These funds shall be available for encumbrance until September 1, 2006.

(iii) Any funds allocated by this subparagraph remaining unencumbered on July 1, 2007, shall revert for general use in the Joe Serna, Jr. Farmworker Housing Grant Program.

(B) Twenty million dollars ($20,000,000) shall be used for developments that also provide health services to the residents. Recipients of these funds shall be required to provide ongoing monitoring of funded developments to ensure compliance with the requirements of the Joe Serna, Jr. Farmworker Housing Grant Program. Projects receiving funds through this allocation shall be ineligible for funding through the Joe Serna, Jr. Farmworker Housing Grant Program.

(C) Except as provided in subparagraph (A) funds not encumbered for the purposes set forth in this paragraph within 30 months of

availability shall revert for general use in the Joe Serna, Jr. Farmworker Housing Grant Program.

(5) Two hundred five million dollars ($205,000,000) shall be transferred to the Self-Help Housing Fund. Notwithstanding Section 13340 of the Government Code and Section 50697.1 of this code, these funds are hereby continuously appropriated without regard to fiscal years to the department to be expended for the purposes of the CalHome Program authorized by Chapter 6 (commencing with Section 50650) of Part 2, except for the following:

(A) Seventy-five million dollars ($75,000,000) shall be transferred to the Building Equity and Growth in Neighborhoods Fund to be used for the Building Equity and Growth in Neighborhoods (BEGIN) Program pursuant to Chapter 4.5 (commencing with Section 50860) of Part 1.

(B) Five million dollars ($5,000,000) shall be used to provide grants to cities, counties, cities and counties, and nonprofit organizations to provide grants for lower income tenants with disabilities for the purpose of making exterior modifications to rental housing in order to make that housing accessible to persons with disabilities. For the purposes of this subparagraph, "exterior modifications" includes modifications that are made to entryways or to common areas of the structure or property. The program provided for under this subparagraph shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(C) Ten million dollars ($10,000,000) shall be expended for construction management under the California Self-Help Housing Program pursuant to subdivision (b) of Section 50696.

(D) Any funds not encumbered for the purposes set forth in this paragraph within 30 months of availability shall revert for general use in the CalHome Program.

(6) Five million dollars ($5,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for capital expenditures in support of local code enforcement and compliance programs. This allocation shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code. If the moneys allocated pursuant to this paragraph are not expended within three years after being transferred, the department may, in its discretion, transfer the moneys to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program.

(7) Two hundred ninety million dollars ($290,000,000) shall be transferred to the Self-Help Housing Fund. Notwithstanding Section 50697.1, these funds are hereby continuously appropriated to the agency to be expended for the purposes of the California Homebuyer's

Downpayment Assistance Program authorized by Chapter 11 (commencing with Section 51500) of Part 3, except for the following:

(A) Fifty million dollars ($50,000,000) shall be transferred to the School Facilities Fee Assistance Fund as provided by subdivision (a) of Section 51453 to be used for the Homebuyer Down Payment Assistance Program of 2002 established by Section 51451.5.

(B) Eighty-five million dollars ($85,000,000) shall be transferred to the California Housing Loan Insurance Fund to be used for purposes of Part 4 (commencing with Section 51600). The agency may transfer these moneys as often as quarterly in amounts that shall not exceed the dollar amount of new insurance written by the agency during the preceding quarter for loans for the purchase of homes made to owner-occupant borrowers with incomes not exceeding 120 percent of the area median income, divided by the risk-to-capital ratio required for the maintenance of satisfactory credit ratings from nationally recognized credit rating services.

(C) (i) Twelve million five hundred thousand dollars ($12,500,000) shall be reserved for downpayment assistance to low-income first-time home buyers who, as documented to the agency by a nonprofit organization certified and funded to provide home ownership counseling by a federally funded national nonprofit corporation, are purchasing a residence in a community revitalization area targeted by the nonprofit organization and who has received home ownership counseling from the nonprofit organization. Community revitalization areas shall be limited to targeted neighborhoods identified by qualified nonprofit organizations as those neighborhoods in need of economic stimulation, renovation, and rehabilitation through efforts that include increased home ownership opportunities for low-income families.

(ii) Effective January 1, 2004, 50 percent of the funds available pursuant to clause (i) shall be available for downpayment assistance in an amount not to exceed 6 percent of the home sale price.

(iii) After 12 months of availability, if more than 50 percent of the funds set aside pursuant to clause (ii) have been encumbered, the agency shall discontinue that program and make all remaining funds available for downpayment assistance pursuant to clause (i). If, however, less than 50 percent of the funds allocated pursuant to clause (ii) are encumbered after that 12-month period, the agency may, at its sole discretion, either make all remaining funds provided pursuant to clause (i) available for the purpose of clause (ii), or may continue to implement clause (ii) until all of the funds allocated for that purpose as of January 1, 2004, have been encumbered.

(D) Twenty-five million dollars ($25,000,000) shall be used for downpayment assistance pursuant to Section 51505. After 18 months of

availability, if the agency determines that the funds set aside pursuant to this section will not be utilized for purposes of Section 51505, these funds shall be available for the general use of the agency for the purposes of the California Homebuyer's Downpayment Assistance Program, but may also continue to be available for the purposes of Section 51505.

(E) Funds not utilized for the purposes set forth in subparagraphs (B) and (C) within 30 months shall revert for general use in the California Homebuyer's Downpayment Assistance Program.

(8) One hundred million dollars ($100,000,000) shall be transferred to the Jobs Housing Improvement Account to be expended as capital grants to local governments for increasing housing pursuant to enabling legislation. If the enabling legislation fails to become law in the 2001–02 Regular Session of the Legislature, the specified allocation for this program shall be void and the funds shall revert for general use in the Multifamily Housing Program as specified in paragraph (1) of subdivision (a).

(b) No portion of the moneys allocated pursuant to this section may be expended for project operating costs, except that this section does not preclude expenditures for operating costs from reserves required to be maintained by or on behalf of the project sponsor.

(c) The Legislature may, from time to time, amend the provisions of law related to programs to which funds are, or have been, allocated pursuant to this section for the purpose of improving the efficiency and effectiveness of the program, or for the purpose of furthering the goals of the program.

(d) The Bureau of State Audits shall conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this part, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this part.

SEC. 415. Section 101630 of the Health and Safety Code is amended to read:

101630. Notwithstanding any other provision of law:

(a) The state or any state agency may enter into contracts with the authority for the authority to obtain or arrange for health care under the authority's health care systems, for all persons who are eligible to receive medical benefits under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) in Monterey County through waiver, pilot project, or otherwise.

(b) The County of Monterey or any city in the County of Monterey may enter into contracts with the authority to obtain or provide health care services for all persons from Monterey County or any city in that county who are eligible to receive health care under Parts 4.5

(commencing with Section 16700) and 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(c) The department shall pursue waivers of federal law as necessary, in order to carry out this section.

SEC. 416. Section 105195 of the Health and Safety Code is amended to read:

105195. (a) Sections 105185 and 105190 shall apply to the following industries:

(1) 1622 Bridges, tunnels, and elevated highways.
(2) 1721 Painting, paper hanging, and decorating.
(3) 1791 Structural steel erection.
(4) 1795 Wrecking and demolition work.
(5) 2759 Commercial printing.
(6) 2816 Inorganic pigments manufacture.
(7) 2819 Industrial inorganic chemicals.
(8) 2821 Plastics materials and resins.
(9) 2892 Explosives manufacture.
(10) 2899 Chemical preparations.
(11) 3069 Fabricated rubber products.
(12) 3087 Custom compounding of purchased plastics resins.
(13) 3089 Plastic products.
(14) 3229 Pressed and blown glass.
(15) 3231 Products of purchased glass.
(16) 3253 Ceramic walls and floor tiles.
(17) 3262 Vitreous china food utensils.
(18) 3269 Pottery products.
(19) 3313 Electrometallurgical products.
(20) 3331 Primary copper.
(21) 3339 Primary nonferrous metals, except copper and aluminum.
(22) 3341 Secondary nonferrous metals.
(23) 3356 Nonferrous rolling, drawing, extruding.
(24) 3363 Aluminum die castings.
(25) 3364 Nonferrous die castings.
(26) 3365 Aluminum foundries.
(27) 3366 Copper foundries.
(28) 3369 Nonferrous foundries.
(29) 3399 Primary metal products.
(30) 3411 Metal cans manufacture.
(31) 3431 Metal sanitary ware.
(32) 3432 Plumbing fittings and brass goods.
(33) 3441 Fabricated structural metal.
(34) 3484 Small arms.
(35) 3491 Industrial valves.

(36) 3492 Fluid power valves and hose fittings.
(37) 3494 Valves and pipe fittings.
(38) 3496 Miscellaneous fabricated wire products.
(39) 3497 Metal foil and leaf.
(40) 3585 Refrigeration and heating equipment.
(41) 3599 Machinery, except electrical.
(42) 3624 Carbon and graphite products.
(43) 3661 Telephone and telegraph apparatus.
(44) 3662 Radio and television communication equipment.
(45) 3663 Radio and television equipment.
(46) 3669 Communications equipment.
(47) 3674 Semiconductors and related devices.
(48) 3691 Storage batteries.
(49) 3692 Primary batteries, dry and wet.
(50) 3699 Electrical equipment and supplies.
(51) 3711 Motor vehicles and car bodies.
(52) 3714 Motor vehicle parts and accessories.
(53) 3721 Aircraft.
(54) 3953 Marking devices.
(55) 3812 Search and navigation equipment.
(56) 3829 Measuring and controlling devices.
(57) 5064 Electrical appliances, television, and radios.
(58) 5093 Scrap and waste materials.
(59) 7538 General automotive repair shops.
(60) 7539 Automotive repair shops.
(61) 7997 Membership sports and recreation clubs.
(62) 7999 Amusement and recreation.

(b) (1) If the department determines that the potential for occupational lead poisoning exists in industries not covered by this section, based on new evidence, the department shall have the authority to add Standard Industrial Classification codes by regulation. Multiple case reports of occupational lead toxicity shall be a criterion for adding Standard Industrial Classification codes covered by this section for the purpose of fee assessment.

(2) If the department determines that lead use and lead exposure no longer exist in an industry covered by this section, based on new evidence, the department shall delete the Standard Industrial Classification code or individual industries within a Standard Industrial Classification code by regulation. If the department otherwise determines that the potential for occupational lead poisoning no longer exists in an industry covered by this section, based on new evidence, the department shall have the authority to delete Standard Industrial Classification codes or individual industries with a Standard Industrial Classification code

by regulation. If the department determines that lead use and lead exposure no longer exist in the operations of an employer in an industry covered by this section, based on evidence submitted by the employer, the department may waive the fee of that employer.

SEC. 417. Section 105215 of the Health and Safety Code is amended to read:

105215. (a) Any public employee, as defined in Section 811.4 of the Government Code, whose responsibilities include matters relating to health and safety, protection of the environment, or the use or transportation of any pesticide and who knows, or has reasonable cause to believe, that a pesticide has been spilled or otherwise accidentally released, shall promptly notify the local health officer or the notification point specified in the local hazardous materials response plan, where the plan has been approved by the State Office of Emergency Services and is in operation. The operator of the notification point shall immediately notify the local health officer of the pesticide spill report.

(b) The local health officer shall immediately notify the county agricultural commissioner and, at his or her discretion, shall immediately notify the Director of Environmental Health Hazard Assessment of each report received. Within seven days after receipt of any report, the local health officer shall notify the Director of Pesticide Regulation, the Director of Environmental Health Hazard Assessment, and the Director of Industrial Relations, on a form prescribed by the Director of Environmental Health Hazard Assessment, of each case reported to him or her pursuant to this section.

(c) The Office of Environmental Health Hazard Assessment shall designate a phone number or numbers for use by local health officers in the immediate notification of the office of a pesticide spill report. The office shall from time to time establish criteria for use by the local health officers in determining whether the circumstances of a pesticide spill warrants the immediate notification of the office.

SEC. 418. Section 105280 of the Health and Safety Code is amended to read:

105280. For purposes of this chapter, the following definitions apply:

(a) "Appropriate case management" means health care referrals, environmental assessments, and educational activities, performed by the appropriate person, professional, or entity, necessary to reduce a child's exposure to lead and the consequences of the exposure, as determined by the United States Centers for Disease Control, or as determined by the department pursuant to Section 105300.

(b) "Lead poisoning" means the disease present when the concentration of lead in whole venous blood reaches or exceeds levels constituting a health risk, as specified in the most recent United States

Centers for Disease Control guidelines for lead poisoning as determined by the department, or when the concentration of lead in whole venous blood reaches or exceeds levels constituting a health risk as determined by the department pursuant to Section 105300.

(c) "Department" means the State Department of Health Services.

(d) "Health assessment" has the same meaning as prescribed in Section 6800 of Title 17 of the California Code of Regulations.

(e) "Screen" means the medical procedure by which the concentration of lead in whole venous blood is measured.

(f) "Health care" means the identification, through evaluation and screening, if indicated, of lead poisoning, as well as any followup medical treatment necessary to reduce the elevated blood lead levels.

(g) "Environmental lead contamination" means the persistent presence of lead in the environment, in quantifiable amounts, that results in ongoing and chronic exposure to children.

SEC. 419. Section 107040 of the Health and Safety Code is amended to read:

107040. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of any provision of the Radiologic Technology Act (Section 27), or any rule, regulation, or order issued thereunder, and at the request of the department, the Attorney General may make application to the superior court for an order enjoining these acts or practices, or for an order directing compliance, and upon a showing by the department that the person has engaged in or is about to engage in any acts or practices, a temporary or permanent injunction, restraining order, or other order may be granted.

SEC. 420. Section 107065 of the Health and Safety Code is amended to read:

107065. Every holder of a certificate or a permit issued pursuant to the Radiologic Technology Act (Section 27) may be disciplined as provided in Sections 107065 and 107670. The proceedings under Sections 107065 and 107670 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 department shall have all of the powers granted therein.

SEC. 421. Section 107080 of the Health and Safety Code is amended to read:

107080. (a) The application fee for any certificate or permit issued pursuant to the Radiologic Technology Act (Section 27) shall be established by the department in an amount it deems reasonably necessary to carry out the purpose of that act.

(b) The fee for any examination conducted pursuant to the Radiologic Technology Act (Section 27), after failure of that examination within the previous 12 months, shall be fixed by the department in an amount it deems reasonably necessary to carry out that act.

(c) The annual renewal fee for each certificate or permit shall be fixed by the department in an amount it deems reasonably necessary to carry out the Radiologic Technology Act (Section 27) .

(d) The penalty fee for renewal of any certificate or permit if application is made after its date of expiration shall be five dollars ($5) and shall be in addition to the fee for renewal prescribed by subdivision (c).

(e) The fee for a duplicate certificate or permit shall be one dollar ($1).

(f) No fee shall be required for a certificate or permit or a renewal thereof except as prescribed in the Radiologic Technology Act (Section 27).

SEC. 422. Section 108310 of the Health and Safety Code is amended to read:

108310. For the purposes of this article, the following terms have the following meanings:

(a) "Manufacturer" includes an importer for resale.

(b) A dealer who sells at wholesale an article or substance shall, with respect to that sale, be considered the distributor of that article or substance.

SEC. 423. Section 109350 of the Health and Safety Code is amended to read:

109350. The department may direct that any individual, person, firm, association, or other entity shall cease and desist any further prescribing, recommending, or use of any drug, medicine, compound, or device for which no application has been approved under this article and Article 1 (commencing with Section 109250) unless its use is exempt under Section 109325 or 109330.

SEC. 424. Section 109360 of the Health and Safety Code is amended to read:

109360. Any person against whom an injunction or cease and desist order has been issued, under this article and Article 1 (commencing with Section 109250), may not undertake to use in the diagnosis, treatment, alleviation, or cure of cancer any new, experimental, untested, or secret drug, medicine, compound, or device for which there is no approved application on file or that does not qualify for an exemption, without first submitting an application to the department.

SEC. 425. Section 111080 of the Health and Safety Code is amended to read:

111080. The quality and labeling standards requirements for bottled water and vended water, including mineral water, shall include all standards prescribed by Section 165.110 of Title 21 of the Code of Federal Regulations. In addition, bottled water and vended water, when bottled, shall comply with the following quality standards and any additional quality standards adopted by regulation that the department determines are reasonably necessary to protect the public health:

(a) Bottled water and vended water shall meet all maximum contaminant levels set for public drinking water that the department determines are necessary or appropriate so that bottled water may present no adverse effect on public health. New or revised allowable levels or monitoring provisions adopted for bottled water by the United States Food and Drug Administration under the federal Food, Drug and Cosmetic Act that are more stringent than the state requirements for bottled water are incorporated into this chapter and are effective on the date established by the federal provisions unless otherwise established by regulations of the department.

(b) Bottled and vended water shall not exceed 10 parts per billion of total trihalomethanes or five parts per billion of lead unless the department establishes a lower level by regulation.

(c) Bottled and vended water shall contain no chemicals in concentrations that the United States Food and Drug Administration or the state department has determined may have an adverse effect on public health.

SEC. 426. Section 112025 of the Health and Safety Code is amended to read:

112025. No employee or other person shall expectorate or discharge any substance from his or her nose or mouth on the floor or interior side wall of any building, room, basement, or cellar where the production, preparation, manufacture, packing, storing, or sale of any food is conducted.

SEC. 427. Section 112030 of the Health and Safety Code is amended to read:

112030. No person shall, nor shall any person be allowed to, reside or sleep in any room of a bake-shop, public dining room, hotel or restaurant kitchen, confectionery, or other place where food is prepared, produced, manufactured, served, or sold.

SEC. 428. Section 113843 of the Health and Safety Code, as added by Section 2 of Chapter 874 of the Statutes of 1996, is repealed.

SEC. 429. Section 113844 of the Health and Safety Code is amended to read:

113844. "Potable water" means water that complies with the standards for transient noncommunity water systems pursuant to the California

Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12), to the extent permitted by federal law.

SEC. 430. Section 113955 of the Health and Safety Code is amended to read:

113955. The hearing officer shall issue a written notice of decision to the permittee within five working days following the hearing. In the event of a suspension or revocation, the notice shall specify the acts or omissions with which the permittee is charged, and shall state the terms of the suspension or that the permit has been revoked.

SEC. 431. Section 114400 of the Health and Safety Code is amended to read:

114400. (a) All utensils and equipment shall be scraped, cleaned, or sanitized as circumstances require.

(b) Restricted food service transient occupancy establishments shall comply with subdivisions (b) to (e), inclusive, of Section 114090 or, at the option of the owner or operator of the establishment, shall utilize a domestic or commercial dishwasher for the purpose of cleaning and sanitizing multiservice kitchen utensils and multiservice consumer utensils if the dishwasher is capable of providing heat to the surface of the utensils of a temperature of at least 165 degrees Fahrenheit. Except as otherwise set forth in this subdivision, restricted food service transient occupancy establishments shall comply with Section 114090.

SEC. 432. Section 115040 of the Health and Safety Code is amended to read:

115040. (a) The license designee shall file periodic financial reports with the department as directed by the department. These reports shall provide detailed information on past and projected expenditures for development and operation of the low-level radioactive waste disposal site according to programmatic function, including, but not limited to, all of the following:

(1) Program management.
(2) Candidate sites selection.
(3) Site characterization.
(4) Environmental.
(5) Public and agency involvement.
(6) Licensing and permitting.
(7) Site development.
(8) Land acquisition.
(9) Financing.
(10) Operations.

(b) The license designee shall file reports with the department, as directed by the department, that identify, quantify, and explain major causes of actual and projected cost overruns and cost underruns with

regard to the cost projections provided in the statement of capabilities and notice of intent.

(c) The Legislature finds and declares that the purpose of this section is to identify minimum financial reporting requirements for the costs of developing and operating the state's low-level radioactive waste disposal facility. This section does not limit the authority of the department to require the license designee to furnish any additional information that the department determines to be necessary to fulfill its duties under this chapter, including Section 115030.

SEC. 433. Section 115061 of the Health and Safety Code is amended to read:

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

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

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

SEC. 434. Section 115255 of the Health and Safety Code is amended to read:

115255. The provisions of the Southwestern Low-Level Radioactive Waste Disposal Compact are as follows:

Article 1. Compact Policy and Formation

The party states hereby find and declare all of the following:

(A) The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sec. 2021b to 2021j, incl.), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

(C) It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to Section 2021 of Title 42 of the United States Code, or the Nuclear Regulatory Commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

Article 2. Definitions

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) "Commission" means the Southwestern Low-Level Radioactive Waste Commission established in Article 3 of this compact.

(B) "Compact region" or "region" means the combined geographical area within the boundaries of the party states.

(C) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission and the Environmental Protection Agency under applicable laws, or by a party state if that state hosts a disposal facility.

(D) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) "Host state" means a party state in which a regional disposal facility is located or being developed. The State of California is the host state under this compact for the first 30 years from the date the California regional disposal facility commences operations.

(H) "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance

with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:

(1) The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2014(e)(2))).

(2) The waste is not uranium mining or mill tailings.

(3) The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of Section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sec. 2021c(b)).

(4) The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than 100 nanocuries per gram, or Plutonium-241 with a concentration greater than 3,500 nanocuries per gram, or Curium-242 with a concentration greater than 20,000 nanocuries per gram.

(J) "Management" means collection, consolidation, storage, packaging, or treatment.

(K) "Major generator state" means a party state that generates 10 percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility.

If no party state other than California generates at least 10 percent of the total amount, "major generator state" means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

(L) "Operator" means a person who operates a regional disposal facility.

(M) "Party state" means any state that has become a party in accordance with Article 7 of this compact.

(N) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(O) "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

(P) "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.

(Q) "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at the disposal facility.

(R) "Transporter" means a person who transports low-level radioactive waste.

(S) "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

Article 3. The Commission

(A) There is hereby established the Southwestern Low-Level Radioactive Waste Commission.

(1) The commission shall consist of one voting member from each party state to be appointed by the Governor, confirmed by the Senate of that party state, and to serve at the pleasure of the Governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the commission that is necessary for the host state's members to compose at least 51 percent of the membership on the commission. The host state's additional members shall be appointed by the host state Governor and confirmed by the host state Senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the commission is appointed, the Governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the Governor shall appoint the host county member pursuant to paragraph (4).

(4) The Governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the Governor shall give first consideration to recommending and appointing the member of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the Governor of at least seven candidates from

which to choose, the Governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the Senate of that party state and shall serve at the pleasure of the Governor of the host state.

(B) The commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

(C) The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action shall be governed by the laws of the host state. The commission shall be located in the capital city of the host state in which the regional disposal facility is located.

(D) The commission's records shall be subject to the host state's public records law, and the meetings of the commission shall be open and public in accordance with the host state's open meeting law.

(E) The commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members shall be compensated according to the appointing state's law.

(F) Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the commission is necessary for the commission to take any action.

(G) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The commission shall meet at least once a year and otherwise as business requires.

(3) The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility.

The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the commission and commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

(4) The surcharges imposed by the commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of Article 4 shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The commission shall establish a fiscal year that conforms to the fiscal years of the party states to the extent possible.

(6) The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(7) The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

(8) The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of Section 2021e of Title 42 of the United States Code, any payments paid from the special escrow account for which the Secretary of Energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of Section 2021 (e) of Title 42 of the United States Code.

(9) The commission shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report

to be submitted on or before January 15 of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods which are alternative technologies to the shallow land burial of low-level radioactive waste.

(10) The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

(11) The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

(12) The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.

(13) The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.

(14) The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(15) The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.

(16) The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.

(17) The commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.

(18) The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.

(19) The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:

(a) The commission approves the importation agreement by a two-thirds vote of the commission.

(b) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.

(20) The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to

export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.

(21) The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

(22) The commission shall, not later than 10 years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

Article 4. Rights, Responsibilities, and Obligations of Party States

(A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

(B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.

(C) (1) Upon the effective date of this compact, the State of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least 30 years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the State of California.

If the State of California does not extend this obligation, the party state, other than the State of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility shall also run for 30 years from the date the second regional disposal facility begins operations.

(2) The host state may close its regional disposal facility when necessary for public health or safety.

(D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Secs. 2021b to 2021j, incl.).

(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

(2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

(3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.

(b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

(c) Assure that charges are assessed without discrimination as to the party state of origin.

(4) Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

(5) The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.

(F) Each party state is subject to the following duties and authority:

(1) To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:

(a) Periodic inspections of packaging and shipping practices.

(b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.

(c) Appropriate enforcement actions with respect to violations.

(2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).

(3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not limited to, requiring that a bond be posted by the violator to pay the cost of

repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.

(4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

(7) Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of Article 3.

(9) Each party state shall agree that if there is any injury to persons on property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of Article 3, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

Article 5. Approval of Regional Facilities

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

Article 6. Prohibited Acts and Penalties

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of Article 3.

(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of Article 3.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state's jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

Article 7. Eligibility, Entry into Effect, Congressional Consent, Withdrawal, Exclusion

(A) The States of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal to the period of time it was a member of this compact.

If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

(E) This compact shall take effect upon the enactment by statute by the legislatures of the State of California and at least one other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

Article 8. Construction and Severability

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the compact that can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2011 et seq.).

(2) An agreement state under Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2021).

(E) Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the Nuclear Regulatory Commission.

SEC. 435. Section 116050 of the Health and Safety Code is amended to read:

116050. Except as provided in Section 18930, the department shall make and enforce regulations pertaining to public swimming pools as it deems proper and shall enforce building standards published in the State Building Standards Code relating to public swimming pools; provided, that no rule or regulation as to design or construction of pools shall apply to any pool that has been constructed before the adoption of the regulation, if the pool as constructed is reasonably safe and the manner of the construction does not preclude compliance with the requirements of the regulations as to bacteriological and chemical quality and clarity of the water in the pool. The department 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.

SEC. 436. Section 116660 of the Health and Safety Code is amended to read:

116660. (a) Any person who operates a public water system without having an unrevoked permit to do so, may be enjoined from so doing by any court of competent jurisdiction at the suit of the department.

(b) When the department determines that any person has engaged in or is engaged in any act or practice that constitutes a violation of this chapter, or any regulation, permit, standard, or order issued or adopted thereunder, the department may bring an action in the superior court for an order enjoining the practices or for an order directing compliance.

(c) Upon a showing by the department of any violation set forth in subdivision (b), the superior court shall enjoin the practices and may do any of the following:

(1) Enforce a reasonable plan of compliance, including the appointment of a competent person, to be approved by the department, and paid by the operator of the public water system, who shall take charge of and operate the system so as to secure compliance.

(2) Enjoin further service connections to the public water system.

(3) Afford any further relief that may be required to insure compliance with this chapter.

SEC. 437. Section 117100 of the Health and Safety Code is amended to read:

117100. The ballot for the election authorized by Section 117090 shall contain the instructions required by law to be printed thereon and in addition thereto the following:

Shall the (insert name of governmental agency) allow fishing in the (name of body of water) and other recreational uses in the surrounding area subject to the regulations of the State Department of Health Services?	YES	
	NO	

If the governmental agency concludes that a bond issue is required to pay for the capital improvements included in the coordinated plan as approved by the amended permit, there shall also be printed on the ballot, immediately following the ballot proposition aforesaid, the following proposition to be voted on by the constituents of the governmental agency:

Shall the (insert name of governmental agency) incur a bonded indebtedness in the principal amount of $____ for providing the capital improvements for fishing in the (name of body of water) and other recreational uses in the surrounding land area, subject to the regulations of the State Department of Health Services?	YES	
	NO	

SEC. 438. Section 120425 of the Health and Safety Code is amended to read:

120425. All moneys appropriated to the department for the purposes of this section and Section 120420 shall be made available to local health departments, as defined in Section 101185, or to areawide associations of local health departments. All moneys received by the local departments or areawide associations shall be utilized only for the purchase of rubella vaccines, other necessary supplies and equipment for rubella immunization campaigns, and promotional costs of these campaigns. No moneys appropriated for the purpose of this section and Section 120420 shall be used by the department or by any local department or areawide association for administrative purposes, and these moneys may not be used to supplant or support local health department clinics and programs already regularly operated by the departments, but may be used only for additional county or areawide rubella immunization campaigns. All moneys appropriated for the purposes of this section and Section 120420 shall be expended by March 31, 1971.

SEC. 439. Section 120830 of the Health and Safety Code is amended to read:

120830. (a) Pilot projects to demonstrate the cost effectiveness of home health, attendant, or hospice care shall be initiated through a block grant program, as described in this section.

(b) The state director shall designate the contractors and the amounts that contractors will receive for the block grant direct service demonstration projects.

(c) An amount of not more than 10 percent of the grant may be retained by contractors for administrative overhead. Contractors accepting block grant funds shall compile comparative cost data reports for transmission to the department and the Legislature. Reports shall be made semiannually until the conclusion of the project.

(d) Contractors receiving direct service block grants shall:

(1) Encourage broad-based community involvement and support for AIDS programs and involve charitable, other nonprofit, and other agencies as well as health care professionals as providers of essential services.

(2) Ensure the proposed services are not duplicated in the community and are based on the needs of people with AIDS or AIDS-related conditions, at-risk communities, their families, or others affected by AIDS.

(3) Make maximum use of other federal, state, and local funds and programs.

(4) Provide services that are culturally and linguistically appropriate to the population served.

(e) Counties with existing programs of demonstrated effectiveness in AIDS education or services shall receive equal consideration with other applicants and shall not be penalized when awarding funds pursuant to this chapter with respect to the proposed expansion of their programs.

(f) Contractors shall develop a comprehensive service system including, but not limited to, the following essential services, that can be provided either directly by the contractors or indirectly through a referral network arranged by the contractor:

(1) Provision for hospice, skilled nursing facility, home health care, and homemaker chore services.

(2) Individual consultation and health planning and assessment.

(3) Information for people with AIDS or AIDS-related conditions regarding death and dying.

(4) Evaluation and referral services for medical care.

(5) Referral services for mental health services, as appropriate.

(6) Assistance in applying for financial aid or social services that are available and for which clients qualify.

The system of essential services developed by a contractor shall offer maximum opportunity for involvement of family, friends, and domestic

partners and of nonprofit and charitable organizations in preventing the severe, adverse health and social consequences that result from being diagnosed with AIDS or AIDS-related conditions.

(g) The direct service program for provision of essential services shall ensure both of the following:

(1) An ongoing quality assurance program.

(2) Confidentiality assurances and methods for developing interagency confidentiality agreements.

SEC. 440. Section 120875 of the Health and Safety Code is amended to read:

120875. The State Department of Education shall provide information to school districts on acquired immune deficiency syndrome (AIDS), on AIDS-related conditions, and on Hepatitis B. This information shall include, but not be limited to, any appropriate methods school employees may employ to prevent exposure to AIDS and Hepatitis B, including information concerning the availability of a vaccine to prevent contraction of Hepatitis B, and that the cost of vaccination may be covered by the health plan benefits of the employees. This information shall be compiled and updated annually, or if there is new information, more frequently, by the State Department of Education in conjunction with the department and in consultation with the California Conference of Local Health Officers. In order to reduce costs, this information may be included as an insert with other regular mailings to the extent practicable, and the information required to be provided on Hepatitis B shall be provided in conjunction with the information required to be provided on AIDS.

SEC. 441. Section 121110 of the Health and Safety Code is amended to read:

121110. (a) Any person who willfully or maliciously discloses the content of any confidential research record, to any third party, except pursuant to this chapter, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who maliciously discloses the content of any confidential research record, to a third party, except pursuant to this chapter, that results in economic, bodily, or psychological harm to the research subject, is guilty of a misdemeanor, punishable by imprisonment in a county jail for a period not to exceed one year, a fine of not to exceed ten thousand dollars ($10,000), or both that imprisonment and fine.

(c) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages for economic, bodily, or psychological harm that is a proximate result of the act.

(d) Any person who negligently or willfully violates Section 121105 is guilty of an infraction punishable by a fine of twenty-five dollars ($25).

(e) Each violation of this chapter is a separate and actionable offense.

(f) Nothing in this section limits or expands the right of an injured research subject to recover damages under any other applicable law.

SEC. 442. Section 121270 of the Health and Safety Code is amended to read:

121270. (a) There is hereby created the AIDS Vaccine Victims Compensation Fund.

(b) For the purposes of this section, the following definitions apply:

(1) "AIDS vaccine" means a vaccine that (A) has been developed by any manufacturer and (B) is approved by the FDA or the department pursuant to Part 5 (commencing with Section 109875) of Division 104 as a safe and efficacious vaccine for the purpose of immunizing against AIDS.

(2) "Board" means the California Victim Compensation and Government Claims Board.

(3) "Damages for personal injuries" means the direct medical costs for the care and treatment of injuries to any person, including a person entitled to recover damages under Section 377 of the Code of Civil Procedure, proximately caused by an AIDS vaccine, the loss of earnings caused by the injuries, and the amount necessary, but not to exceed five hundred fifty thousand dollars ($550,000), to compensate for noneconomic losses, including pain and suffering caused by the injuries.

(4) "Fund" means the AIDS Vaccine Victims Compensation Fund.

(c) The board shall pay from the fund, contingent entirely upon the availability of moneys as provided in subdivision (o), damages for personal injuries caused by an AIDS vaccine that is sold in or delivered in California, and administered or dispersed in California to the injured person except that no payment shall be made for any of the following:

(1) Damages for personal injuries caused by the vaccine to the extent that they are attributable to the comparative negligence of the person making the claim.

(2) Damages for personal injuries in any instance when the manufacturer has been found to be liable for the injuries in a court of law.

(3) Damages for personal injuries due to a vaccination administered during a clinical trial.

(d) An application for payment of damages for personal injuries shall be made on a form prescribed by the board within one year of the date that the injury and its cause are discovered. This application may be

required to be verified. Upon receipt, the board may require the submission of additional information necessary to evaluate the claim.

(e) (1) Within 45 days of the receipt of the application and the submission of any additional information, the board shall do either of the following:

(A) Allow the claim in whole or part.

(B) Disallow the claim.

(2) In those instances of unusual hardship to the victim, the board may grant an emergency award to the injured person to cover immediate needs upon agreement by the injured person to repay in the event of a final determination denying the claim.

(3) If the claim is denied in whole or part, the victim may apply within 60 days of denial for a hearing. The hearing shall be held within 60 days of the request for a hearing unless the injured person requests a later hearing.

(f) At the hearing, the injured person may be represented by counsel and may present relevant evidence as defined in subdivision (c) of Section 11513 of the Government Code. The board may consider additional evidence presented by its staff. If the injured person declines to appear at the hearing, the board may act solely upon the application, the staff report, and other evidence that appears on the record.

(g) The board may delegate the hearing of applications to hearing examiners.

(h) The decision of the board shall be in writing and shall be delivered or mailed to the injured person within 30 days of the hearing. Upon the request by the applicant within 30 days of delivery or mailing, the board may reconsider its decision.

(i) Judicial review of a decision shall be under Section 1094.5 of the Code of Civil Procedure, and the court shall exercise its independent judgment. A petition for review shall be filed as follows:

(1) If no request for reconsideration is made, within 30 days of personal delivery or mailing of the board's decision on the application.

(2) If a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or mailing of the notice of rejection.

(3) If a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or mailing of the final decision on the reconsidered application.

(j) The board shall adopt regulations to implement this section, including those governing discovery.

(k) The fund is subrogated to any right or claim that any injured person may have who receives compensation pursuant to this section, or any

right or claim that the person's personal representative, legal guardian, estate, or survivor may have, against any third party who is liable for the personal injuries caused by the AIDS vaccine, and the fund shall be entitled to indemnity from that third party. The fund shall also be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured person.

(*l*) In the event that the injured person, or his or her guardian, personal representative, estate, or survivors, or any of them, bring an action for damages against the person or persons liable for the injury or death giving rise to an award by the board under this section, notice of institution of legal proceedings and notice of any settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. All notices shall be given by the attorney employed to bring the action for damages or by the injured person, or his or her guardian, personal representative, estate, or survivors, if no attorney is employed.

(m) This section is not intended to affect the right of any individual to pursue claims against the fund and lawsuits against manufacturers concurrently, except that the fund shall be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured party by the fund.

(n) There is hereby created the AIDS Vaccine Injury Compensation Policy Review Task Force consisting of 14 members. The task force shall be composed of 10 members appointed by the Governor, of which two shall be from a list provided by the California Trial Lawyers Association, one from the department, the Director of Finance, one unspecified member, and one attorney with experience and expertise in products liability and negligence defense work, two representing recognized groups that represent victims of vaccine induced injuries or AIDS victims, or both, and two representing manufacturers actively engaged in developing an AIDS vaccine. In addition four Members of the Legislature or their designees shall be appointed to the task force, two of which shall be appointed by the Speaker of the Assembly and two of which shall be appointed by the Senate Committee on Rules. The chairperson of the task force shall be appointed by the Governor from the membership of the task force. The task force shall study and make recommendations on the legislative implementation of the fund created by subdivision (a). These recommendations shall at least address the following issues:

(1) The process by which victims are to be compensated through the fund.

(2) The procedures by which the fund will operate and the governance of the fund.

(3) The method by which manufacturers are to pay into the fund and the amount of that payment.

(4) The procedural relationship between a potential victim's claim through the fund and a court claim made against the manufacturer.

(5) Other issues deemed appropriate by the task force.

The task force shall make its recommendations to the Legislature on or before June 30, 1987.

(o) The fund shall be funded wholly by a surcharge on the sale of an AIDS vaccine, that has been approved by the FDA, or by the department pursuant to Part 5 (commencing with Section 109875) of Division 104, in California in an amount to be determined by the department. The surcharge shall be levied on the sale of each unit of the vaccine sold or delivered, administered, or dispensed in California. The appropriate amount of the surcharge shall be studied by the AIDS Vaccine Injury Compensation Policy Review Task Force, which shall recommend the appropriate amount as part of its report, with the amount of the surcharge not to exceed ten dollars ($10) per unit of vaccine. Expenditures of the task force shall be made at the discretion of the Director of Finance or the director's designee.

(p) For purposes of this section, claims against the fund are contingent upon the existing resources of the fund as provided in subdivision (o), and in no case shall the state be liable for any claims in excess of the resources in the fund.

SEC. 443. Section 121275 of the Health and Safety Code is amended to read:

121275. (a) Because the development of a vaccine now costs somewhere between twenty million dollars ($20,000,000) and forty million dollars ($40,000,000), and because the last vaccine produced and marketed did not sell well, vaccine manufacturers are hesitant to proceed to invest their resources in a risky venture. It is, therefore, in the public health interest of California to assure that manufacturers proceed to develop this vaccine and protect Californians against this dread disease and protect the State of California against the enormous fiscal costs of treatment for persons getting AIDS. It is a sound and worthwhile investment to provide a guarantee of a market to lessen the risk of loss and assure the development of an AIDS vaccine.

It is anticipated that this AIDS vaccine will consist of a three-unit series. The State of California is willing to guarantee that at least 175,000 persons will be vaccinated, and to guarantee the purchase, within three years after the FDA or the department pursuant to Part 5 (commencing with Section 109875) of Division 104 approves marketing of an AIDS vaccine, of at least 500,000 units, at a cost of no more than twenty dollars ($20) per dosage, by all companies, anywhere in the United States.

Therefore, the State of California, by moneys to be appropriated later through the Budget Act, commits itself to purchasing, at the end of three years after the FDA or the department pursuant to Part 5 (commencing with Section 109875) of Division 104 has approved the marketing on a competitive basis, at not more than twenty dollars ($20) per dosage, the difference between 500,000 units and the actual amount sold, delivered, administered, or dispensed by all companies throughout the United States, including units sold to or reimbursed by Medi-Cal, Medicare, or other public programs, providing that fewer than 500,000 units are sold, delivered, administered, or dispensed.

(b) The AIDS Vaccine Guaranteed Purchase Fund is hereby established and shall be administered by the department, which may develop necessary regulations to carry out the purpose of this section.

(c) The department may carry out this section, when those funds are appropriated through the State Budget. In determining which vaccine shall be purchased by the state from among those manufacturers selling or distributing in California, an AIDS vaccine approved by the FDA or the department pursuant to Part 5 (commencing with Section 109875) of Division 104, the department shall take into consideration at least all of the following factors:

(1) The length of time each AIDS vaccine has been in the marketplace in California.

(2) Each AIDS vaccine's history of efficacy since approval by the FDA or the department.

(3) Each AIDS vaccine's history of side effects experienced by previous recipients of the vaccine.

(4) The relative cost of each competing manufacturer's AIDS vaccine.

SEC. 444. Section 121520 of the Health and Safety Code is amended to read:

121520. The department, in consultation with the State Department of Education, shall adopt and enforce all rules and regulations necessary to carry out this chapter.

SEC. 445. Section 122070 of the Health and Safety Code is amended to read:

122070. (a) If a licensed veterinarian states in writing that within 15 days after the purchaser has taken physical possession of a dog following the sale by a breeder, the dog has become ill due to any illness or disease that existed in the dog on or before delivery of the dog to the purchaser, or, if within one year after the purchaser has taken physical possession of the dog after the sale by a breeder, a veterinarian licensed in this state states in writing that the dog has a congenital or hereditary condition that adversely affects the health of the dog, or that requires, or is likely in the future to require, hospitalization or nonelective surgical

procedures, the dog shall be considered unfit for sale, and the breeder shall provide the purchaser with any of the following remedies that the purchaser elects:

(1) Return the dog to the breeder for a refund of the purchase price, plus sales tax, and reimbursement for reasonable veterinary fees for diagnosis and treating the dog in an amount not to exceed the original purchase price of the dog, including sales tax.

(2) Exchange the dog for a dog of the purchaser's choice of equivalent value, providing a replacement dog is available, and receive reimbursement for reasonable veterinary fees for diagnosis and treating the dog in an amount not to exceed the original purchase price of the dog, plus sales tax on the original purchase price of the dog.

(3) Retain the dog, and receive reimbursement for reasonable veterinary fees for diagnosis and treating the dog in an amount not to exceed 150 percent of the original purchase price of the dog, plus sales tax.

(b) If the dog has died, regardless of the date of death of the dog, obtain a refund for the purchase price of the dog, plus sales tax, or a replacement dog of equivalent value of the purchaser's choice, and reimbursement for reasonable veterinary fees for diagnosis and treatment of the dog in an amount not to exceed the purchase price of the dog, plus sales tax, if any of the following conditions exist:

(1) A veterinarian, licensed in this state, states in writing that the dog has died due to an illness or disease that existed within 15 days after the purchaser obtained physical possession of the dog after the sale by a breeder.

(2) A veterinarian, licensed in this state, states in writing that the dog has died due to a congenital or hereditary condition that was diagnosed by the veterinarian within one year after the purchaser obtained physical possession of the dog after the sale by a breeder.

SEC. 446. Section 127575 of the Health and Safety Code is amended to read:

127575. For purposes of this chapter, the following definitions shall apply:

(a) "Carrier" means any of the following:

(1) Any insurer, including, but not limited to, disability insurers, nonprofit hospital service plans, fraternal benefit societies, and firemen's, policemen's, or peace officers' benefit and relief associations.

(2) A health care service plan other than a specialized health care service plan.

(3) A self-funded employer sponsored plan, multiple employer trust, or Taft-Hartley Trust as defined by federal law, authorized to pay for health care services in this state.

(4) The State Compensation Insurance Fund.

(5) The health insurance offered to certain employees of this state by the Public Employees' Retirement System known as "PERS Care."

(b) "Department" means the State Department of Health Services.

(c) "Office" means the Office of Statewide Health Planning and Development.

(d) "Professional health care services" means any diagnostic or treatment services provided in California directly to a patient by a person licensed or practicing pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code who is eligible to directly bill for their services. "Professional health care services" does not include services provided by a person licensed pursuant to a chapter of Division 2 that the director of the office has determined, pursuant to Section 127590, should be exempted.

(e) "Institutional provider services" means any services, equipment, and supplies, other than professional health care services that are provided by an institution, site, or facility through which professional health care services are provided. "Institutional provider services" includes any component of an episode of health care for which there will be charges, other than professional health care services. "Institutional provider services" does not include diagnostic or treatment services that would be considered "professional health care services" but for the fact that the provider is licensed under a chapter of Division 2 of the Business and Professions Code that the director of the office has exempted pursuant to Section 127590.

(f) "California uniform billing form for professional health care services" and "California uniform billing form for institutional provider services" means billing forms in the formats developed by the office pursuant to Section 127580.

SEC. 447. Section 129890 of the Health and Safety Code is amended to read:

129890. (a) Notwithstanding any other provision of law, the office shall, on or before January 1, 1991, set forth and implement criteria for the alteration or construction of buildings specified in subdivision (a) of Section 129725 that provide for onsite field review and approval by construction advisers of the office and provide for preapproval of project plans that comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

(b) Onsite field reviews shall be performed by available area construction advisers of the office. The area construction advisers shall have the responsibility to coordinate any approvals required by the State Fire Marshal. The approvals may be obtained prior to the start of

construction or on a deferred basis, at the discretion of the area construction adviser.

(c) An annual building permit project classified as a "field review" shall be reviewed and approved by the area construction adviser.

(d) Effective January 1, 1991, all plans submitted for the alteration or construction of buildings specified in subdivision (a) of Section 129725 to the office for plan review shall be evaluated to determine if it is exempt from the plan review process or if it qualifies for an expedited plan review. The evaluation shall give priority to plans that are for minor renovation, remodeling, or installation of equipment.

SEC. 448. Section 150204 of the Health and Safety Code is amended to read:

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

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

(1) Establishing eligibility for medically indigent patients who may participate in the program.

(2) Ensuring that patients eligible for the program shall not be charged for any medications provided under the program.

(3) Developing a formulary of medications appropriate for the repository and distribution program.

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

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

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

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

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

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

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

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

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

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

(1) Dispensed to an eligible patient.

(2) Destroyed.

(3) Returned to a reverse distributor.

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

(i) Medication donated to the repository and distribution program shall be maintained in the donated packaging units until dispensed to an eligible patient under this program, who presents a valid prescription. When dispensed to an eligible patient under this program, the medication shall be in a new and properly labeled container, specific to the eligible patient and ensuring the privacy of the individuals for whom the medication was initially dispensed. Expired medication shall not be dispensed.

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

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

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

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

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

SEC. 449. Section 134 of the Insurance Code is amended to read:

134. (a) A purchasing group that intends to do business in this state shall, prior to doing business, furnish to the commissioner notice, which shall do the following:

(1) Identify the state in which the group is domiciled.

(2) Specify the lines and classifications of liability insurance that the purchasing group intends to purchase.

(3) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of that company.

(4) Specify the method by which, and the person or persons, if any, through whom, insurance will be offered to its members whose risks are resident or located in this state.

(5) Identify the principal place of business of the group.

(6) Provide other information that may be required by the commissioner to verify that the purchasing group is qualified under subdivision (i) of Section 130.

(b) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee in the amount of three hundred dollars ($300) shall be submitted to the commissioner for deposit in the Risk Retention Administration Account within the Insurance Fund, except that these requirements do not apply in the case of a purchasing group that did all of the following:

(1) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.

(2) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state.

(3) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 (15 U.S.C. Sec. 3901 et seq.) before October 27, 1986.

(4) Does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

(c) Any purchasing group that was doing business in this state prior to the enactment of this chapter shall, within 30 days after January 1, 1990, furnish notice to the commissioner pursuant to subdivision (a) and furnish information that may be required pursuant to subdivisions (b) and (c).

(d) Each purchasing group that is required to give notice pursuant to subdivision (a) shall also furnish information that may be required by the commissioner to:

(1) Verify that the entity qualifies as a purchasing group.

(2) Determine where the purchasing group is located.

(3) Determine appropriate tax treatment.

(4) Verify that the purchasing group is in compliance with this chapter.

(e) Any purchasing group that intends to do business in this state shall make its initial registration by submitting to the commissioner the materials listed in subdivision (a). The registration is valid until December 31 of the year in which it was made, as long as the purchasing group is in compliance with this chapter. To maintain the registration, the purchasing group shall continue to comply with this chapter. Additionally, the purchasing group shall file the following documents with the commissioner on or before January 31 of each year:

(1) An annual reporting statement on a form prescribed by the commissioner.

(2) An annual renewal fee, to be determined by the commissioner, limited to the actual cost of administering this section, not to exceed two hundred dollars ($200).

(3) Any other information required by the commissioner to determine whether the purchasing group is in compliance with this chapter or other applicable provisions of this code.

(f) The purchasing group shall notify the commissioner in writing of any changes in the information provided according to subdivision (a) within 30 days of the effective date of the change.

SEC. 450. Section 481.5 of the Insurance Code is amended to read:

481.5. (a) Whenever a policy of personal lines insurance terminates for any reason, or there is a reduction in coverage, the insurer shall tender the gross unearned premium resulting from the termination, or the amount

of the unearned premium generated by the reduction in coverage, to the insured or, pursuant to Section 673, to the insured's premium finance company. The gross unearned premium shall be tendered within 25 business days after the insurer either receives notice of the event that generated the gross unearned premium, or receives notice from a premium finance company of a cancellation.

(b) (1) Whenever a policy other than a policy of personal lines insurance terminates for any reason, or there is a reduction in coverage, the gross unearned premium shall be tendered to the insured or, pursuant to Section 673, to the insured's premium finance company. If the policy is not auditable, the gross unearned premium shall be tendered within 80 business days after the insurer either receives notice of the event that generated the gross unearned premium, or receives notice from a premium finance company of a cancellation. If the policy is auditable, the gross unearned premium shall be tendered within 80 business days after the insured provides all requested audit information to the insurer or the insurer's designee.

(2) Notwithstanding paragraph (1), an insurer shall not be required to tender the unearned premium within 80 business days if the final unearned premium amount cannot be determined due to the insured's failure, in breach of a policy requirement, to cooperate with the insurer in a premium audit, or if the amount of the unearned premium determined by a premium audit remains in dispute.

(c) An insurer may tender gross or net unearned premium to an agent or broker, or net unearned premium to a finance company, but shall remain liable to the insured or finance company for payment of any portion of the gross unearned premium that the agent or broker fails to remit to the insured or premium finance company.

(d) Any unearned premium that an insurer fails to tender within the time periods specified in subdivisions (a) and (b) shall bear interest at the rate of 10 percent per annum from and after the date on which the unearned premium was required to be tendered. For the purposes of this section, the tender of any unearned premium to the insured or premium finance company shall be deemed complete upon the deposit of the unearned premium in the United States mail, prepaid, addressed to the named insured or premium finance company at the last known address, or to an agent or broker with an assignment pursuant to paragraph (1) of subdivision (g).

(e) For the purpose of this section, the following definitions apply:

(1) "Gross unearned premium" means the unearned portion of the full amount of the premium charged to the insured, including the unearned portion of any amount of the premium the insurer allocated to an agent or broker as commission.

(2) "Net unearned premium" means the gross unearned premium minus the unearned commission.

(3) "Policy of personal lines insurance" means an insurance policy that is designed for and bought by individuals, and includes, but is not limited to, homeowners' and automobile policies.

(f) The interest penalty required by this section shall not apply to any insurer in conservatorship or liquidation, nor shall this insurer be subject to any other penalty for failure to remit unearned premium in accordance with the time periods required by this section.

(g) (1) An assignment by an insured to an agent or broker of the insured's right to receive unearned premium shall be valid only for the purpose set forth in Section 1735.5.

(2) If the insured notifies the insurer, 25 or more days after the insurer's tender of unearned premium to an agent or broker with an assignment pursuant to paragraph (1), that the agent or broker has failed to issue to the insured an accounting of an offset permitted by Section 1735.5, the insurer shall, within an additional 15 days, either tender the unearned premium directly to the insured or provide the insured with the agent's or broker's accounting of the offset permitted by Section 1735.5.

(3) Whenever an insurer tenders the net rather than gross unearned premium to an agent or broker or premium finance company, the insurer shall contemporaneously notify the agent or broker of the amount of the unearned commission.

(4) If an insurer elects to tender the net rather than the gross unearned premium to a premium finance company, the insurer shall document that the agent or broker tendered unearned commission to the premium finance company within the period required under subdivision (a) or (b) after the insurer either receives notice of the event that generated the unearned premium, or receives notice from a premium finance company of a cancellation.

(h) Whenever an agent or broker receives a refund from a premium finance company, the agent or broker shall tender that money to the insured within 25 days. Whenever an agent or broker with an assignment from the insured receives unearned premium from an insurer, the agent or broker shall account to the insured for any offset permitted by Section 1735.5 within 25 days. If the agent or broker fails to tender payment of any remaining unearned premium after the offset within 25 days, the agent or broker shall pay the insured interest at the rate of 10 percent per annum from and after the 26th day after the agent or broker receives the refund.

(i) In addition to the required unearned premium refund, an insurer shall provide both the insured and the agent or broker, upon the request

of either, with an accounting and explanation of how the amount of the refund was calculated. The explanation shall be clear, concise, and easy to comprehend. The commissioner may adopt regulations setting forth standards to govern this subdivision.

(j) For purposes of subdivisions (a) to (c), inclusive, if the unearned premium is not assigned as security to a premium finance agency pursuant to a premium finance agreement and the amount of unearned premium is less than twenty-five dollars ($25), tender of unearned premium shall include applying the amount of unearned premium either to the renewal premium at the next renewal date or to other premiums due, provided written notice of either application is given to the insured within 30 days after the endorsement, rejection, declination, cancellation, or surrender of a policy of insurance. At the time of endorsement or surrender of a policy of insurance or, within 15 days after the mailing of the written notice required by this subdivision, the insured may request in writing that the unearned premium be tendered as provided in subdivisions (a) to (c), inclusive. Whenever the amount of unearned premium is less than five dollars ($5), tender shall be effective and the written notice required by this subdivision shall not be required if the unearned premium is applied either to the renewal premium at the next renewal date or to other premiums due.

(k) Notwithstanding subdivisions (a) to (c), inclusive, an insurer may at any time solicit the insured's consent, or may in its policy reserve the right, to apply the unearned premium generated by an amendment or endorsement removing or reducing coverage for an insured person or property to the balance owed on the policy as a whole, rather than tendering a refund of the unearned premium. This subdivision shall not apply if the unearned premium is assigned as security to a premium finance company.

(*l*) The amount of unearned premium required to be refunded by an insurer pursuant to this section shall not exceed the amount paid to the insurer by the insured or by a premium finance company.

SEC. 451. Section 676.2 of the Insurance Code is amended to read:

676.2. (a) This section applies only to policies of commercial insurance that are subject to Section 675.5.

(b) After a policy has been in effect for more than 60 days, or if the policy is a renewal, effective immediately, no notice of cancellation shall be effective unless it complies with Section 677.2 and it is based on the occurrence, after the effective date of the policy, of one or more of the following:

(1) Nonpayment of premium, including payment due on a prior policy issued by the insurer and due during the current policy term covering the same risks.

(2) A judgment by a court or an administrative tribunal that the named insured has violated any law of this state or of the United States having as one of its necessary elements an act that materially increases any of the risks insured against.

(3) Discovery of fraud or material misrepresentation by either of the following:

(A) The insured or his or her representative in obtaining the insurance.

(B) The named insured or his or her representative in pursuing a claim under the policy.

(4) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by the named insured or his or her representative, which materially increase any of the risks insured against.

(5) Failure by the named insured or his or her representative to implement reasonable loss control requirements that were agreed to by the insured as a condition of policy issuance or that were conditions precedent to the use by the insurer of a particular rate or rating plan, if the failure materially increases any of the risks insured against.

(6) A determination by the commissioner that the loss of, or changes in, an insurer's reinsurance covering all or part of the risk would threaten the financial integrity or solvency of the insurer. A certification made under penalty of perjury to the commissioner by an officer of the insurer of the loss of, or change in, reinsurance and that the loss or change will threaten the financial integrity or solvency of the insurer if the cancellation of the policy is not permitted shall constitute this determination unless disapproved by the commissioner within 30 days of the filing. There shall be no extensions to this 30-day period.

(7) A determination by the commissioner that a continuation of the policy coverage would place the insurer in violation of the laws of this state or the state of its domicile or that the continuation of coverage would threaten the solvency of the insurer.

(8) A change by the named insured or his or her representative in the activities or property of the commercial or industrial enterprise that results in a material added risk, a materially increased risk, or a materially changed risk, unless the added, increased, or changed risk is included in the policy.

(c) (1) After a policy has been in effect for more than 60 days, or if the policy is a renewal, effective immediately upon renewal, no increase in the rate upon which the premium is based, reduction in limits, or change in the conditions of coverage shall be effective during the policy period unless a written notice is mailed or delivered to the named insured and the producer of record at the mailing address shown on the policy, at least 30 days prior to the effective date of the increase, reduction, or

change. Subdivision (a) of Section 1013 of the Code of Civil Procedure is applicable if the notice is mailed. The notice shall state the effective date of, and the reasons for, the increase, reduction, or change.

(2) The increase, reduction, or change shall not be effective unless it is based upon one of the following reasons:

(A) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards by the named insured that materially increase any of the risks or hazards insured against.

(B) Failure by the named insured to implement reasonable loss control requirements that were agreed to by the insured as a condition of policy issuance or that were conditions precedent to the use by the insurer of a particular rate or rating plan, if the failure materially increases any of the risks insured against.

(C) A determination by the commissioner that loss of or changes in an insurer's reinsurance covering all or part of the risk covered by the policy would threaten the financial integrity or solvency of the insurer unless the change in the terms or conditions or rate upon which the premium is based is permitted.

(D) A change by the named insured in the activities or property of the commercial or industrial enterprise that results in a materially added risk, a materially increased risk, or a materially changed risk, unless the added, increased, or changed risk is included in the policy.

(E) With respect to a change in the rate of a policy of professional liability insurance for a health care provider, the insurer's offer of renewal notifies the policyholder that the insurer has an application filed pursuant to Section 1861.05 pending with the commissioner for approval of a change in the rate upon which the premium is based, and the commissioner subsequently approves the rate change, or some different amount for the policy period. The change shall not be retroactive.

(d) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Title 2 of Division 3 of the Government Code) shall not apply to a determination pursuant to paragraph (6) or (7) of subdivision (b) or subparagraph (C) of paragraph (2) of subdivision (c). The commissioner shall charge an insurer who requests a determination pursuant to paragraph (6) or (7) of subdivision (b) a fee sufficient to recover the costs of making the determination. If the commissioner does not act upon a request by an insurer to cancel or change a policy pursuant to those provisions within 30 days, the request shall be deemed to be approved.

(e) This section shall not prohibit an insurer from increasing a premium during the policy period if the increase is calculated in

accordance with the current rating manual of the insurer and is justified by a physical change in the insured property or by a change in the activities of the commercial or industrial enterprise that materially increases any of the risks insured against.

(f) This section shall not apply to a transfer of a policy without a change in its terms or conditions or the rate upon which the premium is based between insurers that are members of the same insurance group.

SEC. 452. Section 750.4 of the Insurance Code is amended to read:

750.4. Section 750 of the Insurance Code, Sections 3215 and 3219 of the Labor Code, and Section 549 of the Penal Code shall not apply to any person, corporation, partnership, association, or firm, that is operating under both of the following circumstances:

(a) On behalf of an insurer or self-insured person, company, association, or group.

(b) Pursuant to, and within the scope of, a certificate of consent issued pursuant to Section 3702.1 of the Labor Code or pursuant to, and within the scope of, a license issued pursuant to Article 3 (commencing with Section 14020) of Chapter 1 of Division 5.

SEC. 453. Section 1063.145 of the Insurance Code is amended to read:

1063.145. The statement of the amount of surcharge required to be provided under subdivision (b) of Section 1063.14 shall include a description of, and purpose for, the California Insurance Guarantee Association, as follows:

"Companies writing property and casualty insurance business in California are required to participate in the California Insurance Guarantee Association. If a company becomes insolvent the California Insurance Guarantee Association settles unpaid claims and assesses each insurance company for its fair share.

California law requires all companies to surcharge policies to recover these assessments. If your policy is surcharged, 'CA Surcharge' with an amount will be displayed on your premium notice."

SEC. 454. Section 1140.5 of the Insurance Code is amended to read:

1140.5. (a) Notwithstanding any other provision of law, a copy of every form of proxy or written consent or authorization for use at any meeting or proceeding of shareholders or stockholders of any domestic insurer to evidence authority to cast the vote of any shareholder or stockholder, or to record the consent or the authorization of any shareholder or stockholder to any action of the insurer, and a copy of every solicitation, announcement, or advertisement used to obtain, or to influence any shareholder or stockholder to sign, any proxy, or written consent or authorization shall be filed with the commissioner, accompanied by a filing fee of fifty-eight dollars ($58), by the person

intending to use, issue, publish, or circulate the document. This document shall not be used, issued, published, or circulated before a period of 10 days following the date of its filing, or any shorter period that may be designated by the commissioner, has elapsed. Within the 10-day or a shorter period, the commissioner may disapprove of any document filed with him or her pursuant to this section, stating his or her reasons therefor in writing, in which case, the document shall not be used, issued, published, or circulated.

(b) Any person who fails to make the filing required by this section and who thereafter uses any document required to be filed, uses the document before it has been filed with the commissioner for the period required, or uses the document after receiving written notice that the document has been disapproved by the commissioner is guilty of a misdemeanor. It shall be unlawful to use any proxy or consent obtained in violation of this section. The superior court of the State of California in and for the county in which is located the principal place of business of the insurer shall have jurisdiction to enforce this section and the regulations promulgated pursuant to this section, and to grant appropriate relief upon the verified petition of the commissioner, the domestic insurer, or any of its shareholders or stockholders.

(c) The purposes of this section are: to ensure that the shareholders, stockholders, or other persons entitled to vote or give written consents or authorizations are provided with adequate and accurate information regarding the affairs of the insurers in which they have interests, the interests of those soliciting proxies or written consents or authorizations and of those upon whose behalf the solicitations are made, and the matters as to which proxies, written consents, or authorizations are solicited; and to prevent fraud or deception in connection with proxies, proxy statements, or other proxy solicitations. The commissioner may make rules and regulations in furtherance of the purposes of this section. These rules and regulations may differ as to different classes and types of insurers.

(d) This section shall not apply to any domestic insurer having fewer than 100 shareholders or stockholders and shall not apply to any domestic insurer if 95 percent or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares of stock are owned by fewer than 500 shareholders or stockholders. Any domestic insurer that files with the federal Securities and Exchange Commission forms of proxies, consents, and authorizations complying with the requirements of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.) and the amendments thereto and the applicable regulations thereunder, is exempt from this section.

SEC. 455. Section 1734.5 of the Insurance Code is amended to read:

1734.5. (a) (1) If fiduciary funds, as defined in Section 1733, are received by any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and the funds are not remitted, or maintained pursuant to subdivisions (a) and (b) of Section 1734, the funds shall be maintained in any of the following:

(A) United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest.

(B) Certificates of deposit of banks or savings and loan associations licensed by any state government within the United States, or the United States government.

(C) Repurchase agreements collateralized by securities issued by the United States government.

(D) Either of the following:

(i) Bonds and other obligations of this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments upon all property within its boundaries subject to taxation or assessment by the local agency or district to pay the principal and interest of the obligations.

(ii) Revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by this state, or a local agency or district or by a department, board, agency, or authority thereof.

(2) The bonds and obligations described in subparagraph (D) of paragraph (1) shall either have maturities of not more than one year or afford the holder of the obligation the unilateral right to redeem the obligation from its issuer within one year from date of purchase at an amount equal to or greater than its par value, and the bonds and obligations shall be required to be rated at least Aa1, MIG-1/VMIG-1, or Prime-1 by Moody's Investor Service, Inc., or AA, SP-1, or A-1 by Standard and Poor's Corporation.

(3) For the fiduciary funds maintained as provided in paragraph (1), the bonds, certificates, obligations, certificates of deposit, and repurchase agreements shall be valued on the basis of their acquisition cost.

(b) As a condition to maintaining the fiduciary funds pursuant to this section, a written agreement shall be obtained from each and every insurer or person entitled thereto authorizing the maintenance and the retention of any earnings accruing on the funds.

(c) Evidence of the funds shall be maintained on California business by a bank, as defined in Section 102 of the Financial Code, or a savings association, as defined in Section 143 or 5102 of the Financial Code, in a custodian or trust account in California, separate from any other funds,

in an amount at least equal to the premiums and return premiums, net of commissions received by him or her and unpaid to the persons entitled thereto, or, at their discretion or pursuant to a written contract, for the account of these persons. However, the person may commingle with the fiduciary funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies that may arise in his or her business of receiving and transmitting premium or return premium funds.

(d) The commissioner shall not have jurisdiction over any disputes arising between parties concerning the maintenance of fiduciary funds pursuant to this section. However, this subdivision shall not otherwise affect the authority granted to the commissioner over fiduciary funds by other provisions of this code, or regulations adopted pursuant thereto. As used in this subdivision, "parties" shall not include the commissioner.

(e) Investment losses to the principal of fiduciary funds maintained pursuant to this section are the responsibility of the person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and any obligation to insurers or other persons entitled to the fiduciary funds shall in no way be diminished due to any loss in the value to the principal of the fiduciary funds held pursuant to this section.

SEC. 456. Section 1735 of the Insurance Code is amended to read:

1735. (a) As used in this section, a managing general agent is a licensed fire and casualty broker-agent or a life agent to whom all of the following apply:

(1) Has a written management contract and an appointment on file with the commissioner in accordance with Section 1704, which appointment is then in force, with one or more admitted insurers covering business transacted by the insurer in a substantial portion of the State of California.

(2) Under the contract specified in paragraph (1), manages the transaction of either all or one or more of the classes of insurance written by those insurers in that territory or the transactions therein by those insurers under a specified fictitious underwriter's name.

(3) Has the power to appoint, supervise, and terminate the appointment of local agents in that territory.

(4) Has the power to accept or decline risks.

(5) Collects premium moneys from producing broker-agents and remits those moneys to those insurers pursuant to the account current system.

(b) The managing general agent shall, with respect to any principals for whom fiduciary funds are held, comply with Section 1734.

SEC. 457. Section 1763.2 of the Insurance Code is amended to read:

1763.2. (a) A licensed surplus line broker may originate surplus lines business, or may accept that business from any other originating licensee duly licensed for the type or types of insurance involved, and may compensate those licensees therefor.

(b) For any information involved in any insurance transaction described in subdivision (a), or involved in the eligibility of the risk for placement with a surplus line broker, the originating licensee shall use due care and diligence in the collection, preparation, and transmission of the information to the surplus line broker.

SEC. 458. Section 1781.7 of the Insurance Code is amended to read:

1781.7. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity shall only be entered into pursuant to a written contract specifying the responsibilities of each party, which shall be approved by the reinsurers's board of directors. Before a reinsurer assumes or cedes business through such a producer, a true copy of the approved contract shall be filed with the commissioner. The contract shall, at a minimum, contain provisions setting forth the following terms and conditions:

(a) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(b) The reinsurance intermediary-manager shall, not less than quarterly, render calendar-year-basis and underwriting-year-basis accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a quarterly basis.

(c) All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank the accounts of which are insured by an agency or instrumentality of the United States. The reinsurance intermediary-manager may retain no more than three months' estimated claims payment and allocated loss adjustment expenses. Unless the funds held for each reinsurer by the reinsurance intermediary-manager in the fiduciary account are reasonably and readily ascertainable from its books of account and records, and the bank's books of account and records, the reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents. Notwithstanding the foregoing, the reinsurance intermediary-manager shall maintain a separate bank account for each

reinsurer that it represents that is in receivership or liquidation or that the commissioner determines to be in an impaired financial condition.

(d) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing all of the following:

(1) The type of contract, limits, underwriting restrictions, classes or risks, and territory.

(2) The period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation, and disposition of outstanding reserves on covered risks.

(3) The reporting and settlement requirements with respect to balances.

(4) The rate used to compute the reinsurance premium.

(5) The names and addresses of reinsurers.

(6) The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager.

(7) Related correspondence and memoranda.

(8) Proof of placement.

(9) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by subdivision (d) of Section 1781.9, including the identity of retrocessionaires and the percentage of each contract assumed or ceded.

(10) Financial records, including, but not limited to, premium and loss accounts.

(11) If the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer directly from the assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk. If the reinsurance intermediary-manager procures a reinsurance contract on behalf of an admitted ceding insurer that is placed through a representative of the assuming insurer, other than an employee thereof, written evidence that the reinsurer has delegated binding authority to the representative.

(e) The reinsurer shall have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(f) The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

(g) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(h) The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer.

(i) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer, it shall contain all of the following provisions:

(1) All claims shall be reported to the reinsurer in a timely manner.

(2) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that any of the following applies to the claim:

(A) The claim has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.

(B) The claim involves a coverage dispute.

(C) The claim may exceed the reinsurance intermediary-manager's claims settlement authority.

(D) The claim is open for more than six months, unless the reinsurer agrees in writing to waive this requirement, in which event the reinsurance intermediary-manager shall annually provide the reinsurer with an exhibit identifying and describing each open claim.

(3) All claim files shall be joint property of the reinsurer and the reinsurer intermediary-manager. However, upon an order of liquidation of the reinsurer, these files shall become the sole property of the reinsurer or its estate, except when the reinsurance intermediary-manager is also managing the claim files for other reinsurers. In that event, the reinsurance intermediary-manager shall simultaneously and immediately provide the liquidator with copies of all the claim files. With respect to claim files pertaining solely to a reinsurer in liquidation, the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(j) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subdivision (c) of Section 1781.9.

(k) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant and annually shall provide the reinsurer with a certification from an independent certified public accountant that the reinsurance intermediary-manager's allocations of premiums and losses to the reinsurer have been made on a timely and proper basis.

(*l*) The reinsurer shall periodically and at least semiannually conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(m) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract.

(n) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

SEC. 459. Section 1802.5 of the Insurance Code is amended to read:

1802.5. A bail permittee's license, by its terms, permits the licensee to solicit, negotiate, issue, and deliver bail bonds. The license shall not be issued unless and until there is filed with the commissioner

a bond having an admitted surety insurer as surety thereon in the penal sum of five thousand dollars ($5,000), conditioned upon the proper application and disposal of all moneys collected or received by the bail permittee, his or her solicitors licensed pursuant to his or her appointment, and his or her employees, in favor of the people of the State of California.

SEC. 460. Section 1842 of the Insurance Code is amended to read:

1842. (a) The provisions of Chapter 5 (commencing with Section 1621) concerning the license period and the procedure and time for filing applications for renewal of licenses and for filing notices of intention to keep licenses in force applicable to life agents are applicable to licenses authorized by this chapter except that participation in the applications or notices by an admitted insurer is not required.

(b) The fee for filing an application for the issuance or renewal of a license to act as a life and disability insurance analyst or a notice of intention to keep the license in force is one hundred eighteen dollars ($118). As respects life and disability insurance analysts all references in Section 1718 to fees shall be deemed to be this fee. The fee for filing application to take the qualifying examination for life and disability insurance analyst is fifty-nine dollars ($59) and the fee for filing the first application to take the qualifying examination must be paid at the same time the application for issuance of the license is paid. The fees specified in this section shall be paid in advance, and shall be determined by multiplying the number of natural persons to be licensed, or to be named on or added to a license, by the amounts specified in this section as to

each license, multiplied by the number of license years in the period of the license applied for, or the remaining period of the existing license counting any initial fractional license year of the period as one year for that purpose.

SEC. 461. Section 1874.2 of the Insurance Code is amended to read:

1874.2. (a) Upon written request to an insurer by an authorized governmental agency, an insurer or agent authorized by that insurer to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer may possess relating to any specific motor vehicle theft or motor vehicle insurance fraud. Relevant information may include, but is not limited to, all of the following:

(1) Insurance policy information relevant to the motor vehicle theft or motor vehicle insurance fraud under investigation, including, but not limited to, any application for a policy.

(2) Policy premium payment records that are available.

(3) History of previous claims made by the insured.

(4) Information relating to the investigation of the motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proof of loss, and notice of loss.

(b) (1) When an insurer knows or reasonably believes it knows the identity of a person whom it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim or has knowledge of the criminal or fraudulent act that is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or an agent authorized by an insurer to act on its behalf, shall notify the local police department, sheriff's office, the Department of the California Highway Patrol, or district attorney's office, and may notify any other authorized governmental agency of that knowledge or reasonable belief and provide any additional information in accordance with subdivision (a).

(2) When an insurer provides the local police department, sheriff's office, Department of the California Highway Patrol, or district attorney's office with notice pursuant to this section, it shall be deemed sufficient notice to all authorized governmental agencies for the purpose of this chapter. Nothing in this section shall relieve an insurer of its obligations under Section 1872.4.

(3) Nothing in this subdivision shall abrogate or impair the rights or powers created under subdivision (a).

(c) The authorized governmental agency provided with information pursuant to subdivision (a) or (b) may release or provide that information to any other authorized governmental agency.

(d) An authorized governmental agency shall notify the affected insurer in writing when it has reason to believe that a fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim has been committed. The agency shall provide this notice within a reasonable time, not to exceed 30 days. The agency may also release more specific information pursuant to this section when it determines that an ongoing investigation would not be jeopardized. The agency may require a fee from the insurer equal to the cost of providing the notice or the information specified in this section.

(e) An insurer providing information to an authorized agency pursuant to this section shall provide the information within a reasonable time, but not to exceed 30 days from the day on which the duty arose.

SEC. 462. Section 1903 of the Insurance Code is amended to read:

1903. In marine insurance, concealment in respect to any of the following matters does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed:

(a) The national character of the insured.

(b) The liability of the subject matter to capture and detention.

(c) The liability to seizure from breach of foreign laws of trade.

(d) The want of necessary documents.

(e) The use of false and simulated papers.

SEC. 463. Section 10123.141 of the Insurance Code is amended to read:

10123.141. (a) Every policy of expense incurred hospital, medical, or surgical insurance issued, amended, or renewed on or after January 1, 1991, on a group basis, except for policies that only provide coverage for specified diseases or other limited benefit coverage, shall offer coverage as an option for special footwear needed by persons who suffer from foot disfigurement under the terms and conditions agreed upon between the group contract holder and the insurer.

(b) As used in this section, foot disfigurement shall include, but not be limited to, disfigurement from cerebral palsy, arthritis, polio, spina bifida, and diabetes, and foot disfigurement caused by accident or developmental disability.

SEC. 464. Section 10133.56 of the Insurance Code is amended to read:

10133.56. (a) A health insurer that enters into a contract with a professional or institutional provider to provide services at alternative rates of payment pursuant to Section 10133 shall, at the request of an insured, arrange for the completion of covered services by a terminated

provider, if the insured is undergoing a course of treatment for any of the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health insurer in consultation with the insured and the terminated provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.

(4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness, which may exceed 12 months from the contract termination date.

(5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

(6) Performance of a surgery or other procedure that has been recommended and documented by the provider to occur within 180 days of the contract's termination date.

(b) The insurer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section, to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the insurer is not required to continue the provider's services beyond the contract termination date.

(c) Unless otherwise agreed upon between the terminated provider and the insurer or between the terminated provider and the provider

group, the agreement shall be construed to require a rate and method of payment to the terminated provider, for the services rendered pursuant to this section, that are the same as the rate and method of payment for the same services while under contract with the insurer and at the time of termination. The provider shall accept the reimbursement as payment in full and shall not bill the insured for any amount in excess of the reimbursement rate, with the exception of copayments and deductibles pursuant to subdivision (e).

(d) Notice as to the process by which an insured may request completion of covered services pursuant to this section shall be provided in any insurer evidence of coverage and disclosure form issued after March 31, 2004. An insurer shall provide a written copy of this information to its contracting providers and provider groups. An insurer shall also provide a copy to its insureds upon request.

(e) The payment of copayments, deductibles, or other cost-sharing components by the insured during the period of completion of covered services with a terminated provider shall be the same copayments, deductibles, or other cost-sharing components that would be paid by the insured when receiving care from a provider currently contracting with the insurer.

(f) If an insurer delegates the responsibility of complying with this section to its contracting entities, the insurer shall ensure that the requirements of this section are met.

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

(1) "Provider" means a person who is a licentiate as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) "Terminated provider" means a provider whose contract to provide services to insureds is terminated or not renewed by the insurer or one of the insurer's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the insurer or contracting provider group.

(3) "Provider group" includes a medical group, independent practice association, or any other similar organization.

(h) This section shall not require an insurer or provider group to provide for the completion of covered services by a provider whose contract with the insurer or provider group has been terminated or not renewed for reasons relating to medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.

(i) This section shall not require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the insurer contract.

(j) The provisions contained in this section are in addition to any other responsibilities of insurers to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude an insurer from providing continuity of care beyond the requirements of this section.

SEC. 465. Section 10136 of the Insurance Code is amended to read:

10136. (a) No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied.

(b) Ten or more days before the payee executes a transfer agreement, the transferee shall provide the payee with a separate written disclosure statement, accurately completed with the information that applies to the transfer agreement, in substantially the following form, in at least 12-point type unless otherwise indicated (bracketed instructions shall not appear in the form):

"Disclosure Notice Required By Law [14-point boldface type]

You are selling (technically called 'transferring') your right to receive your payments under a structured settlement. You should get this disclosure notice at least 10 days before you sign any contract.

IMPORTANT TERMS: [14-point boldface type]

Total dollar amount of payments you are selling:	$ _____
Present value of amount you are selling:	$ _____
Net amount paid to you:	$ _____

For comparison purposes:

If you did not sell your right to receive structured settlement payments, but instead borrowed the net amount of $____ and paid that loan back in installments with each of the payments you are now selling, the equivalent interest rate you would be paying for that loan would be ____% per year.

[The text and information set forth above under 'IMPORTANT TERMS' shall be in 14-point type and circumscribed by a box with a bold border]

To figure the net amount we are paying, we have charged you for the following expenses:

[itemize in a list by type and amount]

for a total of $____ in expenses.

You should get independent professional advice about whether selling your structured settlement payments is a good idea for you and for your dependents.

You also should get independent professional advice from an accountant or lawyer experienced in tax matters about any income tax consequences from selling your structured settlement payments. We cannot give you the name of anyone to advise you.

Court approval is needed [14-point boldface type]. A court must approve any agreement you sign to sell your rights under a structured settlement. You will not receive any money until the court approves the sale. Court approval could take more than 30 days following the day you sign an agreement selling your rights under a structured settlement.

You may cancel the contract before court approval [14-point boldface type]. You may cancel the agreement selling (or transferring) your rights under a structured settlement without any cost or obligation. You may cancel at any time before the court approves the contract. You will get notice of the date of the court hearing.

If you want to cancel, you do not need any special form. But, you must cancel in writing. Send your cancellation to: [insert transferee's name and address].

If you believe that you have been treated unfairly or have been misled, you should contact your local district attorney or the state Attorney General."

(c) The transfer agreement shall be written in at least 12-point type and shall be complete and without blank spaces to be completed after the payee's signature. The transfer agreement shall set forth clear and conspicuously, and in no less than 12-point type, all of the following:

(1) A statement that the agreement is not effective until the date on which a court enters a final order approving the transfer agreement and that payment to the payee pursuant to the transfer agreement will be delayed up to 30 days or more after the date the payee signed the transfer agreement in order for the court to review and approve the transfer agreement.

(2) The amounts and due dates of the structured settlement payments to be transferred.

(3) The aggregate amount of the structured settlement payments to be transferred. This amount shall be disclosed in the form prescribed in

subdivision (b) in the space for "Total dollar amount of payments you are selling."

(4) The aggregate amount of all expenses, if any, to be deducted from the purchase price to be paid to the payee in exchange for the payments to be transferred, and an itemization of all expenses by type and amount.

(5) The amount payable to the payee, net of all expenses, in exchange for the payments to be transferred. This amount shall be disclosed in the form prescribed in subdivision (b) in the spaces for "Net amount paid to you" and "net amount."

(6) The discounted present value of all structured settlement payments to be transferred and a statement that "This is the value of your structured settlement in current dollars." This amount shall be disclosed in the form prescribed in subdivision (b) in the space for "Present value of amount you are selling."

(7) The federal rate, as described in subdivision (c) of Section 10134, used in determining the discounted present value.

(8) The effective equivalent interest rate, which shall be disclosed in the following statement:

"YOU WILL BE PAYING THE EQUIVALENT OF AN INTEREST RATE OF ____% PER YEAR.

Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, if the transferred structured settlement payments were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal, it would be as if you were paying interest to us of ____% per year, assuming funding on the effective date of transfer."

This percentage amount shall be disclosed in the form prescribed in subdivision (b) in the space for "the equivalent interest rate you would be paying for this loan would be ____% per year."

(9) The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments.

(10) A statement that the payee should obtain independent professional advice regarding any federal and state income tax consequences arising from the proposed transfer, and that the transferee may not refer the payee to any specific adviser for that purpose.

(11) A statement that the court approving the transfer agreement retains continuing jurisdiction to interpret and monitor implementation of the agreement as justice may require.

(12) The following statement: "If you believe you were treated unfairly or were misled as to the nature of the obligations you assumed upon entering into this agreement, you should report those circumstances to your local district attorney or the office of the Attorney General."

(13) The following statement printed in 14-point type, circumscribed by a box with a bold border, and set forth immediately above or adjacent to the space reserved for the payee's signature: "You have the right to cancel this agreement without any cost or obligation until the date the court approves this agreement. You will receive notice of the court hearing date when approval may occur. You must cancel in writing and send your cancellation to [insert transferee's name and address]."

(d) The contract for transferring the structured settlement payment rights may not violate Section 10138.

(e) At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee.

SEC. 466. Section 10203.4 of the Insurance Code is amended to read:

10203.4. (a) Insurance under any group life insurance policy issued pursuant to Sections 10202, 10202.8, 10203, 10203.1, and 10203.7 may, if 75 percent of the insured employees elect, be extended to insure the dependents, or any class or classes thereof, of each insured employee who so elects, in amounts in accordance with some plan that precludes individual selection and that shall not be in excess of 50 percent of the insurance on the life of the insured employee.

(b) "Dependent" includes the member's spouse and all unmarried children from birth through 20 years of age, or through age 22 years if the dependent child is attending an educational institution, or a child 21 years of age or older who is both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee for support and maintenance if proof of the incapacity and dependency is furnished to the insurer by the employee within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(c) The premiums for the insurance on the dependents may be paid by the employer, the employee, or the employer and the employee jointly.

SEC. 467. Section 10203.5 of the Insurance Code is amended to read:

10203.5. (a) Life insurance conforming to all the following conditions is another form of group life insurance:

(1) Covering one of the following groups:

(A) All members are or become borrowers from one financial institution, including subsidiary or affiliated persons, under an agreement to repay the sum borrowed.

(B) All members are or become purchasers of merchandise or other property, exclusive of securities, investment certificates, and bank deposits, under an agreement to pay the balance of the purchase price.

(2) The group numbers not less than 100 new entrants yearly or, in the case of a credit union, not less than 50 borrowers yearly.

(3) The amount insured on any one borrower or purchaser does not exceed:

(A) The amount of the loan commitment in the case of an agricultural or horticultural loan commitment, as defined in Section 10203.55, repayable in one sum or in irregular installments within a period not in excess of 18 months from the initial date of the loan commitment.

(B) In all other cases, the balance of the indebtedness to the financial institution or vendor.

(4) The repayment or payment of purchase price is to be made under the agreement of loan or purchase in substantially equal installments over a period not exceeding 40 years, in installments that may vary according to the terms of a signed agreement, in payments or installments in accordance with the usual terms of the creditor in the case of an open-ended agreement to extend credit, a revolving loan, or revolving charge account, or in one sum or irregular installments within a period not in excess of 18 months from the initial date of the commitment on an agricultural or horticultural loan.

(5) The policy is issued upon application of and made payable to the financial institution, vendor, or a creditor to whom the vendor may transfer title to the indebtedness, as beneficiary, and the premiums are paid by or through the financial institution, vendor, or creditor.

(b) A policy of insurance conforming to this section is not subject to Section 10209 of this code or Section 704.100 of the Code of Civil Procedure.

SEC. 468. Section 10203.8 of the Insurance Code is amended to read:

10203.8. Life insurance conforming to all of the following conditions is another form of group life insurance:

(a) Covering the lives of every eligible member of a group of persons who become or are named depositors under a savings account plan, established by a financial institution including subsidiary or affiliated persons, which plan provides for periodic deposits of like amounts.

(b) The period during which the deposits may be made under the plan does not exceed 60 consecutive months, and the total amount of insurance under the policy on any one depositor does not exceed the difference between the amounts deposited and the maximum amount that may be deposited under the plan and does not exceed one thousand five hundred dollars ($1,500) on any one life.

(c) The group numbers 100 new entrants yearly.

(d) The policy is issued upon application of and made payable to the financial institution as beneficiary, and the premiums are paid by or through the financial institution.

(e) The policy of insurance conforming to this section is not subject to Section 10209 or of this code or Section 704.100 of the Code of Civil Procedure.

SEC. 469. Section 10209 of the Insurance Code is amended to read:

10209. (a) Except as provided by Sections 10203.5 and 10203.8, the policy shall contain a provision that the insurer will issue to the employer for delivery to the insured employee an individual certificate setting forth:

(1) A statement as to the insurance protection to which the employee is entitled and to whom payable.

(2) A provision that if the employment terminates for any reason whatsoever and the employee applies to the insurer within 31 days after the termination, paying the premium applicable to the class of risk to which he or she belongs and to the form and amount of the policy at his or her then attained age, he or she is entitled, without producing evidence of insurability, to the issue by the insurer of any individual life policy in any one of the forms, other than term insurance, customarily issued by the insurer.

(3) A statement that the policy in lieu of group insurance will be in an amount equal to the amount of his or her protection under the group insurance at the time of the termination.

(4) A provision that if the employee dies during the 31-day period within which he or she is entitled to have an individual policy issued to him or her in accordance with this section and before the policy shall have become effective, the amount of life insurance that the employee is entitled to have issued to him or her under the individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(b) If any employee insured under a group life insurance policy delivered in this state becomes entitled under the terms of the policy to have an individual policy of life insurance issued to him or her without evidence of insurability, subject to making of application and payment of the first premium within the period specified in the policy, and if the employee is not given notice of the existence of the right at least 15 days prior to the expiration date of the period, the employee shall have an additional period within which to exercise the right, but nothing in this section shall be construed to continue any insurance beyond the period provided in the policy. This additional period shall expire 25 days next

after the employee is given the notice but in no event shall the additional period extend beyond 60 days next after the expiration date of the period provided in the policy. Written notice presented to the employee or mailed by the policyholder to the last-known address of the employee or mailed by the insurer to the last-known address of the employee as furnished by the policyholder shall constitute notice for the purpose of this section.

(c) Paragraphs (2) and (4) of subdivision (a), and subdivision (b), shall apply to any insurance issued pursuant to Section 10203.4 on the life of a spouse of an employee.

(d) The contract of insurance and individual certificate may contain provisions defining the extent to which the employer acts as the agent of the employee or may act as the agent of the insurer.

SEC. 470. Section 10350.2 of the Insurance Code is amended to read:

10350.2. A disability policy shall contain a provision that shall be in one of the two forms set forth in this section. Policies other than noncancellable policies shall use Form A. Noncancellable policies shall use either Form A or Form B. In Form B, the clause in parentheses in paragraph (a) may be omitted at the insurer's option. Paragraph (a) in Form A shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during the initial two-year period, nor to limit the application of Sections 10369.2 to 10369.6, inclusive, in the event of misstatement with respect to age or occupation or other insurance.

Form A.

Time Limit on Certain Defenses: (a) After two years from the date of issue of this policy, no misstatements, except fraudulent misstatements, made by the applicant in the application for the policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of the two-year period.

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

Form B.

Incontestable: (a) After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during

which the insured is disabled), it shall become incontestable as to the statements contained in the application.

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

SEC. 471. Section 11580.1 of the Insurance Code is amended to read:

11580.1. (a) No policy of automobile liability insurance described in Section 16054 of the Vehicle Code covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be issued or delivered in this state on or after the effective date of this section unless it contains the provisions set forth in subdivision (b). However, none of the requirements of subdivision (b) shall apply to the insurance afforded under the policy (1) to the extent that the insurance exceeds the limits specified in subdivision (a) of Section 16056 of the Vehicle Code, or (2) if the policy contains an underlying insurance requirement, or provides for a retained limit of self-insurance, equal to or greater than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(b) Every policy of automobile liability insurance to which subdivision (a) applies shall contain all of the following provisions:

(1) Coverage limits not less than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(2) Designation by explicit description of, or appropriate reference to, the motor vehicles or class of motor vehicles to which coverage is specifically granted.

(3) Designation by explicit description of the purposes for which coverage for those motor vehicles is specifically excluded.

(4) Provision affording insurance to the named insured with respect to any owned or leased motor vehicle covered by the policy, and to the same extent that insurance is afforded to the named insured, to any other person using the motor vehicle, provided the use is by the named insured or with his or her permission, express or implied, and within the scope of that permission, except that: (A) with regard to insurance afforded for the loading or unloading of the motor vehicle, the insurance may be limited to apply only to the named insured, a relative of the named insured who is a resident of the named insured's household, a lessee or bailee of the motor vehicle, or an employee of any of those persons; and (B) the insurance afforded to any person other than the named insured need not apply to: (i) any employee with respect to bodily injury sustained

by a fellow employee injured in the scope and course of his or her employment, or (ii) any person, or to any agent or employee thereof, employed or otherwise engaged in the business of selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith. As used in this chapter, "owned motor vehicle" includes all motor vehicles described and rated in the policy.

(c) In addition to any exclusion provided in paragraph (3) of subdivision (b), the insurance afforded by any policy of automobile liability insurance to which subdivision (a) applies, including the insurer's obligation to defend, may, by appropriate policy provision, be made inapplicable to any or all of the following:

(1) Liability assumed by the insured under contract.

(2) Liability for bodily injury or property damage caused intentionally by or at the direction of the insured.

(3) Liability imposed upon or assumed by the insured under any workers' compensation law.

(4) Liability for bodily injury to any employee of the insured arising out of and in the course of his or her employment.

(5) Liability for bodily injury to an insured or liability for bodily injury to an insured whenever the ultimate benefits of that indemnification accrue directly or indirectly to an insured.

(6) Liability for damage to property owned, rented to, transported by, or in the charge of, an insured. A motor vehicle operated by an insured shall be considered to be property in the charge of an insured.

(7) Liability for any bodily injury or property damage with respect to which insurance is or can be afforded under a nuclear energy liability policy.

(8) Any motor vehicle or class of motor vehicles, as described or designated in the policy, with respect to which coverage is explicitly excluded, in whole or in part.

"The insured" as used in paragraphs (1), (2), (3), and (4) shall mean only that insured under the policy against whom the particular claim is made or suit brought. "An insured" as used in paragraphs (5) and (6) shall mean any insured under the policy including those persons who would have otherwise been included within the policy's definition of an insured but, by agreement, are subject to the limitations of paragraph (1) of subdivision (d).

(d) Notwithstanding paragraph (4) of subdivision (b), or Article 2 (commencing with Section 16450) of Chapter 3 of Division 7 of, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9 of, the Vehicle Code, the insurer and any named insured may, by the

terms of any policy of automobile liability insurance to which subdivision (a) applies, or by a separate writing relating thereto, agree as to either or both of the following limitations, the agreement to be binding upon every insured to whom the policy applies and upon every third-party claimant:

(1) That coverage and the insurer's obligation to defend under the policy shall not apply nor accrue to the benefit of any insured or any third-party claimant while any motor vehicle is being used or operated by a natural person or persons designated by name. These limitations shall apply to any use or operation of a motor vehicle, including the negligent or alleged negligent entrustment of a motor vehicle to that designated person or persons. This agreement applies to all coverage provided by that policy and is sufficient to comply with the requirements of paragraph (2) of subdivision (a) of Section 11580.2 to delete coverage when a motor vehicle is operated by a natural person or persons designated by name. The insurer shall have an obligation to defend the named insured when all of the following apply to that designated natural person:

(A) He or she is a resident of the same household as the named insured.

(B) As a result of operating the insured motor vehicle of the named insured, he or she is jointly sued with the named insured.

(C) He or she is an insured under a separate automobile liability insurance policy issued to him or her as a named insured, which policy does not provide a defense to the named insured.

An agreement made by the insurer and any named insured more than 60 days following the inception of the policy excluding a designated person by name shall be effective from the date of the agreement and shall, with the signature of a named insured, be conclusive evidence of the validity of the agreement.

That agreement shall remain in force as long as the policy remains in force, and shall apply to any continuation, renewal, or replacement of the policy by the named insured, or reinstatement of the policy within 30 days of any lapse thereof.

(2) That with regard to a policy issued to a named insured engaged in the business of leasing vehicles for those vehicles that are leased for a term in excess of six months, or selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles, coverage shall not apply to any person other than the named insured or his or her agent or employee, except to the extent that the limits of liability of any other valid and collectible insurance available to that person are not equal to the limits of liability specified in subdivision (a) of Section 16056 of the Vehicle Code. If the policy is issued to a named insured engaged in the

business of leasing vehicles, which business includes the lease of vehicles for a term in excess of six months, and the lessor includes in the lease automobile liability insurance, the terms and limits of which are not otherwise specified in the lease, the named insured shall incorporate a provision in each vehicle lease contract advising the lessee of the provisions of this subdivision and the fact that this limitation is applicable except as otherwise provided for by statute or federal law.

(e) Nothing in this section or in Section 16054 or 16450 of the Vehicle Code shall be construed to constitute a homeowner's policy, personal and residence liability policy, personal and farm liability policy, general liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage as an "automobile liability policy" within the meaning of Section 16054 of the Vehicle Code, or as a "motor vehicle liability policy" within the meaning of Section 16450 of the Vehicle Code, nor shall this section apply to a policy that provides insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle in the Republic of Mexico issued or delivered in this state by a nonadmitted Mexican insurer, notwithstanding that the policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(f) (1) On and after January 1, 1976, no policy of automobile liability insurance described in subdivision (a) shall be issued, amended, or renewed in this state if it contains any provision that expressly or impliedly excludes from coverage under the policy the operation or use of an insured motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation. This subdivision shall not apply in any case in which the named insured receives any remuneration of any kind other than reimbursement for actual mileage driven in the performance of those services at a rate not to exceed the following:

(A) For the 1980–81 fiscal year, the maximum rate authorized by the California Victim Compensation and Government Claims Board, which shall also be known as the "base rate."

(B) For each fiscal year thereafter, the greater of either (A) the maximum rate authorized by the California Victim Compensation and Government Claims Board or (B) the base rate as adjusted by the California Consumer Price Index.

(2) No policy of insurance issued under this section may be canceled by an insurer solely for the reason that the named insured is performing

volunteer services for a nonprofit charitable organization or governmental agency consisting of providing social service transportation.

(3) For the purposes of this section, "social service transportation" means transportation services provided by private nonprofit organizations or individuals to either individuals who are senior citizens or individuals or groups of individuals who have special transportation needs because of physical or mental conditions and supported in whole or in part by funding from private or public agencies.

(g) Notwithstanding paragraph (4) of subdivision (b), or Article 2 (commencing with Section 16450) of Chapter 3 of Division 7 of, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9 of, the Vehicle Code, a Mexican nonadmitted insurer and any named insured may, by the terms of any policy of automobile insurance for use solely in the Republic of Mexico to which subdivision (a) applies, or by a separate writing relating thereto, agree to the limitation that coverage under that policy shall not apply to any person riding in or occupying a vehicle owned by the insured or driven by another person with the permission of the insured. The agreement shall be binding upon every insured to whom the policy applies and upon any third-party claimant.

(h) No policy of automobile insurance that provides insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle solely in the Republic of Mexico issued by a nonadmitted Mexican insurance company, shall be subject to, or provide coverage for, those coverages provided in Section 11580.2.

SEC. 472. Section 11872 of the Insurance Code is amended to read:

11872. The fund may annually enter into agreements with state agencies for service to be rendered to the fund. These state agencies include, but shall not be limited to: the Department of Finance, Department of General Services, State Personnel Board, and the Public Employees' Retirement System. If these agencies and the fund cannot agree upon the cost of services provided by the agreements, the California Victim Compensation and Government Claims Board shall be requested to arrive at an equitable settlement.

SEC. 473. Section 12640.02 of the Insurance Code is amended to read:

12640.02. The definitions set forth in this article shall govern the construction of the terms used in this chapter but shall not affect any other provisions of this code.

(a) "Mortgage guaranty insurance" means:

(1) Insurance against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a first lien or

charge on real estate, provided the improvement on the real estate is a residential building or a condominium unit or buildings designed for occupancy by not more than four families.

(2) Insurance against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a junior lien or charge on real estate, provided the improvement on the real estate is a residential building or a condominium unit or building designed for occupancy by not more than four families.

(3) Insurance against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, provided the improvement on the real estate is a building or buildings designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes.

(4) Insurance against financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use, or occupancy of real estate, provided the improvement on the real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

(b) (1) "Authorized real estate security" for the purposes of this chapter means either (A) real estate, plus the balance of any pledged cash account, pledged borrower retirement account, or collateralized guaranty agreement contracted for by parents, blood relatives, employers, or nonprofit corporations for the benefit of the borrower; or (B) real estate securing a note, bond, or other evidence of indebtedness by a junior mortgage, deed of trust, or other instrument constituting a junior lien or charge on the real estate, which, when combined with all existing mortgage loan amounts, does not exceed a total indebtedness equal to 103 percent of the fair market value of the real estate at the time the junior loan is made, provided that, in determining the foregoing 103-percent limitation, if the loan securing the junior lien is an equity line of credit loan, the full amount of the line of credit to be secured by the junior lien shall be considered the amount of the loan, and further provided, in all cases that both of the following are true:

(i) The real estate loan secured in this manner is any type of loan that a bank, savings association, mortgage banker, credit union, mortgage loan broker, or insurance company, which is supervised and regulated by a department of this state or an agency of the federal government, is authorized to make or arrange, or would be authorized to make or arrange,

disregarding any requirement applicable to an institution that the amount of the loan not exceed a certain percentage of the value of the real estate.

(ii) The improvement on the real estate is a building or buildings designed for occupancy as specified by paragraphs (1), (2), and (3) of subdivision (a).

(2) The lien on the real estate may be subject and subordinate to the following:

(A) The lien of any public bond, assessment, or tax, when no installment, call, or payment of or under the bond, assessment, or tax is delinquent.

(B) Outstanding mineral, oil or timber rights, rights-of-way, easements or rights-of-way or support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon the real property under which rents or profits are reserved to the owner thereof.

(3) "Authorized real estate security" also means a stock or membership certificate issued to a tenant-stockholder or resident-member by a completed fee simple cooperative housing corporation, as defined in Section 17265 of the Revenue and Taxation Code and Section 216 of the United States Internal Revenue Code.

(c) "Contingency reserve" means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles.

(d) "Policyholders surplus" means the aggregate of capital, surplus, and contingency reserve.

SEC. 474. Section 12698.50 of the Insurance Code is amended to read:

12698.50. (a) It shall constitute unfair competition for purposes of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code for an insurer, an insurance agent or broker, or an administrator, as defined in Section 1759, to refer an individual employee or employee's dependent to the program, or arrange for an individual employee or employee's dependent to apply to the program, for the purpose of separating that employee or employee's dependent from group health coverage provided in connection with the employee's employment.

(b) Any employee described in subdivision (a) shall have a personal right of action to enforce subdivision (a).

SEC. 475. Section 12698.54 of the Insurance Code is amended to read:

12698.54. It shall constitute an unfair labor practice contrary to public policy and enforceable under Section 95 of the Labor Code for any employer to change the employee-employer share-of-cost ratio or to

make any other modification of maternity care coverage for employees or employees' dependents that results in the enrollment of the employees or employees' dependents in the program established pursuant to this part.

SEC. 476. Section 15039 of the Insurance Code is amended to read:

15039. The commissioner may suspend or revoke a license issued under this chapter if he or she determines that the licensee has done any of the following:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of the license.

(b) Violated this chapter.

(c) Violated any rule of the commissioner adopted pursuant to the authority contained in this chapter.

(d) Been convicted of any crime substantially related to the qualifications, functions, and duties of the holder of the registration or license in question.

(e) Impersonated, or permitted, or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or subdivision thereof.

(f) Committed or permitted any employee to commit any act, while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license.

(g) Willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(h) Committed assault, battery, or kidnapping, or used force or violence on any person.

(i) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(j) Acted as a runner or capper for any attorney.

(k) Committed any act which is a ground for denial of an application for license under this chapter.

(*l*) Manufactured evidence.

(m) Acceptance of employment adverse to a client or former client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of his or her employment by that client or former client.

SEC. 477. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner shall have the authority to investigate employee complaints. The Labor Commissioner may provide

for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It shall be within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved

in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) (1) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

(2) The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, if it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, if it can be shown that proper service was made on the defendant or his or her agent.

SEC. 478. Section 142.4 of the Labor Code is amended to read:

142.4. (a) Occupational safety and health standards and orders shall be adopted, amended, or repealed as provided in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as modified by this chapter.

(b) If an emergency regulation is based upon an emergency temporary standard published in the Federal Register by the Secretary of Labor pursuant to Section 6(c)(1) of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596; 29 U.S.C. Sec. 655(c)(1)), the 120-day period specified in Section 11346.1 of the Government Code shall be deemed not to expire until 120 days after a permanent standard is promulgated by the Secretary of Labor pursuant to Section 6(c)(3) of the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 655(c)(3)).

SEC. 479. Section 226.4 of the Labor Code is amended to read:

226.4. If, upon inspection or investigation, the Labor Commissioner determines that an employer is in violation of subdivision (a) of Section 226, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated.

SEC. 480. Section 243 of the Labor Code is amended to read:

243. (a) If, within 10 years of either a conviction for a violation of this article or failing to satisfy a judgment for nonpayment of wages, or of both, it is alleged that an employer on a second occasion has been convicted of again violating this article or is failing to satisfy a judgment for nonpayment of wages, an employee or the employee's legal representative, an attorney licensed to practice law in this state, may, on behalf of himself or herself and others, bring an action in a court of competent jurisdiction for a temporary restraining order prohibiting the employer from doing business in this state unless the employer deposits with the court a bond to secure compliance by the employer with this article or to satisfy the judgment for nonpayment of wages.

(b) Upon the filing of an affidavit that, to the satisfaction of the court, shows reasonable proof that an employer, for the second time within 10 years, has been convicted of violating this article or has failed to satisfy a judgment for the nonpayment of wages, or both, the court, pursuant to Section 527 of the Code of Civil Procedure, may grant a temporary restraining order that prohibits the employer within 30 days from conducting any business within the state, unless the employer deposits a bond payable to the Labor Commissioner that is conditioned on the employer making wage payments in accordance with this article, or upon satisfaction by the employer of any judgment for nonpayment of wages, or both. The court shall order that the bond be deposited with the court by the employer at any point in time that, within a five-year period from the date of the order, the employer employs more than 10 employees. The court shall order that the bond be in an amount equal to twenty-five thousand dollars ($25,000) or 25 percent of the weekly gross payroll of the employer at the time of the posting of the bond, whichever is greater, and that the term of the bond be for the duration of the service of the employee who brought the action, until past due wages have been paid, or until satisfaction of a judgment for nonpayment of wages.

(c) For purposes of subdivision (b), an employer shall be deemed to have been convicted of having violated this article or to have failed to satisfy a judgment for the second time within 10 years if, to secure labor or personal services in connection with his or her business, the employer

uses the services of an agent, contractor, or subcontractor who is convicted of a violation of this article or fails to satisfy a judgment for wages respecting those employees, or both, but only if the employer had actual knowledge of the person's failure to pay wages. In issuing a temporary restraining order pursuant to this section, the court, in determining the amount and term of the bond, shall count the agent's, contractor's, or subcontractor's employees as part of the employer's total work force. This subdivision shall not apply where a temporary restraining order against the agent, contractor, or subcontractor as an employer has been issued pursuant to subdivision (b).

(d) An employer who, for the third time within 10 years of the first occurrence, is alleged to have violated this article or to have failed to satisfy a judgment for nonpayment of wages, or both, shall be deemed by the court to have commenced a new five-year period for which the posting of a bond may be ordered in accordance with subdivision (b), except that the court may, in its discretion, require the posting of a bond in a greater amount as it determines appropriate under the circumstances.

(e) A former employee who was a party to an earlier action against an employer in which a judgment for the payment of wages was obtained, and who alleges that the employer has failed to satisfy the judgment for the payment of wages, in addition to any other available remedy, may petition the court pursuant to subdivision (b) for a temporary restraining order against the employer to cease doing business in this state unless the employer posts a bond with the court.

(f) Actions brought pursuant to this section shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

(g) Nothing in this section shall be construed to impose any mandatory duties on the Labor Commissioner.

SEC. 481. Section 270.6 of the Labor Code is amended to read:

270.6. (a) No person, or agent or officer thereof, without a permanent and fixed place of business or residence in this state who uses or employs any person in the door-to-door selling of any merchandise, in any similar itinerant activity, or in any telephone solicitation, shall fail or neglect, before commencing work in any period for which any single payment of wages is made or for four calendar weeks, whichever is longer, to do any one of the following:

(1) Have on hand or on deposit with a bank or trust company in the county where the business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest these operations, cash or readily salable securities of a market value sufficient

to pay the wages of every person employed in connection with these operations for that period described in this subdivision.

(2) Deposit with the Labor Commissioner the bond of a surety company authorized to do business within the state, acceptable to the Labor Commissioner, conditioned upon the payment of all wages found to be due and unpaid in connection with these operations under any provision of this code.

(3) Deposit with the Labor Commissioner a time certificate of deposit indicating that the person, agent, or officer subject to this section has deposited with a bank or trust company cash payable to the order of the Labor Commissioner sufficient to pay the wages of every person employed in connection with these operations for that period described in this subdivision.

(b) The cash and securities on deposit referred to in subdivision (a) shall not be commingled with other deposits, securities, or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. The moneys so held in trust are not subject to enforcement of a money judgment by any other creditor of the employer.

(c) Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor.

SEC. 482. Section 1182.6 of the Labor Code is amended to read:

1182.6. (a) No employer who continuously operates a manufacturing facility 24 hours a day for seven days a week, and who has had in operation an established preexisting workweek arrangement, as defined in subdivision (b), shall be in violation of this code or any applicable wage order of the commission by instituting, pursuant to an agreement voluntarily executed by the employer and at least two-thirds of the affected employees before the performance of the work, a regularly scheduled workweek that includes three working days of not more than 12 hours a day, or regularly scheduled workweeks that include three working days of not more than 12 hours a day one week and four working days of not more than 12 hours a day in the following week for an average workweek of 42 hours over a two-week period.

(b) For purposes of this section only, a "preexisting workweek arrangement" is defined as, and limited to, a workweek arrangement that existed before November 1980, and had to be modified or abandoned by an employer because the workweek arrangement did not qualify for any exemption provided by the Industrial Welfare Commission from its daily overtime requirements for collectively bargained arrangements, and did not otherwise comply with the daily overtime requirements of an applicable commission order.

(c) The agreement described in subdivision (a) shall be confirmed by an affirmative vote by secret ballot by at least two-thirds of the affected employees, and may be rescinded at any time by a two-thirds vote of the affected employees. A new vote on whether the agreement described in subdivision (a) shall be continued shall be held every three years, and an affirmative vote by at least two-thirds of the affected employees shall be necessary to continue the agreement.

(d) The employer shall not be required to pay premium wage rates to employees working a schedule described in subdivision (a) unless the employee is required or permitted to work more than 12 hours in any workday, more than the scheduled three or four days in any workweek, or more than 40 hours in any workweek.

(e) This section shall not apply to any employer who is now, or in the future becomes, a party to a collective-bargaining agreement covering employees who would otherwise be covered by this section.

(f) No employee working a schedule described in subdivision (a) shall be required to work more than four consecutive days within seven consecutive days.

SEC. 483. Section 1289 of the Labor Code is amended to read:

1289. (a) If a person desires to contest a citation or the proposed assessment of a civil penalty therefor, he or she shall within 15 business days after service of the citation notify the office of the Labor Commissioner that appears on the citation of his or her request for an informal hearing. The Labor Commissioner or the commissioner's deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty shall be affirmed, modified, or dismissed. The decision of the Labor Commissioner shall consist of a notice of findings, findings, and order that shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from that finding to the appropriate superior court, as long as the party agrees to pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(b) A person to whom a citation has been issued, shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(c) When no petition objecting to a citation or the proposed assessment of a civil penalty is filed, a certified copy of the citation or proposed civil penalty may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed 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 citation or proposed assessment of a civil penalty.

(d) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty after hearing, a certified copy of the findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed 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 be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

SEC. 484. Section 1301 of the Labor Code is amended to read:

1301. (a) The provisions of this article concerning the employment of minors, and the civil penalties for violations of those provisions, shall be fully applicable to every person who owns or controls the real property upon which a minor is employed, whether or not that person is the minor's employer, if the minor's employment is for the benefit of the person, and the person has knowingly permitted the violation or continuation of violations.

(b) The posting of a notice pursuant to Section 49140 of the Education Code shall not operate to exempt any person from this article.

SEC. 485. Section 1302 of the Labor Code is amended to read:

1302. The attendance supervisor, who is a full-time attendance supervisor performing no other duties, of any county, city and county, or school district in which any place of employment is situated, or the probation officer of the county, may at any time, enter the place of employment for the purpose of examining permits to work or to employ of all minors employed in the place of employment, or for the purpose of investigating violations of this article or of Chapter 2 (commencing with Section 48200), 3 (commencing with Section 48400), or 7 (commencing with Section 49100) of Part 27 of the Education Code. If an attendance supervisor or probation officer is denied entrance to the place of employment, or if any violations of laws relating to the

employment of minors are found to exist, the attendance supervisor or probation officer shall report the denial of entrance or the violation to the Labor Commissioner. The report shall be made within 48 hours and shall be in writing, setting forth the fact that he or she has good cause to believe that these laws are being violated in the place of employment, and describing the nature of the violation.

SEC. 486. Section 2686 of the Labor Code is amended to read:

2686. Upon the written request of any manufacturer or contractor, the Conciliation Service of the Department of Industrial Relations shall notify the other party to the dispute of the request for arbitration and shall, within seven days of receipt of the request, appoint an arbitration panel to hear and render a decision regarding the dispute. The panel shall be constituted as follows:

(a) A management level representative from a manufacturer in the general geographic area in which the dispute arises, provided that insofar as possible the manufacturer shall not be a direct competitor of the manufacturer involved in the dispute to be arbitrated. This panel member also shall be selected in accordance with the terms of the written contract.

(b) A representative from the contractors' association whose membership encompasses the general geographic area in which the dispute arises. This panel member also shall be selected in accordance with the terms of the written contract.

(c) A third party to be chosen and agreed upon by the first two parties to the dispute from a list of arbitrators provided by the American Arbitration Association. This party shall act as chairperson of the panel.

SEC. 487. Section 2855 of the Labor Code is amended to read:

2855. (a) Except as otherwise provided in subdivision (b), a contract to render personal service, other than a contract of apprenticeship as provided in Chapter 4 (commencing with Section 3070), may not be enforced against the employee beyond seven years from the commencement of service under it. Any contract, otherwise valid, to perform or render service of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value and the loss of which cannot be reasonably or adequately compensated in damages in an action at law, may nevertheless be enforced against the person contracting to render the service, for a term not to exceed seven years from the commencement of service under it. If the employee voluntarily continues to serve under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

(b) Notwithstanding subdivision (a):

(1) Any employee who is a party to a contract to render personal service in the production of phonorecords in which sounds are first fixed, as defined in Section 101 of Title 17 of the United States Code, may not

invoke the provisions of subdivision (a) without first giving written notice to the employer in accordance with Section 1020 of the Code of Civil Procedure, specifying that the employee from and after a future date certain specified in the notice will no longer render service under the contract by reason of subdivision (a).

(2) Any party to a contract described in paragraph (1) shall have the right to recover damages for a breach of the contract occurring during its term in an action commenced during or after its term, but within the applicable period prescribed by law.

(3) If a party to a contract described in paragraph (1) is, or could contractually be, required to render personal service in the production of a specified quantity of the phonorecords and fails to render all of the required service prior to the date specified in the notice provided in paragraph (1), the party damaged by the failure shall have the right to recover damages for each phonorecord as to which that party has failed to render service in an action that, notwithstanding paragraph (2), shall be commenced within 45 days after the date specified in the notice.

SEC. 488. Section 3364 of the Labor Code is amended to read:

3364. Notwithstanding subdivision (c) of Section 3352, a volunteer, unsalaried member of a sheriff's reserve in any county who is not deemed an employee of the county under Section 3362.5, shall, upon the adoption of a resolution of the board of supervisors declaring that the member is deemed an employee of the county for the purposes of this division, be entitled to the workers' compensation benefits provided by this division for any injury sustained by him or her while engaged in the performance of any active law enforcement service under the direction and control of the sheriff.

SEC. 489. Section 4753.5 of the Labor Code is amended to read:

4753.5. In any hearing, investigation, or proceeding, the state shall be represented by the Attorney General, or the attorneys of the Department of Industrial Relations, as appointed by the director. Expenses incident to representation, including costs for investigation, medical examinations, other expert reports, fees for witnesses, and other necessary and proper expenses, but excluding the salary of any of the Attorney General's deputies, shall be reimbursed from the Workers' Compensation Administration Revolving Fund. No witness fees or fees for medical services shall exceed those fees prescribed by the appeals board for the same services in those cases where the appeals board, by rule, has prescribed fees. Reimbursement pursuant to this section shall be in addition to, and in augmentation of, any other appropriations made or funds available for the use or support of the legal representation.

SEC. 490. Section 5277 of the Labor Code is amended to read:

5277. (a) The arbitrator's findings and award shall be served on all parties within 30 days of submission of the case for decision.

(b) The arbitrator's award shall comply with Section 5313 and shall be filed with the appeals board office pursuant to venue rules published by the appeals board.

(c) The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation judge.

(d) Use of an arbitrator for any part of a proceeding or any issue shall not bind the parties to the use of the same arbitrator for any subsequent issues or proceedings.

(e) Unless all parties agree to a longer period of time, the failure of the arbitrator to submit the decision within 30 days shall result in forfeiture of the arbitrator's fee and shall vacate the submission order and all stipulations.

(f) The presiding workers' compensation judge may submit supplemental proceedings to arbitration pursuant to this part.

SEC. 491. Section 5307.1 of the Labor Code is amended to read:

5307.1. (a) The administrative director, after public hearings, shall adopt and revise periodically an official medical fee schedule that shall establish reasonable maximum fees paid for medical services other than physician services, drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods described in Section 4600 and provided pursuant to this section. Except for physician services, all fees shall be in accordance with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems, provided that employer liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration, shall be determined in accordance with Section 4600. Commencing January 1, 2004, and continuing until the time the administrative director has adopted an official medical fee schedule in accordance with the fee-related structure and rules of the relevant Medicare payment systems, except for the components listed in subdivision (j), maximum reasonable fees shall be 120 percent of the estimated aggregate fees prescribed in the relevant Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (g), except that for pharmacy services and drugs that are not otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100 percent of fees prescribed in the relevant Medi-Cal payment system. Upon adoption by the administrative director of an official medical fee schedule pursuant to this section, the maximum reasonable fees paid shall not exceed 120 percent of estimated aggregate fees prescribed in the Medicare payment system for the same

class of services before application of the inflation factors provided in subdivision (g). Pharmacy services and drugs shall be subject to the requirements of this section, whether furnished through a pharmacy or dispensed directly by the practitioner pursuant to subdivision (b) of Section 4024 of the Business and Professions Code.

(b) In order to comply with the standards specified in subdivision (f), the administrative director may adopt different conversion factors, diagnostic related group weights, and other factors affecting payment amounts from those used in the Medicare payment system, provided estimated aggregate fees do not exceed 120 percent of the estimated aggregate fees paid for the same class of services in the relevant Medicare payment system.

(c) Notwithstanding subdivisions (a) and (d), the maximum facility fee for services performed in an ambulatory surgical center, or in a hospital outpatient department, may not exceed 120 percent of the fee paid by Medicare for the same services performed in a hospital outpatient department.

(d) If the administrative director determines that a medical treatment, facility use, product, or service is not covered by a Medicare payment system, the administrative director shall establish maximum fees for that item, provided that the maximum fee paid shall not exceed 120 percent of the fees paid by Medicare for services that require comparable resources. If the administrative director determines that a pharmacy service or drug is not covered by a Medi-Cal payment system, the administrative director shall establish maximum fees for that item. However, the maximum fee paid shall not exceed 100 percent of the fees paid by Medi-Cal for pharmacy services or drugs that require comparable resources.

(e) Prior to the adoption by the administrative director of a medical fee schedule pursuant to this section, for any treatment, facility use, product, or service not covered by a Medicare payment system, including acupuncture services, or, with regard to pharmacy services and drugs, for a pharmacy service or drug that is not covered by a Medi-Cal payment system, the maximum reasonable fee paid shall not exceed the fee specified in the official medical fee schedule in effect on December 31, 2003.

(f) Within the limits provided by this section, the rates or fees established shall be adequate to ensure a reasonable standard of services and care for injured employees.

(g) (1) (A) Notwithstanding any other provision of law, the official medical fee schedule shall be adjusted to conform to any relevant changes in the Medicare and Medi-Cal payment systems no later than 60 days

after the effective date of those changes, provided that both of the following conditions are met:

(i) The annual inflation adjustment for facility fees for inpatient hospital services provided by acute care hospitals and for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for the 12 months beginning October 1 of the preceding calendar year.

(ii) The annual update in the operating standardized amount and capital standard rate for inpatient hospital services provided by hospitals excluded from the Medicare prospective payment system for acute care hospitals and the conversion factor for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for excluded hospitals for the 12 months beginning October 1 of the preceding calendar year.

(B) The update factors contained in clauses (i) and (ii) of subparagraph (A) shall be applied beginning with the first update in the Medicare fee schedule payment amounts after December 31, 2003.

(2) The administrative director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this paragraph shall be published on the Internet Web site of the Division of Workers' Compensation.

(3) For the purposes of this subdivision, the following definitions apply:

(A) "Medicare Economic Index" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of a providing physician and other services paid under the resource-based relative value scale.

(B) "Hospital market basket" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital services provided by acute care hospitals that are included in the Medicare prospective payment system.

(C) "Hospital market basket for excluded hospitals" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient services by hospitals that are excluded from the Medicare prospective payment system.

(h) Nothing in this section shall prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.

(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

(j) The following Medicare payment system components may not become part of the official medical fee schedule until January 1, 2005:

(1) Inpatient skilled nursing facility care.

(2) Home health agency services.

(3) Inpatient services furnished by hospitals that are exempt from the prospective payment system for general acute care hospitals.

(4) Outpatient renal dialysis services.

(k) Notwithstanding subdivision (a), for the calendar years 2004 and 2005, the existing official medical fee schedule rates for physician services shall remain in effect, but these rates shall be reduced by 5 percent. The administrative director may reduce fees of individual procedures by different amounts, but in no event shall the administrative director reduce the fee for a procedure that is currently reimbursed at a rate at or below the Medicare rate for the same procedure.

(*l*) Notwithstanding subdivision (a), the administrative director, commencing January 1, 2006, shall have the authority, after public hearings, to adopt and revise, no less frequently than biennially, an official medical fee schedule for physician services. If the administrative director fails to adopt an official medical fee schedule for physician services by January 1, 2006, the existing official medical fee schedule rates for physician services shall remain in effect until a new schedule is adopted or the existing schedule is revised.

SEC. 492. Section 5907 of the Labor Code is amended to read:

5907. If, at the time of granting reconsideration, it appears to the satisfaction of the appeals board that no sufficient reason exists for taking further testimony, the appeals board may affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge and may, without further proceedings, without notice, and without setting a time and place for further hearing, enter its findings, order, decision, or award based upon the record in the case.

SEC. 493. Section 6315.3 of the Labor Code is amended to read:

6315.3. The bureau shall, not later than February 15, annually submit to the division for submission to the director a report on the activities of the bureau, including, but not limited to, the following:

(a) Totals of each type of report provided the bureau under each category in subdivision (b) of Section 6315.

(b) Totals of each type of case reflecting the number of investigations and court cases in progress at the start of the calendar year being reported, investigations completed in the calendar year, cases referred to appropriate prosecuting authorities in the calendar year, and investigations and court cases in progress at the end of the calendar year. The types of cases shall include the following:

(1) Those that the bureau is required to investigate, divided into fatalities, serious injuries to five or more employees, and requests for prosecution from a division representative.

(2) Those that were initiated by the bureau following the review required in subdivision (a) of Section 6315, divided into serious injuries to fewer than five employees and serious exposures.

(c) A summary of the dispositions in the calendar year of cases referred by the bureau to appropriate prosecuting authorities. The summary shall be divided into the types of cases, as described in subdivision (b), and shall show at least the violation, the statute for which the case was referred for prosecution, and the dates of referral to the bureau for investigation, referral from the bureau for prosecution, and the final court action if the case was prosecuted.

(d) A summary of investigations completed in the calendar year that did not result in a referral for prosecution, divided into the types of cases as described in subdivision (b), showing the violation and the reasons for nonreferral.

(e) A summary of the use of the bureau's resources in accomplishing the bureau's mission.

SEC. 494. Section 7384 of the Labor Code is amended to read:

7384. The division shall prepare an annual report concerning revenues obtained from all funding sources and expenditures. The division shall file the report with the Legislative Analyst, the Joint Legislative Audit Committee, the Department of Finance, and the appropriate policy committees of the Legislature.

SEC. 495. Section 7994 of the Labor Code is amended to read:

7994. Any person holding an "explosive blaster's license" who is convicted of violating safety orders involving use or handling of explosives in which the violation is judged to be responsible for an accident involving serious injury or death shall have his or her license revoked for at least one year, in addition to any other penalties he or she may be assessed. Any person who has had his or her "explosive blaster's license" revoked may apply for a new license after the minimum period of revocation expires. He or she shall be required to pass all examinations before a new license is granted.

SEC. 496. Section 340 of the Military and Veterans Code is amended to read:

340. (a) Subject to Section 340.1, whenever any officer, warrant officer, or enlisted member of the California National Guard, the organized militia, or the unorganized militia, when called into the active service of the state, pursuant to Section 142, 143, or 146, is wounded, injured, disabled, or killed in the active service of the state in the line of duty, the member or the member's dependents shall receive compensation under Division 4 (commencing with Section 3201) of the Labor Code. For these purposes, the member is deemed to be an employee of the state. The compensation shall be based on the member's average income from all sources during the year immediately preceding the date of wounding, injury, death, or the commencement of disability and shall not exceed the maximum prescribed in Division 4 (commencing with Section 3200) of the Labor Code.

(b) For the purposes of this article, any officer, warrant officer, or enlisted member performing military duty of any nature pursuant to Title 32 or Title 10 of the United States Code shall not be entitled to benefits described in subdivision (a) or in Section 340.1.

(c) Notwithstanding subdivision (a), any officer, warrant officer, or enlisted member on full-time active duty with the Office of the Adjutant General who suffers disability or death in the line of duty from either injury or disease is entitled to receive, from the state, benefits or compensation for that disability or death comparable to that provided to members of the United States armed forces on active duty.

SEC. 497. Section 171d of the Penal Code is amended to read:

171d. Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by that officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, the Governor or a member of his or her immediate family or a person acting with his or her permission with respect to the Governor's Mansion or any other residence of the Governor, any other constitutional officer or a member of his or her immediate family or a person acting with his or her permission with respect to the officer's residence, or a Member of the Legislature or a member of his or her immediate family or a person acting with his or her permission with respect to the Member's residence, shall be punished by imprisonment in a county jail for not more than one year, by fine of not more than one thousand dollars ($1,000), or by both the fine and

imprisonment, or by imprisonment in the state prison, if he or she does any of the following:

(a) Brings a loaded firearm into, or possesses a loaded firearm within, the Governor's Mansion, or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

(b) Brings a loaded firearm upon, or possesses a loaded firearm upon, the grounds of the Governor's Mansion or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

SEC. 498. Section 186.2 of the Penal Code is amended to read:

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

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

(1) Arson, as defined in Section 451.

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

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

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

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

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

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

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

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

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

(14) Robbery, as defined in Section 211.

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

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

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

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

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

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

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

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

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

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

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

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

(27) Any offenses related to fraud or theft against the state's beverage container recycling program, including, but not limited to, those offenses specified in this subdivision and those criminal offenses specified in the California Beverage Container Recycling and Litter Reduction Act, commencing at Section 14500 of the Public Resources Code.

(28) Human trafficking, as defined in Section 236.1.

(29) Theft of personal identifying information, as defined in Section 530.5.

(b) (1) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this chapter, that meet the following requirements:

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

(B) Are not isolated events.

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

(2) Acts that would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

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

(d) "Organized crime" means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual

efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22. "Organized crime" also means false or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code, and the theft of personal identifying information, as defined in Section 530.5.

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

SEC. 499. Section 273.7 of the Penal Code is amended to read:

273.7. (a) Any person who maliciously publishes, disseminates, or otherwise discloses the location of any trafficking shelter or domestic violence shelter or any place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking shelter or domestic violence shelter, is guilty of a misdemeanor.

(b) (1) For purposes of this section, "domestic violence shelter" means a confidential location that provides emergency housing on a 24-hour basis for victims of sexual assault, spousal abuse, or both, and their families.

(2) For purposes of this section, "trafficking shelter" means a confidential location that provides emergency housing on a 24-hour basis for victims of human trafficking, including any person who is a victim under Section 236.1.

(3) Sexual assault, spousal abuse, or both, include, but are not limited to, those crimes described in Sections 240, 242, 243.4, 261, 261.5, 262, 264.1, 266, 266a, 266b, 266c, 266f, 273.5, 273.6, 285, 288, and 289.

(c) Nothing in this section shall apply to confidential communications between an attorney and his or her client.

SEC. 500. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(B) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California, shall be required to register, as follows:

(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement, or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient must reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her

birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, within five working days, of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence, or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, "transient" means a person who has no residence. "Residence" means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually,

within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. "Employed" or "carrying on a vocation" includes employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit

mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) (i) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(ii) Any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(iii) Except as provided in clause (iv), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

(iv) Clause (iii) shall not apply to a person required to register in the state of conviction if the conviction was for the equivalent of one of the following offenses, and the person is not subject to clause (i):

(I) Indecent exposure, pursuant to Section 314.

(II) Unlawful sexual intercourse, pursuant to Section 261.5.

(III) Incest, pursuant to Section 285.

(IV) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in subparagraph (F) of paragraph (2) of subdivision (a), and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) Any person required to register pursuant to any provision of this section, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5.

(G) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized.

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department

shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward

one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Division of Juvenile Facilities to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Facilities, to the custody of which he or she was committed because of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Division of Juvenile Facilities, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Division of Juvenile Facilities officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the date he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) (A) Any person who was last registered at a residence address pursuant to this section who changes his or her residence address, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, shall, in person, within five working days of the move, inform the law enforcement agency or agencies with which he or she last registered of the move, the new address or transient location, if known, and any plans he or she has to return to California.

(B) If the person does not know the new residence address or location at the time of the move, the registrant shall, in person, within five working days of the move, inform the last registering agency or agencies that he or she is moving. The person shall later notify the last registering agency or agencies, in writing, sent by certified or registered mail, of the new address or location within five working days of moving into the new residence address or location, whether temporary or permanent.

(C) The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence .

(2) If the person's new address is in a Division of Juvenile Facilities facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Division of Juvenile Facilities facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5), (7), and (9), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required

pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), any person who is required to register or reregister pursuant to clause (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) or (2) of this subdivision.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense as to each requirement he or she violated.

(9) In addition to any other penalty imposed under this subdivision, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Board of Parole Hearings, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as otherwise provided by law, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county, including firefighting, disaster control, or

whatever the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crime or crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 501. Section 290.6 of the Penal Code is amended to read:

290.6. (a) Fifteen days before the scheduled release date of a person described in subdivision (b), the Department of Corrections and Rehabilitation shall provide to local law enforcement all of the following information regarding the person:

(1) Name.

(2) Community residence and address, including ZIP Code.

(3) Physical description.

(4) Conviction information.

(b) This subdivision shall apply to any person sentenced to the state prison who is required to register pursuant to Section 290 for a conviction of an offense specified in subdivision (b), (c), or (d) of Section 290.46 and to any person described in those subdivisions.

(c) For the purpose of this section, "law enforcement" includes any agency with which the person will be required to register upon his or her release pursuant to Section 290 based upon the person's community of residence upon release.

(d) If it is not possible for the Department of Corrections and Rehabilitation to provide the information specified in subdivision (a) on a date that is 15 days before the scheduled release date, the information shall be provided on the next business day following that date.

(e) The Department of Corrections and Rehabilitation shall notify local law enforcement within 36 hours of learning of the change if the scheduled release date or any of the required information changes prior to the scheduled release date.

SEC. 502. Section 652 of the Penal Code is amended to read:

652. (a) It shall be an infraction for any person to perform or offer to perform body piercing upon a person under the age of 18 years, unless the body piercing is performed in the presence of, or as directed by a notarized writing by, the person's parent or guardian.

(b) This section does not apply to the body piercing of an emancipated minor.

(c) As used in this section, "body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration, including, but not limited to, the piercing of a lip, tongue, nose, or eyebrow. "Body piercing" does not include the piercing of an ear.

(d) Neither the minor upon whom the body piercing was performed, nor the parent or guardian of that minor, nor any other minor is liable for punishment under this section.

SEC. 503. Section 987.9 of the Penal Code is amended to read:

987.9. (a) In the trial of a capital case or a case under subdivision (a) of Section 190.05, the indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. The application for funds shall be by affidavit and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. The fact that an application has been made shall be confidential and the contents of the application shall be confidential. Upon receipt of an application, a judge of the court, other than the trial judge presiding over the case in question, shall rule on the reasonableness of the request and shall disburse an appropriate amount of money to the defendant's attorney. The ruling on the reasonableness of the request shall be made at an in camera hearing. In making the ruling, the court shall be guided by the need to provide a complete and full defense for the defendant.

(b) (1) The Controller shall not reimburse any county for costs that exceed California Victim Compensation and Government Claims Board standards for travel and per diem expenses. The Controller may reimburse extraordinary costs in unusual cases if the county provides sufficient documentation of the need for those expenditures.

(2) At the termination of the proceedings, the attorney shall furnish to the court a complete accounting of all moneys received and disbursed pursuant to this section.

(c) The Controller shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, controlling reimbursements under this section. The regulations shall consider compensation for investigators, expert witnesses, and other expenses that may or may not be reimbursable pursuant to this section. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Controller shall follow any regulations adopted until final approval by the Office of Administrative Law.

(d) The confidentiality provided in this section shall not preclude any court from providing the Attorney General with access to documents protected by this section when the defendant raises an issue on appeal or collateral review where the recorded portion of the record, created pursuant to this section, relates to the issue raised. When the defendant raises that issue, the funding records, or relevant portions thereof, shall be provided to the Attorney General at the Attorney General's request. In this case, the documents shall remain under seal and their use shall be limited solely to the pending proceeding.

SEC. 504. Section 1037.1 of the Penal Code is amended to read:

1037.1. (a) Change of venue costs, as defined in Section 1037, that are court operations, as defined in Section 77003 of the Government Code and Rule 810 of the California Rules of Court, shall be considered court costs to be charged against and paid by the transferring court to the receiving court.

(b) The Judicial Council shall adopt financial policies and procedures to ensure the timely payment of court costs pursuant to this section. The policies and procedures shall include, but are not limited to, both of the following:

(1) The requirement that courts approve a budget and a timeline for reimbursement before the beginning of the trial.

(2) A process for the Administrative Office of the Courts to mediate any disputes regarding costs between transferring and receiving courts.

(c) (1) The presiding judge of the transferring court, or his or her designee, shall authorize the payment for the reimbursement of court costs out of the court operations fund of the transferring court.

(2) Payments for the reimbursement of court costs shall be deposited into the court operations fund of the receiving court.

SEC. 505. Section 1191.2 of the Penal Code is amended to read:

1191.2. In providing notice to the victim pursuant to Section 1191.1, the probation officer shall also provide the victim with information concerning the victim's right to civil recovery against the defendant, the requirement that the court order restitution for the victim, the victim's right to receive a copy of the restitution order from the court and to enforce the restitution order as a civil judgment, the victim's responsibility to furnish the probation department, district attorney, and court with information relevant to his or her losses, and the victim's opportunity to be compensated from the Restitution Fund if eligible under Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. This information shall be in the form of written material prepared by the Judicial Council in consultation with the California Victim Compensation and Government Claims Board, shall include the relevant sections of the Penal Code, and shall be provided to each victim for whom the probation officer has a current mailing address.

SEC. 506. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203 or any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person who is convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person who is convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5, unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person who is convicted of committing a violation of Section 288 or 288.5 and who has been previously convicted of a violation of Section 261, 262, 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of assaulting another person with intent to commit a crime specified in this paragraph in violation of Section 220, or who has been

previously convicted in another state of an offense which, if committed or attempted in this state, would constitute an offense enumerated in this paragraph.

(6) A person who violated Section 288 or 288.5 while kidnapping the child victim in violation of Section 207, 209, or 209.5.

(7) A person who is convicted of committing a violation of Section 288 or 288.5 against more than one victim.

(8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age.

(9) A person who, in violating Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter, as defined in Section 311, depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) (1) Except for a violation of subdivision (b) of Section 288, this section shall only apply if the existence of any fact required in subdivision (a) is alleged in the accusatory pleading and is either admitted by the defendant in open court, or found to be true by the trier of fact.

(2) For the existence of any fact under paragraph (7) of subdivision (a), the allegation must be made pursuant to this section.

(d) (1) If a person is convicted of a violation of Section 288 or 288.5, and the factors listed in subdivision (a) are not pled or proven, probation may be granted only if the following terms and conditions are met:

(A) If the defendant is a member of the victim's household, the court finds that probation is in the best interest of the child victim.

(B) The court finds that rehabilitation of the defendant is feasible and that the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of probation or the suspension of execution or imposition of sentence.

(C) If the defendant is a member of the victim's household, probation shall not be granted unless the defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by his or her return. While removed from the household, the court shall prohibit contact by the defendant with the victim, with the exception that the court may permit supervised contact, upon the request of the director of the court-ordered supervised treatment program, and with the agreement of the victim and the victim's parent or legal guardian, other than the defendant.

(D) The court finds that there is no threat of physical harm to the victim if probation is granted.

(2) The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

(3) The court shall order the psychiatrist or psychologist who is appointed pursuant to Section 288.1 to include a consideration of the factors specified in subparagraphs (A), (B), and (C) of paragraph (1) in making his or her report to the court.

(4) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon ability to pay.

(5) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(e) As used in subdivision (d), the following definitions apply:

(1) "Contact with the victim" includes all physical contact, being in the presence of the victim, communicating by any means, including by a third party acting on behalf of the defendant, or sending any gifts.

(2) "Recognized treatment program" means a program that consists of the following components:

(A) Substantial expertise in the treatment of child sexual abuse.

(B) A treatment regimen designed to specifically address the offense.

(C) The ability to serve indigent clients.

(D) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program, or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

SEC. 507. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or any evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) (1) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable

period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

SEC. 508. Section 1557 of the Penal Code is amended to read:

1557. (a) This section shall apply when this state or a city, county, or city and county employs a person to travel to a foreign jurisdiction outside this state for the express purpose of returning a fugitive from justice to this state when the Governor of this state, in the exercise of the authority conferred by Section 2 of Article IV of the United States

Constitution, or by the laws of this state, has demanded the surrender of the fugitive from the executive authority of any state of the United States, or of any foreign government.

(b) Upon the approval of the Governor, the State Controller shall audit and pay out of the State Treasury as provided in subdivision (c) or (d) the accounts of the person employed to bring back the fugitive, including any money paid by that person for all of the following:

(1) Money paid to the authorities of a sister state for statutory fees in connection with the detention and surrender of the fugitive.

(2) Money paid to the authorities of the sister state for the subsistence of the fugitive while detained by the sister state without payment of which the authorities of the sister state refuse to surrender the fugitive.

(3) Where it is necessary to present witnesses or evidence in the sister state, without which the sister state would not surrender the fugitive, the cost of producing the witnesses or evidence in the sister state.

(4) Where the appearance of witnesses has been authorized in advance by the Governor, who may authorize the appearance in unusual cases where the interests of justice would be served, the cost of producing witnesses to appear in the sister state on behalf of the fugitive in opposition to his or her extradition.

(c) No amount shall be paid out of the State Treasury to a city, county, or city and county except as follows:

(1) When a warrant has been issued by any magistrate after the filing of a complaint or the finding of an indictment and its presentation to the court and filing by the clerk, and the person named therein as defendant is a fugitive from justice who has been found and arrested in any state of the United States or in any foreign government, the county auditor shall draw his or her warrant and the county treasurer shall pay to the person designated to return the fugitive, the amount of expenses estimated by the district attorney to be incurred in the return of the fugitive.

(2) If the person designated to return the fugitive is a city officer, the city officer authorized to draw warrants on the city treasury shall draw his or her warrant and the city treasurer shall pay to that person the amount of expenses estimated by the district attorney to be incurred in the return of the fugitive.

(3) The person designated to return the fugitive shall make no disbursements from any funds advanced without a receipt being obtained therefor showing the amount, the purpose for which the sum is expended, the place, the date, and to whom paid.

(4) A receipt obtained pursuant to paragraph (3) shall be filed by the person designated to return the fugitive with the county auditor or appropriate city officer or State Controller, as the case may be, together with an affidavit by the person that the expenditures represented by the

receipts were necessarily made in the performance of duty, and when the advance has been made by the county or city treasurer to the person designated to return the fugitive, and has thereafter been audited by the State Controller, the payment thereof shall be made by the State Treasurer to the county or city treasury that has advanced the funds.

(5) In every case where the expenses of the person employed to bring back the fugitive as provided in this section, are less than the amount advanced on the recommendation of the district attorney, the person employed to bring back the fugitive shall return to the county or city treasurer, as appropriate, the difference in amount between the aggregate amount of receipts so filed by him or her, as herein employed, and the amount advanced to the person upon the recommendation of the district attorney.

(6) When no advance has been made to the person designated to return the fugitive, the sums expended by him or her, when audited by the State Controller, shall be paid by the State Treasurer to the person so designated.

(7) Any payments made out of the State Treasury pursuant to this section shall be made from appropriations for the fiscal year in which those payments are made.

(d) Payments to state agencies will be made in accord with the rules of the California Victim Compensation and Government Claims Board.

SEC. 509. Section 2786 of the Penal Code is amended to read:

2786. All money in the Inmate Welfare Fund of the Department of Corrections is hereby appropriated for educational and recreational purposes at the various prison camps established under this article and shall be expended by the director upon warrants drawn upon the State Treasury by the State Controller after approval of the claims by the California Victim Compensation and Government Claims Board.

SEC. 510. Section 2800 of the Penal Code is amended to read:

2800. Commencing July 1, 2005, there is hereby continued in existence within the Department of Corrections and Rehabilitation the Prison Industry Authority. As used in this article, "authority" means the Prison Industry Authority. Commencing July 1, 2005, any reference to the Department of Corrections shall refer to the Department of Corrections and Rehabilitation.

SEC. 511. Section 3003 of the Penal Code is amended to read:

3003. (a) (1) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

(2) For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an

offense while confined in the state prison or a local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department

of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) (1) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any public or private school, including any or all of kindergarten and grades 1 to 8, inclusive.

(2) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law.

(k) (1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 512. Section 4017.1 of the Penal Code is amended to read:

4017.1. (a) (1) Except as provided in paragraph (2), any person confined in a county jail, industrial farm, road camp, or city jail who is required or permitted by an order of the board of supervisors or city council to perform work, and any person while performing community service in lieu of a fine or custody or who is assigned to work furlough, may not be employed to perform any function that provides access to personal information of private individuals, including, but not limited to, the following: addresses; telephone numbers; health insurance,

taxpayer, school, or employee identification numbers; mothers' maiden names; demand deposit account, debit card, credit card, savings account, or checking account numbers, PINs, or passwords; social security numbers; places of employment; dates of birth; state- or government-issued driver's license or identification numbers; alien registration numbers; government passport numbers; unique biometric data, such as fingerprints, facial scan identifiers, voice prints, retina or iris images, or other similar identifiers; unique electronic identification numbers; address or routing codes; and telecommunication identifying information or access devices.

(2) Notwithstanding paragraph (1), persons assigned to work furlough programs may be permitted to work in situations that allow them to retain or look at a driver's license or credit card for no longer than the period of time needed to complete an immediate transaction. However, no person assigned to work furlough shall be placed in any position that may require the deposit of a credit card or driver's license as insurance or surety.

(b) Any person confined in a county jail, industrial farm, road camp, or city jail who has access to any personal information shall disclose that he or she is confined before taking any personal information from anyone.

(c) This section shall not apply to inmates in employment programs or public service facilities where incidental contact with personal information may occur.

SEC. 513. Section 4900 of the Penal Code is amended to read:

4900. Any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, or who, being innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, under the conditions provided under this chapter, present a claim against the state to the California Victim Compensation and Government Claims Board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment.

SEC. 514. Section 4901 of the Penal Code is amended to read:

4901. A claim under Section 4900, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, must be presented by the claimant to the California Victim Compensation and Government Claims Board within a period of six months after judgment of acquittal or

discharge given, or after pardon granted, or after release from imprisonment, and at least four months prior to the next meeting of the Legislature and no claim not so presented shall be considered California Victim Compensation and Government Claims Board.

SEC. 515. Section 4902 of the Penal Code is amended to read:

4902. Upon presentation of a claim under Section 4900, the California Victim Compensation and Government Claims Board shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the time fixed for the hearing.

SEC. 516. Section 4904 of the Penal Code is amended to read:

4904. If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant did not, by any act or omission either intentionally or negligently, contribute to the bringing about of his or her arrest or conviction, and that the claimant has sustained pecuniary injury through his or her erroneous conviction and imprisonment, the California Victim Compensation and Government Claims Board shall report the facts of the case and its conclusions to the next Legislature, with a recommendation that an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury. The amount of the appropriation recommended shall be a sum equivalent to one hundred dollars ($100) per day of incarceration served subsequent to the claimant's conviction and that appropriation shall not be treated as gross income to the recipient under the Revenue and Taxation Code.

SEC. 517. Section 4905 of the Penal Code is amended to read:

4905. The California Victim Compensation and Government Claims Board shall make up its report and recommendation and shall give to the Controller a statement showing its recommendations for appropriations under this chapter, as provided by law in cases of other claimants against the state for which no appropriations have been made.

SEC. 518. Section 4906 of the Penal Code is amended to read:

4906. The California Victim Compensation and Government Claims Board is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect this chapter.

SEC. 519. Section 5001 of the Penal Code is amended to read:

5001. The Governor may request the State Personnel Board to use extensive recruitment and merit selection techniques and procedures to provide lists of persons qualified for appointment pursuant to Article 14 (commencing with Section 12838) of Chapter 1 of Part 2.5 of Division 3 of the Government Code. The Governor may appoint any person from

the lists of qualified persons or may reject all names and appoint other persons who meet the requirements of the positions.

SEC. 520. Section 5009 of the Penal Code is amended to read:

5009. (a) It is the intention of the Legislature that all prisoners shall be afforded reasonable opportunities to exercise religious freedom.

(b) (1) Except in extraordinary circumstances, upon the transfer of an inmate to another state prison institution, any member of the clergy or spiritual adviser who has been previously authorized by the Department of Corrections and Rehabilitation to visit that inmate shall be granted visitation privileges at the institution to which the inmate is transferred within 72 hours of the transfer.

(2) Visitations by members of the clergy or spiritual advisers shall be subject to the same rules, regulations, and policies relating to general visitations applicable at the institution to which the inmate is transferred.

(3) A departmental or volunteer chaplain who has ministered to or advised an inmate incarcerated in state prison may, voluntarily and without compensation, continue to minister to or advise the inmate while he or she is on parole, provided that the departmental or volunteer chaplain so notifies the warden and the parolee's parole agent in writing.

(c) Nothing in this section limits the department's ability to prohibit a departmental chaplain from ministering to a parolee, or to exclude a volunteer chaplain from department facilities, if either is found to be in violation of any law or regulation and that violation would ordinarily be grounds for adverse action or denial of access to a facility or person under the department's custody.

SEC. 521. Section 5071 of the Penal Code is amended to read:

5071. (a) The Secretary of the Department of Corrections and Rehabilitation shall not assign any prison inmate to employment that provides that inmate with access to personal information of private individuals, including, but not limited to, the following: addresses; telephone numbers; health insurance, taxpayer, school, or employee identification numbers; mothers' maiden names; demand deposit account, debit card, credit card, savings account, or checking account numbers, PINs, or passwords; social security numbers; places of employment; dates of birth; state- or government-issued driver's license or identification numbers; alien registration numbers; government passport numbers; unique biometric data, such as fingerprints, facial scan identifiers, voice prints, retina or iris images, or other similar identifiers; unique electronic identification numbers; address or routing codes; and telecommunication identifying information or access devices.

(b) Any person who is a prison inmate, and who has access to any personal information, shall disclose that he or she is a prison inmate before taking any personal information from anyone.

(c) This section shall not apply to inmates in employment programs or public service facilities where incidental contact with personal information may occur.

SEC. 522. Section 5076.1 of the Penal Code is amended to read:

5076.1. (a) The board shall meet at each of the state prisons and facilities under the jurisdiction of the Division of Juvenile Facilities. Meetings shall be held at whatever times may be necessary for a full and complete study of the cases of all inmates and wards whose matters are considered. Other times and places of meeting may also be designated by the board. Each commissioner of the board shall receive his or her actual necessary traveling expenses incurred in the performance of his or her official duties. Where the board performs its functions by meeting en banc in either public or executive sessions to decide matters of general policy, at least nine members shall be present, and no action shall be valid unless it is concurred in by a majority vote of those present.

(b) The board may use deputy commissioners to whom it may assign appropriate duties, including hearing cases and making decisions. Those decisions shall be made in accordance with policies approved by a majority of the total membership of the board.

(c) The board may meet and transact business in panels. Each panel shall consist of two or more persons, subject to subdivision (d) of Section 3041. No action shall be valid unless concurred in by a majority vote of the persons present. In the event of a tie vote, the matter shall be referred to a randomly selected committee, comprised of a majority of the commissioners specifically appointed to hear adult parole matters and who are holding office at the time.

(d) When determining whether commissioners or deputy commissioners shall hear matters pursuant to subdivision (f) of Section 5075.1, or any other matter submitted to the board involving wards under the jurisdiction of the Division of Juvenile Facilities, the chair shall take into account the degree of complexity of the issues presented by the case. Any decision resulting in the extension of a parole consideration date shall entitle a ward to appeal the decision to a panel comprised of two or more commissioners, of which no more than one may be a deputy commissioner. The panel shall consider and act upon the appeal in accordance with rules established by the board.

(e) Consideration of parole release for persons sentenced to life imprisonment pursuant to subdivision (b) of Section 1168 shall be heard by a panel of two or more commissioners or deputy commissioners, of which only one may be a deputy commissioner. A recommendation for recall of a sentence under subdivisions (d) and (e) of Section 1170 shall be made by a panel, a majority of whose commissioners are commissioners of the Board of Parole Hearings.

SEC. 523. Section 6024 of the Penal Code is amended to read:

6024. Commencing July 1, 2005, there is hereby established within the Department of Corrections and Rehabilitation the Corrections Standards Authority. As of July 1, 2005, any reference to the Board of Corrections refers to the Corrections Standards Authority. As of that date, the Board of Corrections is abolished.

SEC. 524. Section 11163 of the Penal Code is amended to read:

11163. (a) The Legislature finds and declares that even though the Legislature has provided for immunity from liability, pursuant to Section 11161.9, for persons required or authorized to report pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws.

In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibility, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions.

(b) (1) Therefore, a health practitioner may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees incurred in any action against that person on the basis of that person reporting in accordance with this article if the court dismisses the action upon a demurrer or motion for summary judgment made by that person or if that person prevails in the action.

(2) The California Victim Compensation and Government Claims Board shall allow the claim pursuant to paragraph (1) if the requirements of paragraph (1) are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(3) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

SEC. 525. Section 11172 of the Penal Code is amended to read:

11172. (a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made

with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) (1) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the California Victim Compensation and Government Claims Board for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(2) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the

processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

SEC. 526. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or

livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge who sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) (i) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

(ii) In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the

prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) (i) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

(ii) In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form

to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 527. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon or any .50 BMG rifle to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(3) Except in the case of a first violation involving not more than two firearms as provided in subdivisions (b) and (c), for purposes of this section, if more than one assault weapon or .50 BMG rifle is involved in any violation of this section, there shall be a distinct and separate offense for each.

(b) Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment in the state prison. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars ($500) if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276, 12276.1, or 12276.5.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the assault weapon within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(4) The person relinquished the firearm pursuant to Section 12288, in which case the assault weapon shall be destroyed pursuant to Section 12028.

(c) Any person who, within this state, possesses any .50 BMG rifle, except as provided in this chapter, shall be punished by a fine of one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars ($500) if the person was found in possession of no more than two firearms in compliance with subdivision (a) of Section 12285 and the person meets the conditions set forth in paragraphs (1), (2), and (3):

(1) The person proves that he or she lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the .50 BMG rifle within one year following the end of the .50 BMG rifle registration period established pursuant to subdivision (a) of Section 12285.

(4) Firearms seized pursuant to this subdivision from persons who meet all of the conditions set forth in paragraphs (1), (2), and (3) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the .50 BMG rifle should be destroyed pursuant to Section 12028. Firearms seized from persons who do not meet the conditions set forth in paragraphs (1), (2), and (3) shall be destroyed pursuant to Section 12028.

(d) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(e) Subdivisions (a), (b), and (c) shall not apply to the sale to, purchase by, importation of, or possession of assault weapons or a .50 BMG rifle by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties.

(f) (1) Subdivisions (b) and (c) shall not prohibit the possession or use of assault weapons or a .50 BMG rifle by sworn peace officer members of those agencies specified in subdivision (e) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a), (b), and (c) shall not prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a sworn peace officer member of an agency specified in subdivision (e) if the peace officer is authorized by his or her employer to possess or receive the assault weapon or the .50 BMG rifle. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. For this exemption to apply, in the case of a peace officer who possesses or receives the assault weapon prior to January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 on or before April 1, 2002, and in the case of a peace officer who possesses or receives the assault weapon on or after January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt. In the case of a peace officer who possesses or receives a .50 BMG rifle on or before January 1, 2005, the officer shall register the .50 BMG rifle on or before April 30, 2006. In the case of a peace officer who possesses or receives a .50 BMG rifle after January 1, 2005, the officer shall register the .50 BMG rifle not later than one year after possession or receipt. The peace officer must include with the registration, a copy of the authorization required pursuant to this paragraph.

(3) Nothing in this section shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon or .50 BMG rifle.

(g) Subdivision (b) shall not apply to the possession of an assault weapon during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon prior to the date it was specified as an assault weapon pursuant to Section

12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(h) Subdivisions (a), (b), and (c) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons or .50 BMG rifles for sale to the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(i) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) that is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(j) Subdivisions (b) and (c) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) if the assault weapon or .50 BMG rifle is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(k) Subdivision (a) shall not apply to either of the following:

(1) A person who lawfully possesses and has registered an assault weapon or .50 BMG rifle pursuant to this chapter who lends that assault weapon or .50 BMG rifle to another if all the following apply:

(A) The person to whom the assault weapon or .50 BMG rifle is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon or .50 BMG rifle is lent remains in the presence of the registered possessor of the assault weapon or .50 BMG rifle.

(C) The assault weapon or .50 BMG rifle is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon or .50 BMG rifle to the registered possessor, or the lawful possessor, which is lent by the same pursuant to paragraph (1).

(*l*) Subdivisions (b) and (c) shall not apply to the possession of an assault weapon or .50 BMG rifle by a person to whom an assault weapon or .50 BMG rifle is lent pursuant to subdivision (k).

(m) Subdivisions (a), (b), and (c) shall not apply to the possession and importation of an assault weapon or a .50 BMG rifle into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon or a .50 BMG rifle.

(2) The competition or match is conducted on the premises of one of the following:

(A) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(B) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon or .50 BMG rifle is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(n) Subdivisions (b) and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286 or 12287.

(2) A person who has a permit to possess an assault weapon or a .50 BMG rifle issued pursuant to Section 12286 or 12287 when he or she is acting in accordance with Section 12285, 12286, or 12287.

(o) Subdivisions (a), (b), and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286, 12287, or 12290.

(p) Subdivisions (b) and (c) shall not apply to the registered owner of an assault weapon or a .50 BMG rifle possessing that firearm in accordance with subdivision (c) of Section 12285.

(q) Subdivision (a) shall not apply to the importation into this state of an assault weapon or a .50 BMG rifle by the registered owner of that assault weapon or a .50 BMG rifle if it is in accordance with the provisions of subdivision (c) of Section 12285.

(r) Subdivision (a) shall not apply during the first 180 days of the 2005 calendar year to the importation into this state of a .50 BMG rifle by a person who lawfully possessed that .50 BMG rifle in this state prior to January 1, 2005.

(s) Subdivision (c) shall not apply to the possession of a .50 BMG rifle that is not defined or specified as an assault weapon pursuant to this chapter, by any person prior to May 1, 2006, if all of the following are applicable:

(1) The person is eligible under this chapter to register that .50 BMG rifle.

(2) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(3) The person is otherwise in compliance with this chapter.

(t) Subdivisions (a), (b), and (c) shall not apply to the sale of assault weapons or .50 BMG rifles by persons who are issued permits pursuant to Section 12287 to any of the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Federal military and law enforcement agencies.

(4) Law enforcement and military agencies of other states.

(5) Foreign governments and agencies approved by the United States State Department.

(6) Officers described in subdivision (f) who are authorized to possess assault weapons or .50 BMG rifles pursuant to subdivision (f).

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

SEC. 528. Section 13300.1 of the Penal Code is repealed.

SEC. 529. Section 13603 of the Penal Code is amended to read:

13603. (a) The Department of Corrections and Rehabilitation shall provide 16 weeks of training to each correctional peace officer cadet. Except as provided by subdivision (b), this training shall be completed by the cadet prior to his or her assignment to a post or position as a correctional peace officer.

(b) If an agreement is reached between the department and the bargaining unit for the correctional peace officers that this subdivision shall apply, and with the approval of the Corrections Standards Authority on how to implement the on-the-job training requirements of this subdivision, the department shall provide a total of 16 weeks of training to each correctional peace officer cadet as follows:

(1) Twelve weeks of the training shall be at the department's training academy. Cadets shall be sworn in as correctional peace officers upon the completion of this initial 12 weeks.

(2) Four weeks shall be at the institution where the cadet is assigned to a post or position.

(c) The department shall provide a minimum of two weeks of training to each newly appointed first-line supervisor.

(d) Training standards previously established pursuant to this section shall remain in effect until training requirements are established by the Corrections Standards Authority pursuant to Section 13602.

SEC. 530. Section 13810 of the Penal Code is amended to read:

13810. (a) There is hereby created in the state government the California Council on Criminal Justice, which shall be composed of the following members: the Attorney General; the Administrative Director of the Courts; 19 members appointed by the Governor, including the Commissioner of the Department of the Highway Patrol, the Secretary of the Department of Corrections and Rehabilitation, or his or her designee, a subordinate officer of the Secretary of Corrections and Rehabilitation, and the State Public Defender; eight members appointed by the Senate Committee on Rules; and eight members appointed by the Speaker of the Assembly.

(b) (1) The remaining appointees of the Governor shall include different persons from each of the following categories: a district attorney, a sheriff, a county public defender, a county probation officer, a member of a city council, a member of a county board of supervisors, a faculty member of a college or university qualified in the field of criminology, police science, or law, a person qualified in the field of criminal justice research and six private citizens, including a representative of a citizens, professional, or community organization.

(2) The Senate Committee on Rules shall include among its appointments different persons from each of the following categories: a member of the Senate Committee on Public Safety, a representative of the counties, a representative of the cities, a judge designated by the Judicial Council, and four private citizens, including a representative of a citizens, professional, or community organization.

(3) The Speaker of the Assembly shall include among his or her appointments different persons from each of the following categories: a representative of the counties, a representative of the cities, a member of the Assembly Committee on Public Safety, a chief of police, a peace officer, and three private citizens, including a representative of a citizens, professional, or community organization directly related to delinquency prevention.

(c) The Governor shall select a chairperson from among the members of the council.

SEC. 531. Section 13826.7 of the Penal Code is amended to read:

13826.7. The agency or agencies designated by the Director of Finance pursuant to Section 13820 and the California Council on Criminal Justice are encouraged to utilize any federal funds that may become available for purposes of this chapter. This chapter becomes operative only if federal funds are made available for its implementation.

SEC. 532. Section 13835.2 of the Penal Code is amended to read:

13835.2. (a) Funds appropriated from the Victim-Witness Assistance Fund shall be made available through the agency or agencies designated by the Director of Finance pursuant to Section 13820 to any public or private nonprofit agency for the assistance of victims and witnesses that meets all of the following requirements:

(1) It provides comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs that do not restrict services to victims and witnesses of a particular type of crime, and do not restrict services to victims of crime in which there is a suspect in the case.

(2) It is recognized by the board of supervisors as the major provider of comprehensive services to victims and witnesses in the county.

(3) It is selected by the board of supervisors as the agency to receive funds pursuant to this article.

(4) It assists victims of crime in the preparation, verification, and presentation of their claims to the California Victim Compensation and Government Claims Board for indemnification pursuant to Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) It cooperates with the California Victim Compensation and Government Claims Board in verifying the data required by Article 1

(commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall consider the following factors, together with any other circumstances it deems appropriate, in awarding funds to public or private nonprofit agencies designated as victim and witness assistance centers:

(1) The capability of the agency to provide comprehensive services as defined in this article.

(2) The stated goals and objectives of the center.

(3) The number of people to be served and the needs of the community.

(4) Evidence of community support.

(5) The organizational structure of the agency that will operate the center.

(6) The capability of the agency to provide confidentiality of records.

(c) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall conduct an evaluation of the activities and performance of the centers established pursuant to Chapter 1256 of the Statutes of 1977 to determine their ability to comply with the intent of this article, and shall report the findings thereon to the Legislature by January 1, 1985.

SEC. 533. Section 14030 of the Penal Code is amended to read:

14030. (a) The Attorney General shall establish a liaison with the United States Marshal's office in order to facilitate the legal processes over which the federal government has sole authority, including, but not limited to, those processes included in Section 14024. The liaison shall coordinate all requests for federal assistance relating to witness protection as established by this title.

(b) The Attorney General shall pursue all federal sources that may be available for implementing this program. For that purpose, the Attorney General shall establish a liaison with the United States Department of Justice.

(c) The Attorney General, with the California Victim Compensation and Government Claims Board, shall establish procedures to maximize federal funds for witness protection services.

SEC. 534. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no apparel, garments, corresponding

accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents, employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice determine the contractor's compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited apparel, garments, or corresponding accessories, equipment, materials, or supplies were laundered or provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty that shall be the greater of one thousand dollars ($1,000) or an amount equaling 20 percent of the value of the apparel, garments, corresponding accessories, equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance

with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to either the Director of Industrial Relations or the Department of Justice.

(e) (1) For purposes of this section, "forced labor" shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) "Abusive forms of child labor" means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

(B) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 years either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily, or under a contract, the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) "Exploitation of children in sweatshop labor" means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association.

(4) "Sweatshop labor" means all work or service exacted from or performed by any person in violation of more than one law of the country

of manufacture governing wages, employee benefits, occupational health, occupational safety, nondiscrimination, or freedom of association.

(5) "Apparel, garments, or corresponding accessories" includes, but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, "forced labor" and "convict labor" do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) "State agency" means any state agency in this state.

(f) (1) On or before February 1, 2004, the Department of Industrial Relations shall establish a contractor responsibility program, including a Sweatfree Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Sweatfree Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The Sweatfree Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Upon implementation in the manner described in paragraph (4), every contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Sweatfree Code of Conduct that no apparel, garments, or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor.

(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Sweatfree Code of Conduct. Sweatfree Code of Conduct procurement policies involving apparel, garments, and corresponding accessories may be permitted a phasein period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phasein goals and timetables of up to three years to achieve compliance with the principles of the Sweatfree Code of Conduct.

(4) In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore mechanisms employed by other governmental entities, including, but not limited to, New Jersey Executive Order 20, of 2002, to ensure that businesses that contract with this state are in compliance with this section and any regulations or requirements promulgated in conformance with

this section, as amended by Section 2 of Chapter 711 of the Statutes of 2003. The mechanisms explored may include, but not be limited to, authorization to contract with a competent nonprofit organization that is neither funded nor controlled, in whole or in part, by a corporation that is engaged in the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies. The Department of Industrial Relations, in complying with this paragraph, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Sweatfree Code of Conduct.

(5) To ensure public access and confidence, the Department of Industrial Relations shall ensure public awareness and access to proposed contracts by postings on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The appropriate agencies shall establish a mechanism for soliciting and reviewing any information indicating violations of the Sweatfree Code of Conduct by prospective or current bidders, contractors, or subcontractors. The agencies shall make their findings public when they reject allegations against bidding or contracting parties.

(6) Contractors shall ensure that their subcontractors comply in writing with the Sweatfree Code of Conduct, under penalty of perjury. Contractors shall attach a copy of the Sweatfree Code of Conduct to the certification required by subdivision (a).

(g) No state agency may enter into a contract with any contractor unless the contractor meets the following requirements:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For contractors whose locations for manufacture or assembly are outside the United States, those contractors shall ensure that their subcontractors comply with the appropriate laws of countries where the facilities are located.

(2) Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes that are not regulated by the National Labor Relations Board.

(3) Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed. Whenever a state agency

expends funds for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, the applicable labor standards established by the local jurisdiction through the exercise of either local police powers or local spending powers in which the labor, in compliance with the contract or purchase order for which the expenditure is made, is performed shall apply with regard to the contract or purchase order for which the expenditure is made, unless the applicable local standards are in conflict with, or are explicitly preempted by, state law. A state agency may not require, as a condition for the receipt of state funds or assistance, that a local jurisdiction refrain from applying the labor standards that are otherwise applicable to that local jurisdiction. The Department of Industrial Relations may, without incurring additional expenses, access information from any nonprofit organization, including, but not limited to, the World Bank, that gathers and disseminates data with respect to wages paid throughout the world, to allow the Department of Industrial Relations to determine whether contractors and subcontractors are compensating their employees at a level that enables those employees to live above the applicable poverty level.

(4) All contractors and subcontractors shall comply with the overtime laws and regulations of the country in which their employees are working.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located. In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for the minimum age of employment, the age for completing education shall apply to this section.

(7) There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

(8) The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state, and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

(9) There may be no discrimination in hiring, salary, benefits, performance evaluation, discipline, promotion, retirement, or dismissal on the basis of age, sex, pregnancy, maternity leave status, marital status,

race, nationality, country of origin, ethnic origin, disability, sexual orientation, gender identity, religion, or political opinion.

(10) No worker may be subjected to any physical, sexual, psychological, or verbal harassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.

(11) No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents, that endanger reproductive health.

(12) Contractors and bidders shall list the names and addresses of each subcontractor to be utilized in the performance of the contract, and list each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, which shall be maintained and updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

(h) Any person who certifies as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(i) The provisions of this section, as amended by Section 2 of Chapter 711 of the Statutes of 2003, shall be in addition to any other provisions that authorize the prosecution and enforcement of local labor laws and may not be interpreted to prohibit a local prosecutor from bringing a criminal or civil action against an individual or business that violates the provisions of this section.

(j) (1) The certification requirements set forth in subdivisions (a) and (f) do not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less.

(2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

SEC. 535. The heading of Article 3 (commencing with Section 9201) of Chapter 9 of Part 1 of Division 2 of the Public Contract Code is repealed.

SEC. 536. Section 10240.5 of the Public Contract Code is amended to read:

10240.5. (a) The Departments of General Services, Transportation, and Water Resources shall jointly adopt and may, from time to time, modify, revise, or repeal uniform regulations to implement this article, which regulations shall be consistent with this article and Article 7.2

(commencing with Section 10245). The regulations may include, but need not be limited to:

(1) The method of initiating arbitration.

(2) The place of hearing based upon the convenience of the parties.

(3) Procedures for the selection of a neutral arbitrator.

(4) The form and content of any pleading.

(5) Procedure for conducting hearings.

(6) The providing of experts to assist the arbitrator in the event the assistance is needed.

(7) The content of the award.

(8) Simplified procedures for claims of fifty thousand dollars ($50,000) or less.

(b) Pending adoption of the initial uniform regulations under this section, the arbitration rules set forth in Subchapter 3 (commencing with Section 301) of Chapter 2 of Title 1 of the California Code of Regulations, shall govern the conduct of arbitrations under this chapter.

SEC. 537. Section 10329 of the Public Contract Code is amended to read:

10329. No person shall willfully split a single transaction into a series of transactions for the purpose of evading the bidding requirements of this article.

SEC. 538. Section 12183 of the Public Contract Code is amended to read:

12183. (a) All state departments and agencies, including, but not limited to, the Department of Transportation, the Department of Water Resources, the Department of Forestry and Fire Protection, and the Department of Parks and Recreation, shall give purchase preference to compost and cocompost products when they can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, or both, if the cocompost products meet all applicable state standards and regulations, as determined by appropriate testing. The product preference shall include, but not be limited to, the construction of noise attenuation barriers and safety walls, highway planting projects, and recultivation and erosion control programs.

SEC. 539. Section 20105 of the Public Contract Code is amended to read:

20105. This article shall apply to contracts subject to the State School Building Aid Law of 1949 provided for in Chapter 4 (commencing with Section 15700) of Part 10 of the Education Code.

SEC. 540. Section 20118.4 of the Public Contract Code is amended to read:

20118.4. (a) If any change or alteration of a contract governed by Article 3 (commencing with Section 17595) of Chapter 5 of Part 10.5

of the Education Code is ordered by the governing board of the district, the change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration, without the formality of securing bids, if the cost so agreed upon does not exceed the greater of the following:

(1) The amount specified in Section 20111 or 20114, whichever is applicable to the original contract.

(2) Ten percent of the original contract price.

(b) The governing board of any school district, or of two or more school districts governed by governing boards of identical personnel, having an average daily attendance of 400,000 or more as shown by the annual report of the county superintendent of schools for the preceding year, may also authorize any change or alteration of a contract for reconstruction or rehabilitation work, other than for the construction of new buildings or other new structures, if the cost of the change or alteration is in excess of the limitations in paragraphs (1) and (2) of subdivision (a) but does not exceed 25 percent of the original contract price, without the formality of securing bids, and the change or alteration is a necessary and integral part of the work under the contract and the taking of bids would delay the completion of the contract. Changes exceeding 15 percent of the original contract price shall be approved by an affirmative vote of not less than 75 percent of the members of the governing board.

SEC. 541. Section 20133 of the Public Contract Code is amended to read:

20133. (a) (1) This section provides for an alternative procedure on bidding on building construction projects in excess of two million five hundred thousand dollars ($2,500,000) applicable only in the Counties of Alameda, Butte, Contra Costa, Del Norte, El Dorado, Fresno, Humboldt, Kings, Los Angeles, Madera, Mariposa, Mendocino, Merced, Monterey, Napa, Orange, Placer, Sacramento, San Diego, San Joaquin, San Luis Obispo, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Tulare, Yolo, and Yuba, upon approval of the appropriate board of supervisors.

(2) These counties may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable these counties to utilize cost-effective options for building and modernizing public facilities. It is not the intent of the Legislature to authorize this procedure for transportation facilities, including, but not limited to, roads and bridges.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process. The Legislature also finds that the cost-effective benefits to the counties are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(3) It is the intent of the Legislature to provide an alternative and optional procedure for bidding and building construction projects for these counties.

(4) The design-build approach may be used, but is not limited to, when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method.

(5) If the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria related to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other

information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to include the methodology that will be used by the county to evaluate proposals and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant factors that the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or

association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the county that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (P.L. 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member

of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars ($50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record 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 not be open to public inspection.

(4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design, and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship

Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(*l*) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after November 1, 2004, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of "skilled labor force availability."

(12) An assessment of the design-build dollar limits on county projects. This assessment shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. This assessment shall also include projects where the best value method was not used due to dollar limitations.

(13) An assessment of the most appropriate uses for the design-build approach.

(m) Any county named in subdivision (a) that elects to not use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the county elected to not use the design-build method.

(n) On or before January 1, 2010, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision (*l*). The report may include recommendations for modifying or extending this section.

(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. 542. Section 20407 of the Public Contract Code is amended to read:

20407. In the event of great emergency, including, but not limited to, states of disaster defined in Section 8558 of the Government Code, upon the majority vote of the board, the board may proceed at once to replace or repair any and all bridges without adopting plans, specifications, strain sheets, or working details and without letting contracts or calling for bids. The work may be done by day labor under the direction of the board or by contract, or by a combination of the two. If done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material and labor expended by him or her in doing the work, plus not more than 15 percent to cover all profits, supervision, and any other expense. No more than the lowest current market prices shall be paid for materials.

SEC. 543. Section 20448 of the Public Contract Code is amended to read:

20448. At the hearing on the resolution of intention, the legislative body, without further notice and hearing, may order any changes, as

defined in Sections 20446 and 20447, except changes to include additional territory in the assessment district. Any changes to include additional territory and all changes after the hearing on the resolution of intention shall be ordered only as provided in this chapter.

SEC. 544. Section 20450 of the Public Contract Code is amended to read:

20450. If a resolution required under Section 20449 proposes to include additional territory in the assessment district, at least 15 days prior to the hearing fixed therein, the clerk shall mail a copy of the resolution to all persons owning real property within the additional territory whose names and addresses appear on the last equalized assessment roll or as known to the clerk. This section shall not apply if the hearing of objections is not required pursuant to Section 20449.

SEC. 545. Section 20451 of the Public Contract Code is amended to read:

20451. Written objections to the proposed changes may be filed with the clerk by any interested person at any time not later than the time set for the hearing. The legislative body shall hear and pass upon the objections at the time appointed, or at any time to which the hearing thereof may be adjourned, and its decision thereon shall be final and conclusive. If no written objections to the changes have been delivered to the clerk up to the hour set for hearing thereon, or if the objections have been heard and found by the legislative body to be insufficient or have been overruled or denied, immediately thereupon the legislative body by an affirmative vote of four-fifths of its members shall acquire jurisdiction to order the changes made. If the hearing of objections is not required, pursuant to Section 20449, immediately upon passage of the resolution the legislative body shall acquire jurisdiction to order the changes made. The decisions and determinations of the legislative body ordering the changes shall be final and conclusive upon all persons entitled to appeal thereupon to the legislative body.

SEC. 546. Section 20452 of the Public Contract Code is amended to read:

20452. (a) No changes, except as provided in Section 20453, shall be made pursuant to this chapter that will increase the estimated assessable cost by more than 20 percent of the total estimated cost of the work as determined from either of the following:

(1) The engineer's estimate, if the change is ordered prior to the award of the contract.

(2) The successful bid, if the change is ordered after the award of the contract.

(b) Any changes made pursuant to subdivision (a) shall also be subject to the limitations, if any, contained in any law applicable to the

proceedings that imposes limitations upon the amount by which the estimated cost of the work or improvement may be increased by reason of those changes.

SEC. 547. Section 20456 of the Public Contract Code is amended to read:

20456. Subject to the limitations of Section 20455, the contract may include a provision to determine a fair and equitable price for changes in the work, including, but not limited to, arbitration or cost plus a fixed fee.

SEC. 548. Section 20487 of the Public Contract Code is amended to read:

20487. If, in the opinion of the legislative body, the public interest will not be served by allowing the property owners to take a contract, it may so provide in the resolution of intention. In that event, no notice of award of contract need be published pursuant to Section 20484.

SEC. 549. Section 20522 of the Public Contract Code is amended to read:

20522. (a) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the district.

(3) A certified check made payable to the district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the district.

(b) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 550. Section 20563 of the Public Contract Code is amended to read:

20563. The board shall give notice by publication once a week for three successive weeks in a newspaper published in the county in which the principal office of a district is kept, or if no newspaper is published in that county, in a newspaper the board deems advisable, calling for bids for the construction of the works or of any portion of them.

SEC. 551. Section 20582 of the Public Contract Code is amended to read:

20582. When work is to be done, the board shall give notice calling for bids by publication in the county in which the principal office of a district is kept once a week for four consecutive weeks.

SEC. 552. Section 20688.2 of the Public Contract Code is amended to read:

20688.2. Any work of grading, clearing, demolition, or construction undertaken by the agency shall be done by contract after competitive bids if the cost of that work exceeds the amount specified in Section 20162, as that section presently exists or may be hereafter amended. With respect to work of grading, clearing, demolition, or construction that is not in excess of that amount, the agency may contract the work without competitive bids, and in contracting the work may give priority to the residents of the redevelopment project areas and to persons displaced from those areas as a result of redevelopment activities.

SEC. 553. Section 20853 of the Public Contract Code is amended to read:

20853. Immediately upon the award of the contract, the superintendent of streets shall enter into a contract with the person to whom the contract was awarded for making the improvements upon the portions of the streets described in the notice inviting bids, and at the price stated in the bid. The contractor shall execute bonds in the manner required by Section 20426.

SEC. 554. Section 20894 of the Public Contract Code is amended to read:

20894. If the contractor abandons the work, or fails to proceed with it as rapidly as required by the contract, the city forester may relet the work in the same manner as in the first letting, or complete or cause it to be completed in any other manner he or she deems advisable. The city forester may retain the amount of any expense incidental to the reletting, out of any funds due or to become due to the contractor, and may also hold the contractor and the sureties upon the contractor's bond responsible for any additional expenses and for any damages resulting from the abandonment or failure to complete the contract.

SEC. 555. Section 21020.8 of the Public Contract Code is amended to read:

21020.8. Any work or improvements provided for in the act may be located, constructed, and maintained in, along, or across any public road or highway in the County of Orange, in the manner as to afford security for life and property, but the board of supervisors of the district shall restore or cause to be restored any public road or highway to its former state as near as may be, so as not to impair its usefulness.

SEC. 556. Section 21040 of the Public Contract Code is amended to read:

21040. This article shall apply to contracts by the Orange County Water District, as provided for in Chapter 924 of the Statutes of 1933.

SEC. 557. Section 21071 of the Public Contract Code is amended to read:

21071. (a) All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of ten thousand dollars ($10,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise, by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district, inviting sealed proposals for the construction of the improvement or work before any contract shall be made for the improvement or work, and may let by contract separately any part of the work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code and be subject to that chapter. The board shall also have the right to reject any and all bids. If all proposals are rejected, no proposals are received pursuant to the advertisement, the estimated cost of the work does not exceed the sum of ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work when necessary in order to protect life and property from impending flood damage, the board of supervisors may, without advertising for bids, have the work done by force account or negotiated contract.

(b) The district shall have the power to purchase in the open market without advertising for bids, materials, supplies, equipment, and other personal property for use in any work either under contract or by force account if the costs do not exceed ten thousand dollars ($10,000). It shall be the duty of the purchasing agent of Ventura County, as the ex officio purchasing agent of the Ventura County Flood Control District, unless otherwise ordered by the board of supervisors, to purchase for the district all materials, supplies, equipment, and other personal property necessary to carry out the purposes of this article, and to engage independent contractors to perform sundry services for the district, if the aggregate cost of that work, exclusive of materials to be furnished by the district, does not exceed ten thousand dollars ($10,000).

(c) The purchasing agent shall make all the purchases and contracts upon proper requisition, signed by the engineer-manager of the district, or his or her authorized representative.

(d) If the work consists of the maintenance or alteration of existing facilities, including electrical, painting, and roofing, if the cost of labor and materials for the work, according to the engineer's estimate, will exceed five thousand dollars ($5,000), and if the work is not of the type

of work referred to in this section, the maintenance and alteration work shall be performed under a contract or contracts that shall be let to the lowest responsible bidder or bidders in the manner described in this section.

SEC. 558. Section 21471 of the Public Contract Code is amended to read:

21471. Subject to the limitations in Section 14 of Chapter 166 of the Statutes of 1967, the agency may join with one or more public agencies, private corporations, or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with the other public agencies, private corporations, or persons for the purpose of financing the acquisitions, constructions, and operations. The contract may provide for contributions to be made by each party to the contract, the division and apportionment of the expenses of acquisitions and operations, and the division and apportionment of the benefits and the services and products therefrom, may provide for any agency to effect the acquisitions and to carry on those operations, and shall provide, in the powers and methods of procedure for the agency, the method by which the agency may contract. The contracts with other public agencies, private corporations, or persons may contain any other and further covenants and agreements that may be necessary or convenient to accomplish the purposes of the contracts. As used in this section, "public agency" shall be deemed to mean and include the United States or any department or agency thereof, the State of California or any department or agency thereof, or a county, city, public corporation, or other public district of this state. As used in this section, "private corporation" shall be deemed to mean and include any private corporation organized under the laws of the United States or of this or any other state. Contracts mentioned in this section include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto, or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States or any department or agency thereof, or with any private corporation organized under the laws of the United States, by which the Mojave Water Agency, or any improvement district thereof, incurs an indebtedness or liability exceeding in any year the income and revenue for that year shall not be executed without the assent of two-thirds of the qualified electors of the agency, or an improvement district thereof, voting at a special election to be held for that purpose. The special election shall be called and held, so far as practicable, in the same manner as bond elections for the agency. The exact form of the contract need not be available at the time of the special election, but all of the following shall be known and included in the proposition or

measure submitted to the qualified electors of the agency, or an improvement district thereof, at the special election:

(a) Purpose of the contract.

(b) Maximum amount of the indebtedness created by the contract.

(c) Maximum term of repayment.

(d) Maximum interest rate on the indebtedness created by the contract.

SEC. 559. Section 21601 of the Public Contract Code is amended to read:

21601. Any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars ($5,000), shall be done by contract and let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation, or by two insertions in a weekly newspaper of general circulation, printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any and all bids and readvertise, or, by a two-thirds vote, may elect to undertake the work by force account. If no proposals are received, the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials, and supplies for use in any work, either under contract or by force account.

SEC. 560. Section 2776 of the Public Resources Code is amended to read:

2776. (a) No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, the person has, in good faith

and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

(b) The reclamation plan required to be filed under subdivision (b) of Section 2770, shall apply to operations conducted after January 1, 1976, or to be conducted.

(c) Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.

SEC. 561. Section 4116 of the Public Resources Code is amended to read:

4116. Any claim for damages arising against the state under Section 4114 or 4115 shall be presented to the California Victim Compensation and Government Claims Board in accordance with Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code and, if not covered by insurance, shall be payable only out of funds appropriated by the Legislature for that purpose. If the state has elected to acquire liability insurance, the California Victim Compensation and Government Claims Board may automatically deny this claim.

SEC. 562. Section 4144 of the Public Resources Code is amended to read:

4144. (a) Notwithstanding Section 4142, the director may, with the approval of the Department of General Services, enter into a cooperative agreement, for the purpose of preventing and suppressing fires, with a city, county, special district, or other political subdivision of the state or person, firm, association, or corporation that requests an agreement, under those terms and conditions that the director deems wise.

(b) The director shall not enter into or renew a cooperative agreement pursuant to this section under any of the following circumstances:

(1) With any county that has assumed responsibility pursuant to Section 4129.

(2) If the land to be protected is not in proximity to, nor within lands classified by the board pursuant to Section 4125 as, a state responsibility area. For the purposes of this paragraph, "proximity" means within a distance from an existing facility that results in a response time established by the board that is not longer than that used by the department in meeting its state wild land fire protection mission.

(3) The director determines that the agreement would significantly reduce existing fire prevention and suppression service levels.

(4) The director determines, pursuant to the policy and standards adopted by the board under Section 4143, that the agreement would replicate services provided under an agreement made pursuant to Section 4142.

(5) The director determines that the service area of a particular station under the agreement is more appropriately served under an agreement made pursuant to Section 4142.

(c) The cooperative agreement shall provide all of the following:

(1) The department shall ensure that a staffing level, mutually agreeable to the parties to the agreement, is maintained on all fire prevention and suppression vehicles.

(2) The personnel, equipment, and buildings utilized shall be limited to those used to protect state responsibility areas. Whenever the cooperative agreement provides for the employment of personnel during the nonfire season who would be in addition to the personnel required for the necessary operation and maintenance of equipment and buildings under the jurisdiction of the director, the full salaries and all benefits of the additional personnel shall be apportioned, as costs to the city, county, special district, or other political subdivision of the state, or person, firm, association, or corporation that contracts with the department pursuant to the cooperative agreement for fire protection.

(3) A cost apportionment between the state and the city, county, special district, or other political subdivision of the state, or person, firm, association, or corporation that contracts with the state for fire protection that reasonably reflects cost apportionments made pursuant to Section 4141 or 4142, except that the contracting city, county, special district, other political subdivision of the state, or contracting person, firm, association, or corporation shall be apportioned the additional cost for extended staff availability for 24-hour emergency response, for state personnel assigned to staff fire engines at a rate determined annually by the director, plus staff benefit costs attributable to the apportionment, and total unplanned overtime pay. The department shall recover its actual additional costs.

SEC. 563. Section 4516.6 of the Public Resources Code is amended to read:

4516.6. (a) To provide for adequate public review and comment, notwithstanding Section 4582.7, the director shall not approve a timber harvesting plan in any county for which rules and regulations have been adopted pursuant to Section 4516.5 or 4516.8 until 35 days from the date of filing of the plan, and timber operations shall not commence until five days from the date of approval of the plan. The board may provide,

by regulation, for those periods to be waived or shortened by the department upon a determination, pursuant to criteria and procedures established by the board, that the proposed timber operations will cause no significant environmental damage or threat to public health and safety or to the environment, or that the timber operations are necessary to reduce that threat. If the chairperson of the board of supervisors of the county in which the proposed timber operations are located notifies the director and the plan submitter that the county intends to appeal the approval of the plan and that the county meets the requirements for filing an appeal, no timber operations shall occur until the final determination of the appeal. If the board of supervisors determines not to appeal the approval of the plan, it shall immediately notify the director and the plan submitter in writing of that determination, and timber operations pursuant to the plan may commence immediately.

(b) (1) The board of supervisors of the county for which rules and regulations have been adopted pursuant to Section 4516.5 or 4516.8 may, not later than 10 days after approval of the plan by the director, appeal that approval to the board, if the county has both participated in the initial inspection of the plan area with the director and participated in a multidisciplinary review of the plan.

(2) The board may establish procedures for filing the appeal and may specify findings that the board of supervisors is required to make in filing the appeal to demonstrate that a substantial issue is raised with respect to public health and safety or the environment.

(c) The board shall grant to a county that meets the requirements for filing an appeal an initial hearing to consider the county's request for an appeal at the next regularly scheduled board meeting following the receipt of the request.

(d) The board shall grant a public hearing on the appeal if it determines at an initial hearing pursuant to subdivision (c) that the appeal raises substantial issues with respect to public health and safety or the environment.

(e) (1) The board shall hold a public hearing on the appeal granted pursuant to subdivision (d) within 30 days from the date of granting the hearing or at the next regularly scheduled board meeting, whichever occurs first, or within a longer period of time that is mutually agreed upon by the board, the county, and the plan submitter. Upon conclusion of the hearing, the board shall approve or deny the plan. The basis of the board's decision shall be conformance with this section and the rules and regulations of the board, including any rules or regulations enacted with respect to the county pursuant to Section 4516.5 or 4516.8, and this chapter. In denying a plan, the board may make findings that set forth

conditions under which it believes that the plan would have been approved.

(2) The board may delegate conduct of the hearing and the decision to a committee of three members to be appointed for that hearing by the chairperson of the board. The committee shall consist of at least two general public members of the board. The chairperson of the board or the chairperson's designee shall conduct the hearing. The decision of the committee shall have the full force and effect of a decision of the full board.

(f) This section does not apply to timber operations on any land area of less than three acres and that is not zoned for timberland production.

SEC. 564. Section 4602.6 of the Public Resources Code is amended to read:

4602.6. (a) If a timber operator believes that a forest officer lacked reasonable cause to issue or extend a stop order pursuant to Section 4602.5, the timber operator may present a claim to the California Victim Compensation and Government Claims Board pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code for compensation and damages resulting from the stopping of timber operations.

(b) If the board finds that the forest officer lacked reasonable cause to issue or extend the stop order, the board shall award a sum of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) per day for each day the order was in effect.

SEC. 565. Section 5006.48 of the Public Resources Code is amended to read:

5006.48. (a) Notwithstanding any other provision of law, the Director of General Services may acquire, on behalf of the state, a fee or lesser right or interest in real and personal property in the Counties of Alameda and San Joaquin located approximately 10 miles east of the City of Livermore and commonly known as the Carnegie Cycle Park. If the property is leased, the lease shall be for the term and for the consideration that is mutually agreed upon by and between the Director of General Services and the lessor, and consented to by the Director of Parks and Recreation, and with rent to be paid by the Department of Parks and Recreation.

(b) Any interest in property acquired pursuant to this section shall be subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(c) Upon acquisition of the property, the Director of General Services shall transfer jurisdiction over the property to the Department of Parks and Recreation, which shall administer the property as a unit of the state park system. The Department of Parks and Recreation shall carry out a

program in that unit of planning, development, construction, maintenance, administration, and conservation of trails and areas for the recreational use of off-highway vehicles and for other related purposes of the state park system. Areas for the recreational use of off-highway vehicles shall be administered pursuant to Chapter 1.25 (commencing with Section 5090.01).

(d) The Director of General Services may offer, under competitive bidding procedures, all or part of the property for lease if the Director of Parks and Recreation determines at that time it is not then needed for the purposes of the state park system and will not be needed for the term of the lease to be offered. Any lease entered into pursuant to this section shall be subject to Section 15862 of the Government Code. Notwithstanding Section 15863 of the Government Code, all rent accruing from that lease after jurisdiction over the property is transferred to the Department of Parks and Recreation pursuant to subdivision (c) shall be paid into the State Treasury to the credit of the Off-Highway Vehicle Fund and shall be available for expenditure only for the purposes specified in subdivision (b) of Section 5090.61.

(e) Any fees or other returns collected by the Department of Parks and Recreation in its administration of the unit referred to in subdivision (c) shall be paid into the State Treasury to the credit of the Off-Highway Vehicle Fund and shall be available for expenditure only for the purposes specified in subdivision (b) of Section 5090.61.

SEC. 566. Section 5080.06 of the Public Resources Code is amended to read:

5080.06. For any contract authorizing occupancy by the concessionaire for a period of more than two years of any portion of the state park system, the department shall prepare an invitation to bid, which shall include a summary of the terms and conditions of the concession sufficient to enable persons to bid solely on the basis of rates to be paid to the state. The invitation to bid shall specify the minimum acceptable rent, except in instances in which a minimum acceptable rent cannot be ascertained because of the novelty or uniqueness of the service or facility to be provided or in instances in which the department has determined that a better return to the state can be secured by not specifying a minimum acceptable rent. Bids shall be made only on the basis of the invitation to bid.

SEC. 567. Section 5080.36 of the Public Resources Code is amended to read:

5080.36. (a) Notwithstanding any provision of this article, the department may enter into an operating agreement with a qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, and control of El Presidio de Santa

Barbara State Historic Park. The agreement shall include, but is not limited to, the following:

(1) The district superintendent for the department shall provide liaison with the department, the nonprofit organization, and the public.

(2) The nonprofit organization shall annually submit a written report to the department regarding its operating activities during the prior year and shall make copies of the report available to the public upon request. The report shall include a full accounting of all revenues and expenditures for El Presidio de Santa Barbara State Historic Park.

(3) All revenues received from El Presidio de Santa Barbara State Historic Park shall be expended only for the care, maintenance, operation, administration, improvement, or development of the unit.

(b) The district superintendent for the department shall, following submittal of the annual report under subdivision (a), hold a public meeting for discussion of the report and any operating policies or procedures. Any recommendation resulting from the annual public meeting shall be submitted by the district superintendent to the director for review and approval.

(c) The general plan for El Presidio de Santa Barbara State Historic Park shall, in addition to the requirements set forth in Section 5002.2, specifically evaluate and define the manner in which the unit is proposed to be operated. The general plan shall be reviewed by the State Park and Recreation Commission for a determination that the unit will be operated in a manner that generally meets the standards followed by the department in its operation of similar units, that enhances the general public use and enjoyment of, and recreational and educational experiences at, the unit, and that provides for the satisfactory management of park resources.

(d) Whenever the department intends to enter into an operating agreement with respect to El Presidio de Santa Barbara State Historic Park, the department shall notify each Member of the Legislature in whose district the unit is located of that intention.

SEC. 568. Section 5096.514 of the Public Resources Code is amended to read:

5096.514. Not more than 10 working days after the close of escrow for a major acquisition of conservation land by an acquisition agency, the acquisition agency shall make available to the public all of the following information, unless it is exempt from being disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(a) A copy of the appraisal for the conservation land approved by the Department of General Services, and from which fair market value was determined.

(b) A copy of all other documents relevant to the purchase of the conservation land, including, but not limited to, environmental assessments or other documents not already disclosed pursuant to Section 5096.513.

SEC. 569. Section 5141.1 of the Public Resources Code is amended to read:

5141.1. A lease or sublease entered into pursuant to subdivision (c) of Section 5140 shall provide that the net revenue, if any, from the operation and use of the facilities, remaining after the payment of any expenses and costs for maintenance, operation, or management, payment of interest and principal upon any loans made to the nonprofit corporation or association for purposes of maintenance, operation, or management, or any other expenses, and after providing maintenance and operation reserves, shall be paid at least annually to the county. Notwithstanding Section 231 of the Revenue and Taxation Code, all buildings, structures, and facilities, together with the land upon which they are situated, and so much of the surrounding land as is required for their use and occupation, operated by a nonprofit association or corporation pursuant to the operating lease or sublease, shall be exempt from taxation within the meaning of "charitable purposes" in subdivision (b) of Section 4 of Article XIII of the California Constitution. The lease or sublease shall provide that, upon its expiration and after payment or discharge of its indebtedness and liabilities, all of the assets of the nonprofit association or corporation shall be transferred to the county.

SEC. 570. Section 5366 of the Public Resources Code is amended to read:

5366. The State Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code) and Part 7 (commencing with Section 1720) of Division 2 of the Labor Code shall be applicable to this article.

SEC. 571. Section 5671 of the Public Resources Code is amended to read:

5671. The Legislature hereby finds and declares as follows:

(a) There is a great, measurable demand for the provision of increased fishing opportunities in the major metropolitan areas of California.

(b) There is a high concentration of urban social and economic problems in California's major metropolitan areas that can be partially alleviated by the increased recreational activities and supplemental food sources afforded by fishing opportunities.

(c) In view of the foregoing, the Legislature declares that an active, cooperative, and funded urban fishing program should be implemented without delay.

SEC. 572. Section 6314 of the Public Resources Code is amended to read:

6314. (a) A person who removes, without authorization from the commission, or a person who destroys or damages, an archaeological site or a historic resource that is located on or in the submerged lands of, and that is the property of, the state, is guilty of a misdemeanor, which shall be punishable by imprisonment in a county jail not to exceed six months, a fine not to exceed five thousand dollars ($5,000), or both that imprisonment and fine.

(b) In addition, the commission or, at its request, the Attorney General or a district attorney in whose jurisdiction the violation occurred, may seek civil damages for the damage, loss, or destruction of an abandoned shipwreck, its gear or cargo, or an archaeological site or historic resource located on or in submerged lands of the state. A vessel used to damage, destroy, or cause the loss of the shipwreck, archaeological site, or historic resource is subject to a proceeding in rem by the state for the costs and damages resulting from that damage, destruction, or loss. Enforcement may include, where appropriate, a restraining order or injunctive relief to restrain and enjoin violations or threatened violations of Section 6309, Section 6313, or this section and for the return of items taken in violation of these sections.

(c) An artifact, an object, or material that has been removed from a state submerged archaeological site or submerged historic resource, as specified in subdivision (a), and that is found in a watercraft occupied by persons who do not hold a permit as required by Section 6309 or 6313 or other reasonable evidence of legal possession, is prima facie evidence of a violation of that section and the artifact, object, or material may be confiscated by a state, federal, or local law enforcement officer. An artifact, an object, or material confiscated pursuant to this section shall be returned to the person claiming ownership within 30 days of its confiscation, unless a prosecuting attorney determines that it is required as evidence in the prosecution of a criminal violation.

(d) In a case in which a district attorney, at the request of the commission, or with its concurrence, enforces subdivision (a), the commission shall, notwithstanding Section 1463 of the Penal Code, be entitled to an equal division of the fine imposed.

(e) All state and local law enforcement agencies and officers are directed to assist in enforcing this section, and are requested to work with and seek the cooperation of federal law enforcement agencies, including deputizing federal officers when appropriate.

SEC. 573. Section 6925.2 of the Public Resources Code is amended to read:

6925.2. Notwithstanding any other provision of this article, the commission may, at its discretion, issue a lease to the first qualified applicant for a parcel of less than 640 acres if the geothermal resources to be developed on this parcel are utilized entirely for purposes other than electricity generation. The terms, conditions, rentals, royalties, drilling requirements, and development programs of those leases shall be as determined by the commission. If there is an existing geothermal resources lease or permit for the land, the applicant shall obtain the permission of the lessee or permittee.

SEC. 574. Section 8710 of the Public Resources Code is amended to read:

8710. An action under this division is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), or the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

SEC. 575. Section 9084 of the Public Resources Code is amended to read:

9084. (a) Subject to the availability of funds and any limitations imposed by this division, the department may provide grants to resource conservation districts for the purpose of assisting the districts in carrying out any work that they are authorized to undertake, including, but not limited to, grants for watershed projects.

(b) (1) To qualify for a grant under subdivision (a), a resource conservation district shall do all of the following:

(A) Prepare an annual and a long-range work plan pursuant to Section 9413. The long-range work plan shall reflect input from local agencies and organizations regarding land use and resource conservation goals.

(B) Convene regular meetings in accordance with the open meeting requirements of Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and the requirements of this division.

(C) Secure sources of local support funding, which may include funding from in-kind contributions and services.

(2) A resource conservation district seeking a grant pursuant to this section shall submit to the department a grant proposal that includes, but is not limited to, all of the following information:

(A) A description of the work for which the grant is sought.

(B) An explanation of the public or private need for the work, including, but not limited to, any relevant information demonstrating the urgency of the project.

(C) An itemized summary of the projected cost of the work.

(D) An estimate of the amount of the projected costs of the work that will be covered by local support funding, including funding from in-kind contributions or services.

(3) To qualify for a grant awarded pursuant to this section, a resource conservation district shall be required to provide at least a 25 percent local match of funding, of which 40 percent of that amount shall be provided in cash. The department shall give preference in the awarding of grants to those districts that, among other things, provide a greater percentage of local match funding than the minimum required by this paragraph.

(4) A resource conservation district that receives a grant awarded under this section shall provide the department with an informal accounting summary that describes how the grant money was spent in accordance with the purposes and conditions of the grant.

SEC. 576. Section 21080.24 of the Public Resources Code is amended to read:

21080.24. (a) This division does not apply to the issuance, modification, amendment, or renewal of a permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to a district Title V program established pursuant to Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

(b) Nothing in this section is intended to result in the application of this division to a physical or operational change that, prior to January 1, 1995, was not subject to this division.

SEC. 577. Section 21151.1 of the Public Resources Code is amended to read:

21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for a project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to a project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(4) A base reuse plan as defined in Section 21083.8.1. The Legislature hereby finds that no reimbursement is required pursuant to Section 6 of Article XIII B of the California Constitution for an environmental impact report for a base reuse plan if an environmental impact report is otherwise required for that base reuse plan pursuant to any other provision of this division.

(b) For purposes of clause (ii) of subparagraph (A) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in a state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or a state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to a project that does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, that is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit that is transportable and that is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment that performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations, as those sections read on June 1, 1991.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project that, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process. However, a facility that operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 117690 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality

management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to a project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) do not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 of the Health and Safety Code on or after January 1, 1992, but not before that date, or only conducts activities that are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt a project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

SEC. 578. Section 21167.1 of the Public Resources Code is amended to read:

21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of an action or proceeding on appeal from a decision of a lower court, all courts in which the action or proceeding is pending shall give the action or proceeding preference over all other civil actions, in the matter of setting the action or proceeding for hearing or trial, and in hearing or trying the action or proceeding, so that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.

(b) To ensure that actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5 may be quickly heard and determined in the lower courts, the superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws,

so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5.

(c) In an action or proceeding filed pursuant to this chapter that is joined with any other cause of action, the court, upon a motion by any party, may grant severance of the actions. In determining whether to grant severance, the court shall consider such matters as judicial economy, administrative economy, and prejudice to any party.

SEC. 579. Section 25135 of the Public Resources Code is amended to read:

25135. "Conversion" means the processes by which residue is converted to a more usable energy form, including, but not limited to, combustion, anaerobic digestion, and pyrolysis, and is used for heating, process heat applications, and electric power generation.

SEC. 580. 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 9604 of the Public Utilities Code.

SEC. 581. Section 26032 of the Public Resources Code is amended to read:

26032. The authority may enter into contracts of sale with any participating party covering any project financed by the authority. The purchase price pursuant to the contract of sale shall be treated in substantially the same manner and shall be at least sufficient to provide funds for all the purposes provided in Section 26031 and may be paid in installments, together with interest on the unpaid balance, or otherwise, as may be mutually agreed and set forth in the contract of sale. All payments received by the authority under any installment sales or conditional sales contract shall be applied by the authority substantially in the same manner as provided in Section 26031 in the case of lease payments or rental charges received by the authority.

SEC. 582. Section 26569.5 of the Public Resources Code is amended to read:

26569.5. A district formed under this chapter shall be comprised of an area within a local agency that is specially benefited by, and is subject to a special assessment to pay the cost of, an improvement. The district is not an entity separate and distinct from the local agency within which it is formed.

SEC. 583. Section 29305 of the Public Resources Code is amended to read:

29305. The Wildlife Conservation Board shall acquire title to, or a lesser right or interest in, land or water that the board determines is appropriate for the purposes of the protection plan. When authorized by the board, the department shall construct facilities that are suitable for the purpose for which the acquisitions were made. The acquisitions shall be made in accordance with the Wildlife Conservation Law of 1947 (Chapter 4 (commencing with Section 1300) of Division 2 of the Fish and Game Code) and the criteria specified in Section 29009 of this code.

SEC. 584. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission, consisting of 19 members as follows:

(a) One member of the board of supervisors of each of the five counties within the delta whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of the county.

(b) Three elected city council members shall be selected and appointed by city selection committees, from regional and area councils of government, one in each of the following areas:

(1) One from the north delta, consisting of the Counties of Yolo and Sacramento.

(2) One from the south delta, consisting of the County of San Joaquin.

(3) One from the west delta, consisting of the Counties of Contra Costa and Solano.

(c) (1) One member each from the board of directors of five different reclamation districts that are located within the primary zone who are residents of the delta, and who are elected by the trustees of the reclamation districts within the following areas:

(A) Two members from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973), provided at least one member is also a member of the Delta Citizens Municipal Advisory Council.

(B) One member from the west delta consisting of the area of Contra Costa County within the delta.

(C) One member from the area of the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973).

(D) One member from the area of the South Delta Water Agency as described in Section 9.1 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973).

(2) Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. For purposes of this section, each reclamation district shall have one vote. The north delta area shall conduct separate votes to select each of its two members.

(d) The Director of Parks and Recreation or the director's sole designee.

(e) The Director of Fish and Game or the director's sole designee.

(f) The Secretary of Food and Agriculture or the secretary's sole designee.

(g) The executive officer of the State Lands Commission or the executive officer's sole designee.

(h) The Director of Boating and Waterways or the director's sole designee.

(i) The Director of Water Resources or the director's sole designee.

SEC. 585. Section 30118.5 of the Public Resources Code is amended to read:

30118.5. "Special treatment area" means an identifiable and geographically bounded forested area within the coastal zone that constitutes a significant habitat area, area of special scenic significance, and any land where logging activities could adversely affect a public recreation area or the biological productivity of any wetland, estuary, or stream especially valuable because of its role in a coastal ecosystem.

SEC. 586. Section 30166 of the Public Resources Code is amended to read:

30166. In Los Angeles County:

(a) In three locations within the Santa Monica Mountains, the boundary is moved seaward to the five-mile limit described in Section 30103 and as specifically shown on maps 22, 23, and 24.

(b) In the Temescal Canyon watershed in the City of Los Angeles, all lands owned or controlled by the Presbyterian Synod, the University of California, the Los Angeles County Sanitation District, and the Los Angeles Unified School District are added.

(c) In the Cities of Los Angeles and El Segundo, the areas east of Vista del Mar that include the Scattergood Steam Plant, the Hyperion Sewage Treatment Plant, and portions of an oil refinery are excluded as specifically shown on map 25. In adopting this boundary change, the Legislature specifically reaffirms the existing location of the coastal zone boundary in the Venice area of the City of Los Angeles.

(d) In the City of Manhattan Beach, approximately 140 acres, and in the City of Hermosa Beach, approximately 170 acres, are excluded as specifically shown on maps 25 and 26.

(e) In the City of Palos Verdes Estates, approximately 95 acres landward of Paseo del Mar are excluded as specifically shown on map 26.

(f) In the City of Long Beach, the area near Colorado Lagoon is excluded as specifically shown on map 27.

(g) In the City of Long Beach, the area commencing at the intersection of the existing coastal zone boundary at Colorado Street and Pacific Coast Highway, thence southerly along Pacific Coast Highway to the intersection of Loynes Drive, thence easterly along Loynes Drive to the intersection of Los Cerritos Channel, thence northerly along Los Cerritos Channel to the existing coastal zone boundary, is excluded as specifically shown on map 27A.

SEC. 587. Section 30170 of the Public Resources Code is amended to read:

30170. In San Diego County:

(a) In the City of Oceanside, approximately 500 acres are excluded as specifically shown on maps 30A and 31.

(b) In the City of Carlsbad, approximately 180 acres in the downtown area, except for the Elm Street corridor, are excluded as specifically shown on map 31.

(c) In the City of Carlsbad, the area lying north of the Palomar Airport as generally shown on maps 31 and 32 and as specifically described in this subdivision is excluded.

Those portions of lots "F" and "G" of Rancho Agua Hedionda, part in the City of Carlsbad and part in the unincorporated area of the County of San Diego, State of California, according to the partition map thereof No. 823, filed in the office of the county recorder of that county, November 16, 1896, described as follows:

Commencing at point 1 of said lot "F" as shown on said map; thence along the boundary line of said lot "F" south 25° 33´ 56″ east, 229.00 feet to point 23 of said lot "F" and south 54° 40´ 19″ east, 1347.00 feet; thence leaving said boundary line south 35° 19´ 44″ west, 41.28 feet to the true point of beginning, which point is the true point of beginning, of the land described in deed to Japatul Corporation recorded December 8, 1975, at recorder's file/page No. 345107 of official records to said county; thence along the boundary line of said land south 35° 19´ 44″ west, 2216.46 feet and north 53° 02´ 49″ west, 1214.69 feet to the northeast corner of the land described in deed to Japatul Corporation recorded December 8, 1975, at recorder's file/page No. 345103 of said official records; thence along the boundary lines of said land as follows: West, 1550 feet, more or less, to the boundary of said lot "F"; south 00° 12´ 00″ west, 550 feet, more or less, to point 5 of said lot "F"; south 10° 25´ 10″ east along a straight line between said point 5 and point 14 of said lot "F," to point 14 of said lot "F"; thence along the boundary of said lot "F" south 52° 15´ 45″ east (record south 51° 00´ 00″ east) 1860.74 feet more or less to the most westerly corner of the land conveyed to James L. Hieatt, et ux, by deed recorded June 11, 1913, in Book 617, page 54 of deed, records of said county; thence along the northwesterly and northeasterly boundary of Hieatt's land as follows: North 25° 00´ 00″ east, 594.00 feet and south 52° 15´ 45″ east (record south 51° 00´ 00″ east per deed) 1348.61 feet to a point of intersection with the northerly line of Palomar County Airport, said point being on the boundary of the land conveyed to Japatul Corporation by deed recorded December 8, 1975, at recorder's file/page No. 345107 of said official records; thence along said boundary as follows: North 79° 10´ 00″ east, 4052.22 feet north 10° 50´ 00″ west, 500.00 feet; north 79° 10´ 00″ east 262.00 feet, south 10° 50´ 00″ east, 500.00 feet; north 79° 10´ 00″ east, 1005 feet, more or less, to the westerly line of the land conveyed to the County of San Diego by deed recorded May 28, 1970, at recorder's

file/page No. 93075 of said official records; thence continuing along the boundary of last said Japatul Corporation's land north 38° 42´ 44″ west, 2510.58 feet to the beginning of a tangent 1845.00 foot radius curve concave northeasterly; along the arc of said curve through a central angle of 14° 25´ 52″ a distance of 464.70 feet to a point of the southerly boundary of the land allotted to Thalia Kelly Considine, et al., by partial final judgment in partition, recorded January 18, 1963, at recorder's file/page No. 11643 of said official records; thence continuing along last said Japatul Corporation's land south 67° 50´ 28″ west, 1392.80 feet north 33° 08´ 52″ west, 915.12 feet and north 00° 30´ 53″ west, 1290.37 feet to the southerly line of said land conveyed to the County of San Diego, being also the northerly line of last said Japatul Corporation's land; thence along said common line north 74° 57´ 25″ west, 427.67 feet to the beginning of a tangent 2045.00 foot radius curve concave northerly; and westerly along the arc of said curve through a central angle of 16° 59´ 24″, a distance of 606.41 feet to the true point of beginning.

And those properties known as assessors parcel Nos. 212-020-08, 212-020-22, and 212-020-23.

Excepting therefrom, that portion, if any, conveyed to the County of San Diego, by quitclaim deed recorded January 12, 1977, at recorder's file/page No. 012820 of said official records.

No development may occur in the area described in this subdivision until a plan for drainage of the parcel to be developed has been approved by the local government having jurisdiction over the area after consultation with the commission and the Department of Fish and Game. The plan shall assure that no detrimental increase occurs in runoff of water from the parcel to be developed and shall require that the facilities necessary to implement the plan are installed as part of the development.

(d) In the City of Carlsbad and adjacent unincorporated areas, approximately 600 acres consisting of the Palomar Airport and an adjoining industrial park are excluded as specifically shown on maps 31 and 32.

(e) An area consisting of approximately 333 acres lying west and south of the Palomar Airport and bounded on the south by Palomar Airport Road is excluded as specifically shown on maps 31 and 32.

No development may occur in the area described in this subdivision until a plan for drainage of the parcel to be developed has been approved by the local government having jurisdiction over the area after consultation with the commission and the Department of Fish and Game. The plan shall assure that no detrimental increase occurs in runoff of water from the parcel to be developed and shall require that the facilities necessary to implement the plan are installed as part of the development.

(f) On or before October 1, 1980, the commission shall, after public hearing and in consultation with the City of Carlsbad, prepare, approve, and adopt a local coastal program for the following parcels in the vicinity of Batiquitos Lagoon within the City of Carlsbad: lands owned by Rancho La Costa, a registered limited partnership, lands (consisting of approximately 80 acres) owned by Standard Pacific of San Diego, Inc., that were conveyed by Rancho La Costa on October 8, 1977, and lands owned by the Occidental Petroleum Company. Those parcels shall be determined by ownership as of September 12, 1979. As used in this subdivision, "parcels" means the parcels identified in this paragraph. The local coastal program required by this subdivision shall include all of the following elements:

(1) Protection of agricultural lands and uses to the extent feasible.

(2) Minimization of adverse impacts from sedimentation.

(3) Protection of feasible public recreational opportunities.

(4) Provision for economically feasible development consistent with the three elements specified in this subdivision.

The local coastal program required by this subdivision shall, after adoption by the commission, be deemed certified and shall for all purposes of this division constitute certified local coastal program segments for those parcels in the City of Carlsbad. The segments of the city's local coastal program for those parcels may be amended pursuant to the provisions of this division relating to the amendment of local coastal programs. In addition, until (i) the City of Carlsbad adopts or enacts the implementing actions contained in the local coastal program, or (ii) other statutory provisions provide alternately for the adoption, certification, and implementation of a local coastal program for those parcels, the local coastal program required by this subdivision may also be amended by the commission at the request of the owner of any of those parcels. For administrative purposes, the commission may group these requests in order to schedule them for consideration at a single commission hearing. However, the commission shall schedule these requests for consideration at least once during each four-month period, beginning January 1, 1982. After either of these events occur, however, these property owners shall no longer be eligible to request the commission to amend the local coastal program.

If the commission fails to adopt a local coastal program within the time limits specified in this subdivision, those parcels shall be excluded from the coastal zone and shall no longer be subject to this division. It is the intent of the Legislature in enacting this subdivision that a procedure to expedite the preparation and adoption of a local coastal program for those parcels be established so that the public and affected

property owners know as soon as possible what the permissible uses of those lands are.

(g) In the vicinity of the intersection of Del Mar Heights Road and the San Diego Freeway, approximately 250 acres are excluded as specifically shown on map 33.

(h) In the vicinity of the intersection of Carmel Valley Road and the San Diego Freeway, approximately 45 acres are added as specifically shown on map 33.

In the City of San Diego, the Carmel Valley area consisting of approximately 1,400 acres as shown on map 33 that has been placed on file with the Secretary of State on January 23, 1980, shall be excluded from the coastal zone after the City of San Diego submits, and the commission certifies, a drainage plan and a transportation plan for the area. The city shall implement and enforce the certified drainage and transportation plans. Any amendments or changes to the underlying land use plan for the area that affects drainage, or to either the certified drainage or transportation plan, shall be reviewed and processed in the same manner as an amendment of a certified local coastal program pursuant to Section 30514. Any land use not in conformance with the certified drainage and transportation plans may be appealed to the commission pursuant to the appeals procedure as provided by Chapter 7 (commencing with Section 30600). The drainage plan and any amendments thereto shall be prepared after consultation with the Department of Fish and Game and shall ensure that problems resulting from water runoff, sedimentation, and siltation are adequately identified and resolved.

(i) Near the head of the south branch of Los Penasquitos Canyon, the boundary is moved seaward to the five-mile limit as described in Section 30103 and as specifically shown on map 33.

(j) In the City of San Diego, approximately 1,855 acres known as the Mount Soledad and La Jolla Mesa areas are added as specifically shown on map 34. However, on or before February 29, 1980, and pursuant to either subdivision (d) of Section 30610 or Section 30610.5, the commission shall exclude from coastal development permit requirements any single-family residence within the area specified in this subdivision. No coastal development permit shall be required for any improvement, maintenance activity, relocation, or reasonable expansion of any commercial radio or television transmission facilities within the area specified in this subdivision unless the proposed activity could result in a significant change in the density or intensity of use in the area or could have a significant adverse impact on highly scenic resources of public importance. However, no prior review by the commission of this activity shall be required.

(k) In the City of San Diego, approximately 30 acres known as the Famosa Slough is added as specifically shown on maps 34 and 35.

SEC. 588. Section 30171.2 of the Public Resources Code is amended to read:

30171.2. (a) Except as provided in subdivision (b), on and after January 1, 1985, no agricultural conversion fees may be levied or collected under the agricultural subsidy program provided in the local coastal program of the City of Carlsbad that was adopted and certified pursuant to Section 30171. All other provisions of that program shall continue to be operative, including the right to develop designated areas as provided in the program.

(b) This section shall not affect any right or obligation under any agreement or contract entered into prior to January 1, 1985, pursuant to that agricultural subsidy program, including the payment of any fees and the right of development in accordance with the provisions of the agreement or contract. As to these properties, the agricultural subsidy fees in existence as of December 31, 1984, shall be paid and allocated within the City of Carlsbad, or on projects outside the city that benefit agricultural programs within the city, in accordance with the provisions of the agricultural subsidy program as it existed on September 30, 1984.

(c) Any agricultural conversion fees collected pursuant to the agricultural subsidy program and not deposited in the agricultural improvement fund in accordance with the local coastal program or that have not been expended in the form of agricultural subsidies assigned to landowners by the local coastal program land use policy plan on January 1, 1985, shall be used by the California Victim Compensation and Government Claims Board to reimburse the party that paid the fees if no agreements or contracts have been entered into or to the original parties to the agreements or contracts referred to in subdivision (b) in proportion to the amount of fees paid by the parties. However, if the property subject to the fee was under option at the time that the original agreement or contract was entered into and the optionee was a party to the agricultural subsidy agreement, payments allocable to that property shall be paid to the optionee in the event the optionee has exercised the option. Reimbursements under this section shall be paid within 90 days after January 1, 1985, or payment of the fee, whichever occurs later, and only after waiver by the party being reimbursed of any potential legal rights resulting from enactment of this section.

(d) (1) Any person entitled to reimbursement of fees under subdivision (c) shall file a claim with the California Victim Compensation and Government Claims Board, which shall determine the validity of the claim and pay that person a pro rata share based on the relative

amounts of fees paid under the local coastal program or any agreement or contract entered pursuant thereto.

(2) There is hereby appropriated to the California Victim Compensation and Government Claims Board the fees referred to in subdivision (c), for the purpose of making refunds under this section.

(e) Notwithstanding any geographical limitation contained in this division, funds deposited pursuant to subdivision (b) may be expended for physical or institutional development improvements needed to facilitate long-term agricultural production within the City of Carlsbad. These funds may be used to construct improvements outside the coastal zone boundaries in San Diego County if the improvements are not inconsistent with the Carlsbad local coastal program and the State Coastal Conservancy determines that the improvements will benefit agricultural production within the coastal zone of the City of Carlsbad.

SEC. 589. Section 30222.5 of the Public Resources Code is amended to read:

30222.5. Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

SEC. 590. Section 30315.1 of the Public Resources Code is amended to read:

30315.1. Adoption of findings for any action taken by the commission requires a majority vote of the members from the prevailing side present at the meeting of the commission, with at least three of the prevailing members present and voting.

SEC. 591. Section 30608 of the Public Resources Code is amended to read:

30608. No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972 (former Division 18 (commencing with Section 27000)) shall be required to secure approval for the development pursuant to this division. However, no substantial change may be made in the development without prior approval having been obtained under this division.

SEC. 592. Section 30610.4 of the Public Resources Code is amended to read:

30610.4. (a) Upon establishment of an acquisition cost pursuant to subdivision (f) of Section 30610.3, the commission shall review the area in question to determine if all or some portion of that area meets the criteria specified in subdivision (b) of Section 30610.1 for areas within which no coastal development permit will be required from the

commission for construction of single-family residences. Notwithstanding paragraph (1) of subdivision (c) of Section 30610.1, lots, other than those immediately adjacent to any beach or to the mean high tide line where there is no beach, can be included in this exclusion area. If the commission determines an area designated pursuant to subdivision (b) of Section 30610.3 meets that criteria, the area shall be designated as one wherein no coastal development permit from the commission shall be required for the construction of single-family residences.

(b) Prior to the commencement of construction of any single-family residence within an area designated pursuant to this section, a certificate of exemption must be obtained pursuant to Section 30610.2 and the appropriate "in-lieu" public access fee shall be paid.

SEC. 593. Section 30610.6 of the Public Resources Code is amended to read:

30610.6. (a) The Legislature hereby finds and declares that it is in the public interest to provide by statute for the resolution of the lengthy and bitter dispute involving development of existing legal lots within the unincorporated area of Sonoma County, commonly known as the Sea Ranch. The reasons for the need to finally resolve this dispute include the following:

(1) Acknowledgment by the responsible regulatory agencies that development of existing lots at Sea Ranch can proceed consistent with the provisions of this division and other applicable laws provided certain conditions have been met. Development has been prevented at considerable costs to property owners because these conditions have not been met.

(2) That it has been, and continues to be, costly to Sea Ranch property owners and the public because of, among other reasons, extensive and protracted litigation, continuing administrative proceedings, and escalating construction costs.

(3) The need to provide additional public access to and along portions of the coast at the Sea Ranch in order to meet the requirements of this division. The continuation of this dispute prevents the public from enjoying the use of those access opportunities.

(4) The commission is unable to refund 118 "environmental deposits" to property owners because coastal development permit conditions have not been met.

(5) It appears likely that this lengthy dispute will continue unless the Legislature provides a solution, and the failure to resolve the dispute will be unfair to property owners and the public.

(b) The Legislature further finds and declares that because of the unique circumstances of this situation, the provisions of this section constitute the most expeditious and equitable mechanism to ensure a

timely solution that is in the best interest of property owners and that is consistent with this division.

(c) If the Sea Ranch Association and Oceanic California, Inc. desire to take advantage of the terms of this section, they shall, not sooner than April 1, 1981, and not later than July 1, 1981, deposit into escrow deeds and other necessary documents that have been determined by the State Coastal Conservancy prior to their deposit in escrow to be legally sufficient to convey to the State Coastal Conservancy enforceable and nonexclusive public use easements free and clear of liens and encumbrances for the easements specifically described in this subdivision. Upon deposit of five hundred thousand dollars ($500,000) into the same escrow account by the State Coastal Conservancy, but in no event later than 30 days after the deeds and other necessary documents have been deposited in the escrow account, the escrow agent shall transmit the five hundred thousand dollars ($500,000), less the escrow, title, and administrative costs of the State Coastal Conservancy, in an amount not to exceed twenty thousand dollars ($20,000), to the Sea Ranch Association and shall convey the deeds and other necessary documents to the State Coastal Conservancy. The conservancy shall subsequently convey the deeds and other necessary documents to an appropriate public agency that is authorized and agrees to accept the easements. The deeds specified in this subdivision shall be for the following easements:

(1) In Unit 34A, a 30-foot wide vehicle and pedestrian access easement from a point on State Highway 1, 50 feet north of mile post marker 56.75, a day parking area for 10 vehicles, a 15-foot wide pedestrian accessway from the parking area continuing west to the bluff-top trail, and a 15-foot wide bluff-top pedestrian easement beginning at the southern boundary of Gualala Point County Park and continuing for approximately three miles in a southerly direction to the sandy beach at the northern end of Unit 28 just north of Walk-on Beach together with a 15-foot wide pedestrian easement to provide a connection to Walk-on Beach to the south.

(2) In Unit 24, a day parking area west of State Highway 1, just south of Whalebone Reach, for six vehicles, and a 15-foot wide pedestrian accessway over Sea Ranch Association common areas crossing Pacific Reach and continuing westerly to the southern portion of Shell Beach with a 15-foot wide pedestrian easement to connect with the northern portion of Shell Beach.

(3) In Unit 36, a 30-foot wide vehicle and pedestrian accessway from State Highway 1, mile post marker 53.96, a day parking area for 10 vehicles, and a 15-foot wide pedestrian accessway from the parking area to the beach at the intersection of Units 21 and 36.

(4) In Unit 17, adjacent to the intersection of Navigator's Reach and State Highway 1, 75 feet north of mile post marker 52.21, enough land to provide day parking for four vehicles and a 15-foot wide pedestrian accessway from the parking area to Pebble Beach.

(5) In Unit 8, a 30-foot wide vehicle and pedestrian accessway from State Highway 1, mile post marker 50.85, a day parking area for 10 vehicles and a 15-foot wide pedestrian accessway from the parking area to Black Point Beach.

(6) With respect to each of the beaches to which access will be provided by the easements specified in this subdivision, an easement for public use of the area between the line of mean high tide and either the toe of the adjacent bluff or the first line of vegetation, whichever is nearer to the water.

(7) Scenic view easements for those areas specified by the executive director, as provided in subdivision (d), and which easements allow for the removal of trees in order to restore and preserve scenic views from State Highway 1.

(d) The executive director of the commission shall, within 30 days after the effective date of this section, specifically identify the areas along State Highway 1 for which the scenic view easements provided for in paragraph (7) of subdivision (c) will be required. In identifying the areas for which easements for the restoration and preservation of public scenic views will be required, the executive director shall take into account the effect of tree removal so as to avoid causing erosion problems. It is the intent of the Legislature that only those areas be identified where scenic views to or along the coast are unique or particularly beautiful or spectacular and which thereby take on public importance. The restoration and preservation of the scenic view areas specified pursuant to this subdivision shall be at public expense.

(e) Within 30 days after the effective date of this section, the executive director of the commission shall specify design criteria for the height, site, and bulk of any development visible from the scenic view areas provided for in subdivision (d). This criteria shall be enforced by the County of Sonoma if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy. This criteria shall be reasonable so as to enable affected property owners to build single-family residences of substantially similar overall size to those that property owners who are not affected by these criteria may build or have already built under the Sea Ranch Association's building design criteria. The purpose of the criteria is to ensure that development will not substantially detract from the specified scenic view areas.

(f) On and after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been

conveyed to the State Coastal Conservancy, no additional public access requirements shall be imposed at the Sea Ranch pursuant to this division by any regional commission, the commission, any other state agency, or any local government. The Legislature hereby finds and declares that the provision of the access facilities specified in this subdivision shall be deemed adequate to meet the requirements of this division.

(g) The realignment of internal roads within the Sea Ranch shall not be required by any state or local agency acting pursuant to this division. However, appropriate easements may be required by the County of Sonoma to provide for the expansion of State Highway 1 for the development of turnout and left-turn lanes and for the location of a bicycle path, when the funds are made available for those purposes. The Legislature finds and declares that this subdivision is adequate to meet the requirements of this division to ensure that new development at the Sea Ranch will not overburden the capacity of State Highway 1 to the detriment of recreational users.

(h) No coastal development permit shall be required pursuant to this division for the development of supplemental water supply facilities determined by the State Water Resources Control Board to be necessary to meet the needs of legally permitted development within the Sea Ranch. The commission, through its executive director, shall participate in the proceedings before the State Water Resources Control Board relating to these facilities and may recommend terms and conditions that the commission deems necessary to protect against adverse impacts on coastal zone resources. The State Water Resources Control Board shall condition any permit or other authorization for the development of these facilities so as to carry out the commission's recommendation, unless the State Water Resources Control Board determines that the recommended terms or conditions are unreasonable. This subdivision shall become operative if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy.

(i) Within 90 days after the effective date of this section, the commission, through its executive director, shall specify criteria for septic tank construction, operation, and monitoring within the Sea Ranch to ensure protection of coastal zone resources consistent with the policies of this division. The North Coast Regional Water Quality Control Board shall review the criteria and adopt it, unless it finds the criteria or a portion thereof is unreasonable. The regional board shall be responsible for the enforcement of the adopted criteria if the deeds and other necessary documents specified in subdivision (c) have been conveyed to the State Coastal Conservancy.

(j) Within 60 days after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been conveyed to the State Coastal Conservancy, the commission shall refund every Sea Ranch "environmental deposit" together with any interest earned on the deposit to the person, or his or her designee, who paid the deposit.

(k) Notwithstanding any other provision of law, on and after the date on which the deeds and other necessary documents deposited in escrow pursuant to subdivision (c) have been conveyed to the State Coastal Conservancy, a coastal development permit shall not be required pursuant to this division for the construction of any single-family residence dwelling on any vacant, legal lot existing at the Sea Ranch on the effective date of this section. With respect to any other development for which a coastal development permit is required within legally existing lots at the Sea Ranch, no conditions may be imposed pursuant to this division that impose additional public access requirements or that relate to supplemental water supply facilities, septic tank systems, or internal road realignment.

(*l*) Notwithstanding any other provision of law, if on July 1, 1981, deeds and other necessary documents that are legally sufficient to convey the easements specified in subdivision (c) have not been deposited in an escrow account, the provisions of this section shall no longer be operative and shall have no force or effect and thereafter all the provisions of this division in effect prior to enactment of this section shall again be applicable to any development within the Sea Ranch.

(m) The Legislature hereby finds and declares that the provisions for the settlement of this dispute, especially with respect to public access, as set forth in this section provide an alternative to and are equivalent to the provisions set forth in Section 30610.3. The Legislature further finds that the provisions of this section are not in lieu of the permit and planning requirements of this division but rather provide for an alternative mechanism to Section 30610.3 for the resolution of outstanding issues at the Sea Ranch.

SEC. 594. Section 30716 of the Public Resources Code is amended to read:

30716. (a) A certified port master plan may be amended by the port governing body, but an amendment shall not take effect until it has been certified by the commission. Any proposed amendment shall be submitted to, and processed by, the commission in the same manner as provided for submission and certification of a port master plan.

(b) The commission shall, by regulation, establish a procedure whereby proposed amendments to a certified port master plan may be reviewed and designated by the executive director of the commission as

being minor in nature and need not comply with Section 30714. These amendments shall take effect on the 10th working day after the executive director designates the amendments as minor.

(c) (1) The executive director may determine that a proposed certified port master plan amendment is de minimis if the executive director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, is consistent with the policies of Chapter 3 (commencing with Section 30200), and meets the following criteria:

(A) The port governing body, at least 21 days prior to the date of submitting the proposed amendment to the executive director, has provided public notice, and provided a copy to the commission, which specifies the dates and places where comments will be accepted on the proposed amendment, contains a brief description of the proposed amendment, and states the address where copies of the proposed amendment are available for public review, by one of the following procedures:

(i) Publication, not fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed amendment. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice by the port governing body both onsite and offsite in the area affected by the proposed amendment.

(iii) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(B) The proposed amendment does not propose any change in land use or water uses or any change in the allowable use of property.

(2) At the time that the port governing body submits the proposed amendment to the executive director, the port governing body shall also submit to the executive director any public comments that were received during the comment period provided pursuant to subparagraph (A) of paragraph (1).

(3) (A) The executive director shall make a determination as to whether the proposed amendment is de minimis within 10 working days from the date of submittal by the local government. If the proposed amendment is determined to be de minimis, the proposed amendment shall be noticed in the agenda of the next regularly scheduled meeting of the commission, in accordance with Section 11125 of the Government Code, and any public comments forwarded by the port governing body shall be made available to the members of the commission.

(B) If three members of the commission object to the executive director's determination that the proposed amendment is de minimis, the proposed amendment shall be set for public hearing in accordance with the procedures specified in subdivision (b), or as specified in subdivision (c) if applicable, as determined by the executive director, or, at the request of the port governing body, returned to the local government. If set for public hearing under subdivision (b), the time requirements set by this section and Section 30714 shall commence from the date on which the objection to the de minimis designation was made.

(C) If three or more members of the commission do not object to the de minimis determination, the de minimis amendment shall become a part of the certified port master plan 10 days from the date of the commission meeting.

(4) The commission may, after a noticed public hearing, adopt guidelines to implement this subdivision, which shall be exempt from review by the Office of Administrative Law and from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall file any guidelines adopted pursuant to this paragraph with the Office of Administrative Law.

SEC. 595. Section 31163 of the Public Resources Code is amended to read:

31163. (a) The conservancy shall cooperate with cities, counties, and districts, the bay commission, other regional governmental bodies, nonprofit land trusts, nonprofit landowner organizations, and other interested parties in identifying and adopting long-term resource and outdoor recreational goals for the San Francisco Bay area, which shall guide the ongoing activities of the San Francisco Bay Area Conservancy Program. The conservancy shall utilize the list of priority areas and concerns established by the bay commission pursuant to subdivision (b) of Section 31056 as guidance in the selection of those San Francisco area projects that are within the jurisdiction of the bay commission. However, the guidance provided by the bay commission is advisory and the conservancy shall have the responsibility for making program decisions. Any acquisition of real property using funds authorized pursuant to this chapter shall be from willing sellers if the land is actively farmed or ranched. Any acquisition of real property by the conservancy pursuant to this chapter shall be from willing sellers.

(b) The conservancy shall participate in and support interagency actions and public/private partnerships in the San Francisco Bay area for the purpose of implementing subdivision (a), and providing for broad-based local involvement in, and support for, the San Francisco Bay Area Conservancy Program.

(c) The conservancy shall utilize the criteria specified in this subdivision to develop project priorities for the San Francisco Bay Area Conservancy Program that provide for development and acquisition projects, urban and rural projects, and open space and outdoor recreational projects. The conservancy shall give priority to projects that, to the greatest extent, meet the following criteria:

(1) Are supported by adopted local or regional plans.

(2) Are multijurisdictional or serve a regional constituency.

(3) Can be implemented in a timely way.

(4) Provide opportunities for benefits that could be lost if the project is not quickly implemented.

(5) Include matching funds from other sources of funding or assistance.

(d) (1) The conservancy shall be the lead agency in the funding and development of projects implementing the San Francisco Bay Area Water Trail Plan prepared pursuant to Section 66694 of the Government Code.

(2) During the period when the plan is being prepared and after the completion of the plan, the conservancy may undertake projects and award grants that are generally consistent with and advance the preparation of the plan or achieve the implementation of the plan.

(3) To advance the preparation of the plan, the conservancy shall help coordinate a collaborative partnership with the bay commission, the Association of Bay Area Governments, and other interested persons, organizations, and agencies, including, but not limited to, interested state, county, and district departments and commissions, parks and park districts, ports, regional governmental bodies, nonprofit groups, user groups, and businesses.

(4) In developing the plan and undertaking projects to implement the plan, areas for which access is to be managed or prohibited shall be determined in consultation with resource protection agencies, the United States Coast Guard, the Water Transit Authority, the State Lands Commission, local law enforcement agencies, and through the environmental review process required by the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(5) Upon the completion of the plan, the conservancy shall consider the plan's adoption and inclusion of the appropriate elements of the plan in the conservancy's strategic plan.

(6) The conservancy shall not award a grant or undertake a project for the San Francisco Bay Area Water Trail that would have a significant adverse impact on a sensitive wildlife area or is in conflict with the goals of subdivision (a) of Section 31162.

SEC. 596. Section 31258 of the Public Resources Code is amended to read:

31258. (a) Following the completion of a coastal resource enhancement plan, the conservancy shall forward the plan to the commission for determination of conformity of the plan with the policies and objectives of Division 20 (commencing with Section 30000). The commission shall have 60 days to review the project and transmit the findings on the plan to the conservancy. If no comments are received within the period, the restoration plan shall be deemed to be in accord with Division 20 (commencing with Section 30000).

(b) (1) Following the certification of a local coastal program, the city, county, or city and county with jurisdiction over the certified area, rather than the commission, shall review the coastal resource enhancement plan if all of the following circumstances apply:

(A) The proposed enhancement plan will be implemented entirely within one local public agency's jurisdiction.

(B) The area proposed for enhancement is identified pursuant to Section 31251.

(C) Implementation of the enhancement plan does not require an amendment to the certified local coastal program.

(2) The local public agency shall review the enhancement plan to determine consistency with the certified local coastal program within 60 days after transmittal of the plan from the conservancy and shall transmit its findings to the conservancy immediately upon completion of plan review. If no comments are received at the end of the 60-day period, the plan shall be deemed to be in accord with the provisions of the certified local coastal program.

(c) If the enhancement plan will be implemented in whole or in part in an area in which the commission retains coastal development permit jurisdiction pursuant to subdivision (b) of Section 30519, in which two or more local governments have jurisdiction, or where a local coastal program amendment is required to implement the plan, the commission shall be responsible for enhancement plan review and shall conduct the review in the following manner. The commission shall review the enhancement plan for consistency with the policies and objectives of Division 20 (commencing with Section 30000), as provided in subdivision (a), for the area subject to retained coastal development permit jurisdiction pursuant to subdivision (b) of Section 30519 and where a local coastal program amendment is required, and shall review the plan for consistency with certified local coastal programs for areas under local government coastal development permit jurisdiction.

SEC. 597. Section 32103 of the Public Resources Code is amended to read:

32103. Except as otherwise expressly provided by the authority, every issue of its bonds shall be general obligations of the authority

payable from any revenues or moneys of the authority available therefor and not otherwise pledged, including the proceeds of additional bonds, 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 holders of particular bonds pledging any particular revenues. Notwithstanding that the bonds may be payable from a special fund, they shall be deemed to be negotiable instruments for all purposes, subject only to the bond registration provisions.

SEC. 598. Section 33201 of the Public Resources Code is amended to read:

33201. (a) The State Coastal Conservancy, pursuant to Division 21 (commencing with Section 31000), has the prime responsibility for carrying out projects identified in certified local coastal programs for jurisdictions within the coastal zone portion of the zone, and the Santa Monica Mountains Conservancy has the prime responsibility pursuant to this division to undertake projects within the coastal zone portion of the zone that implement the park, recreation, conservation, and open-space provisions of the plan.

(b) This section does not affect any project undertaken by the Santa Monica Mountains Conservancy or the State Coastal Conservancy prior to January 1, 1983, nor shall this section be construed to affect the existing review and approval powers of the California Coastal Commission.

(c) The State Coastal Conservancy does not have jurisdiction in the zone outside the coastal zone portion of the zone.

SEC. 599. Section 33207.5 of the Public Resources Code is amended to read:

33207.5. (a) The executive director, on behalf of the conservancy, shall, contemporaneously with the Los Angeles Unified School District completing all procedures and transfers in accordance with subdivisions (b) and (c), waive and release all the conservancy's right, title, or interest to purchase Los Angeles Unified School District property pursuant to subdivision (b) of Section 33207, and pursuant to any other statutory authority, wherever granted, to those school sites commonly referred to as the Beverly Glen Midsite School site, the property commonly referred to as the four recorded lots of the Old Ranch Road School site, the property commonly referred to as the South of Lanai Road School site, and any other school district properties located within the zone, except that the conservancy shall retain all rights to purchase the acreage parcel of the Old Ranch Road School site as set forth in this section.

(b) The exemption in subdivision (a) shall become operative if the Board of Education of the Los Angeles Unified School District, referred to in this section as the Board of Education, within two days of the

effective date of this section, votes to offer to the conservancy, and within five days of the effective date of this section records in the office of the Los Angeles County Recorder, an irrevocable offer to sell to the conservancy, at the original purchase price, the Temescal Junior High School site; and records in the office of the Los Angeles County Recorder an offer of a right to purchase to the conservancy upon terms and procedures in accordance with subdivision (d), a portion of the Old Ranch Road site described as follows:

All that portion of blocks 39 and 43 lying within the Santa Monica Land and Water Company Tract M.R. 78-44/49 owned by the Los Angeles Unified School District, together with appurtenant access easements along Old Ranch Road.

(c) The exemption in subdivision (a) shall only become operative if the Board of Education, within two days of the effective date of this section, approves a resolution of intention to sell the Old Ranch Road site described in subdivision (b). The resolution to sell shall direct publication of notice of the Board of Education's intention to sell in a newspaper of general circulation published within the Los Angeles Unified School District within 10 days of the resolution and shall cause the notice to be published on at least three occasions within a period of time of not less than 15 days. The notice shall fix a date for the opening of bids not less than 21 days after the last publication. The bids shall be opened in public in the offices of the real estate branch in accordance with the Los Angeles Unified School District's procedure. The executive director of the conservancy shall be advised of the bid opening and location not less than seven days prior thereto. The resolution to sell and notice shall state a minimum bid price of one million four hundred thousand dollars ($1,400,000) cash sale, and close of escrow to occur within 45 days of acceptance of the highest responsible bid by the Board of Education. All bids shall be in writing and accompanied by a deposit of not less than fifty thousand dollars ($50,000) in cash or cashier's check.

(d) (1) Prior to accepting any responsible bid received pursuant to subdivision (c), the Board of Education or its designee shall call for oral bids. If, upon the call for oral bidding, any person offers to purchase the property upon the terms and conditions specified in the resolution, for a price exceeding by at least 5 percent the highest written or previous oral proposal that is made by a responsible person, that higher bid shall be designated as the highest responsible bid if the oral bid is reduced to writing and signed by the offeror and accompanied by a cashier's check or by cash in an amount not less than fifty thousand dollars ($50,000).

(2) After determining the highest responsible bidder, the Board of Education shall offer the Old Ranch Road School site described in

subdivision (b) to the conservancy at the price indicated in the highest responsible bid as determined in subdivision (c) and this subdivision, but at a price not less than one million four hundred thousand dollars ($1,400,000). The offer shall be in writing and shall remain open for a period of 10 days from the date that the written offer is received by the conservancy. The executive director of the conservancy shall have the right, against all others, to gain the right to purchase the property at any time within the 10-day period at the price of the highest responsible bid by communicating to the Board of Education in writing.

(3) In the event the executive director of the conservancy exercises the right to purchase pursuant to this section, the State of California, Santa Monica Mountains Conservancy, shall receive a conveyance of the property from the Board of Education by quit claim deed if the State of California pays the Board of Education by warrant or by cashier's check, the amount of the highest bid at any time within a six-month period commencing with the date of the receipt by the executive director of the conservancy of the Board of Education's offer, as described in this subdivision.

(4) If the executive director of the conservancy does not, within the 10-day period described in this subdivision, indicate his or her intention to exercise the right to purchase the property, the Board of Education may convey the property to the highest responsible bidder. In the event the highest responsible bidder fails to complete the purchase, the Board of Education shall offer the property to the executive director of the conservancy in accordance with the procedure set forth in this subdivision for each successive responsible bid, but in no case shall the price to the conservancy be less than one million four hundred thousand dollars ($1,400,000).

(5) Should the executive director of the conservancy indicate an intention to exercise the right to purchase within the 10-day period, but fail to pay the Board of Education the purchase price by warrant of the State of California or cashier's check within the six-month period, or the executive director of the conservancy fails to exercise the right to purchase within the 10-day period and the property is purchased by the highest responsible bidder, the executive director of the conservancy shall execute a waiver and release in accordance with subdivision (a) for the Old Ranch Road site as described in subdivision (b).

(e) (1) In the event the conservancy does not acquire the portion of the Old Ranch Road site described in subdivision (b) pursuant to the procedure set forth in this section, and the conservancy has released and waived its rights pursuant to subdivision (a), the Board of Education may offer the Old Ranch Road site for purchase to the highest responsible bidder on the same terms as determined pursuant to this section, or should

the responsible bidder no longer wish to purchase the property, the Board of Education may offer the property for sale pursuant to the provisions of the Education Code governing the sale of surplus district property.

(2) Notwithstanding any other provision of law, the Board of Education may adopt or approve any and all acts required by it to carry out this section and may sell to the conservancy the real property described as the Temescal Junior High School site at its original purchase price in accordance with the procedures specified in this section by an affirmative vote of five members of the Board of Education. Further, notwithstanding the provisions of the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code), and any other provision of law, the executive director of the conservancy may take any actions that are necessary to carry out this division.

SEC. 600. Section 42463 of the Public Resources Code is amended to read:

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Account" means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) "Authorized collector" means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) "Board" means the California Integrated Waste Management Board.

(d) "Consumer" means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

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

(f) (1) Except as provided in paragraph (2), "covered electronic device" means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) "Covered electronic device" does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(g) "Covered electronic waste" or "covered e-waste" means a covered electronic device that is discarded.

(h) "Covered electronic waste recycling fee" or "covered e-waste recycling fee" means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) "Covered electronic waste recycler" or "covered e-waste recycler" means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) "Discarded" has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

(k) "Electronic waste recovery payment" means an amount established and paid by the board pursuant to Section 42477.

(*l*) "Electronic waste recycling payment" means an amount established and paid by the board pursuant to Section 42478.

(m) "Hazardous material" has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) "Manufacturer" means either of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person's brand name.

(o) "Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, "person" also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(p) "Recycling" has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

(q) "Refurbished," when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(r) "Retailer" means a person who makes a retail sale of a new or refurbished covered electronic device. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(s) (1) "Retail sale" has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) "Retail sale" does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(t) "Vendor" means a person that makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the covered electronic device to a consumer under a lease that is a continuing

sale and purchase pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(u) "Video display device" means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

SEC. 601. Section 42888 of the Public Resources Code is amended to read:

42888. (a) Except as agreed to by the board, no refund shall be approved by the board after three years from the date the payment was due for which the overpayment was made, or with respect to deficiency or jeopardy determinations, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given by the board.

(b) A refund may be approved by the board for any period agreed to by the board for good cause if a claim for the referral is filed with the board before the expiration of the period agreed upon.

SEC. 602. Section 42891 of the Public Resources Code is amended to read:

42891. The Department of General Services shall revise its procedures and procurement specifications for state purchases of products that are made of, or contain components that can be derived from the recycling of, used tires, including, but not limited to, rubber, oil, natural gas, carbon black, asphalt rubber, floor tiles, carpet underlays, mats, drainage pipes, garbage cans, retreaded tires, and water hoses. For those purchases, the department shall give preference, wherever feasible, to the suppliers of recycled tire products. This preference shall be 5 percent of the lowest bid or price quoted by suppliers offering similar products made from nonrecycled components.

SEC. 603. Section 43500 of the Public Resources Code is amended to read:

43500. The Legislature hereby finds and declares that the long-term protection of air, water, and land from pollution due to the disposal of

solid waste is best achieved by requiring financial assurances of the closure and postclosure maintenance of solid waste landfills.

SEC. 604. Section 44820 of the Public Resources Code is amended to read:

44820. (a) Except as provided in subdivision (c), the board shall adopt, by regulation, a permitting, inspection, and enforcement program for the disposal of asbestos containing waste, as specified in Section 25143.7 of the Health and Safety Code, at any solid waste facility or disposal site subject to regulation pursuant to this part. The program may include, but is not limited to, standards and certification requirements for local enforcement agencies, pursuant to which the board may delegate authority for the regulation of asbestos containing waste to local enforcement agencies.

(b) On or before March 1, 1995, or the earliest feasible date thereafter, the board and the Department of Toxic Substances Control shall enter into a memorandum of understanding that defines the enforcement responsibilities of each agency for the disposal of asbestos containing waste at any solid waste disposal facility or disposal site subject to regulation pursuant to this part. The memorandum of understanding shall be periodically updated to be consistent with each agency's responsibilities pursuant to this section and Chapter 6.5 (commencing with Section 25100) of Division 30 of the Health and Safety Code.

(c) Until the board has adopted regulations pursuant to subdivision (a), the Department of Toxic Substances Control shall regulate asbestos containing waste at a solid waste facility or disposal site.

(d) Any regulations adopted pursuant to this section shall be deemed emergency regulations and shall be adopted in accordance with the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.) The adoption of these regulations shall be deemed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare.

SEC. 605. Section 49161 of the Public Resources Code is amended to read:

49161. The resolution shall state all of the following:

(a) The general objectives and purposes for which it is proposed to incur an indebtedness.

(b) A general description of all property to be acquired or damaged and work to be executed through the expenditure of the funds secured by the issuance and sale of the bonds.

(c) An estimate of the cost of the proposed work.

(d) The amount of the bonds proposed to be issued.

(e) The number of years beyond which the bonds are to run.

(f) The rate of interest or a maximum rate of interest to be paid.

(g) The date of the election.

(h) The election precincts, polling places, and election officers.

SEC. 606. Section 71081 of the Public Resources Code is amended to read:

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

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

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

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

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

(b) The following definitions apply to this section:

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

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

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

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

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

(d) The office shall be the lead agency for developing new environmental indicators, for modifying, deleting, and updating existing

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

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

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

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

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

(i) The secretary shall periodically assess the ability of the environmental indicators system to meet each of the objectives cited in subdivision (a) and the ability of the system to support the development and implementation of the agencywide environmental justice strategy pursuant to Section 71113.

SEC. 607. Section 95.2 of the Revenue and Taxation Code is amended to read:

95.2. (a) (1) Notwithstanding any other provision of law, for the 1990–91 fiscal year, for the purposes of the computations required by Section 96.1 or its predecessor section, the amount of property tax presumed to have been received by the county in the prior year shall be increased by the amount of 1989–90 property tax administrative costs proportionately attributable to incorporated cities as determined pursuant to paragraph (2).

(2) The auditor shall determine the 1989–90 fiscal year property tax administrative costs proportionately attributable to incorporated cities by adding the 1989–90 fiscal year property tax-related costs of the assessor, tax collector, and auditor, including applicable administrative overhead costs as permitted by federal Office of Management and Budget Circular A-87 standards, and multiplying the sum of those amounts by the ratio of property tax revenue received by all incorporated cities

divided by the total property tax revenue for all local jurisdictions in the county for that fiscal year.

(3) The county shall use the additional revenue received pursuant to this subdivision only to fund the actual costs of assessing, collecting, and allocating property taxes. At least once each fiscal year, the county auditor shall report the amount of these actual costs and allowable overhead costs to the legislative body and any other jurisdiction or person that requests the information. To the extent that actual costs for assessing, collecting, and allocating property taxes plus allowable overhead costs are less than the amount determined pursuant to paragraph (2), the county auditor shall apportion the difference to each incorporated city as otherwise required by this section.

(4) The county may retain up to one-half of any increased property tax allocation to which a jurisdiction may be otherwise entitled, until the county receives its additional revenues pursuant to this subdivision.

(5) It is the intent of the Legislature in enacting this subdivision to recognize that since the approval of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for cities. It is further the intent of the Legislature that the adjustments provided for by this subdivision shall constitute charges by a county for the assessment, collection, and allocation of property taxes and shall not exceed the actual costs reasonably borne by a county for those activities.

(b) If so directed by the board of supervisors, the auditor shall determine the 1989–90 fiscal year property tax administrative costs proportionately attributable to local jurisdictions other than the county or city and county, and cities, by adding the property tax-related costs of the assessor, tax collector, and auditor, including applicable administrative overhead costs as permitted by federal Office of Management and Budget Circular A-87 standards, and multiplying the sum of those amounts by the ratio of property tax revenue received by jurisdictions other than the county, city and county, and cities, divided by the total property tax received by all local jurisdictions in the county for that fiscal year. Notwithstanding any other provision of law, this amount may be calculated for each fiscal year commencing with the 1989–90 fiscal year, and the auditor shall, commencing in the 1990–91 fiscal year, if so directed by the board of supervisors, submit an invoice to these jurisdictions for services rendered in the prior fiscal year.

(c) Notwithstanding subdivision (b), no invoice as described in that subdivision shall be submitted to any school district, community college district, or county office of education, nor shall any of those entities be required to pay any invoice, for property tax administrative costs for

services rendered in the 1990–91 fiscal year, or in any subsequent fiscal year. This subdivision shall not be construed to prevent the auditor of any county from collecting from school districts, community college districts, and county offices of education, in accordance with subdivision (b), property tax administrative costs for services rendered to those entities in the 1989–90 fiscal year.

SEC. 608. Section 531.7 of the Revenue and Taxation Code is amended to read:

531.7. If property has not been legally assessable on the local secured roll for any year because the property has been tax deeded to a taxing agency other than the state, the property shall be deemed to have escaped assessment for that year and shall be subject to this article if any of the following circumstances apply:

(a) The property has not been declared tax defaulted for delinquent taxes.

(b) The property has been redeemed from the tax sale and deeded to the taxing agency.

(c) The tax deed to the taxing agency has been held to be invalid and has been canceled; provided, however, that the statute of limitations provided for in Section 532 shall not apply.

SEC. 609. Section 862 of the Revenue and Taxation Code is amended to read:

862. When an assessee, after a request by the board, fails to file a property statement by the date specified in Section 830 or files with the board a property statement or report on a form prescribed by the board with respect to state-assessed property and the statement fails to report any taxable tangible property information accurately, regardless of whether or not this information is available to the assessee, to the extent that these failures cause the board not to assess the property or to assess it at a lower valuation than it would have if the property information had been reported accurately, the property shall be assessed in accordance with Section 864, and a penalty of 10 percent shall be added to the additional assessment. If the failure to report or the failure to report accurately is willful or fraudulent, a penalty of 25 percent shall be added to the additional assessment. If the assessee establishes to the satisfaction of the board that the failure to file an accurate property statement was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided that the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

SEC. 610. Section 2188.5 of the Revenue and Taxation Code is amended to read:

2188.5. (a) (1) Subject to the limitations set forth in subdivision (b), whenever real property has been divided into planned developments as defined in Section 11003 of the Business and Professions Code, the interests therein shall be presumed to be the value of each separately owned lot, parcel, or area, and the assessment shall reflect this value, which includes all of the following:

(A) The assessment attributable to the value of the separately owned lot, parcel, or area and the improvements thereon.

(B) The assessment attributable to the share in the common area reserved as an appurtenance of the separately owned lot, parcel, or area.

(C) The new base year value of the common area resulting from any change in ownership pursuant to Chapter 2 (commencing with Section 60) or new construction pursuant to Chapter 3 (commencing with Section 70) attributable to the share in the common area reserved as an appurtenance of the separately owned lot, parcel, or area.

(2) For the purposes of this section, "common area" shall mean the land and improvements within a lot, parcel, or area, the beneficial use and enjoyment of which is reserved in whole or in part as an appurtenance to the separately owned lots, parcels, or areas, whether this common area is held in common or through ownership of shares of stock or membership in an owners' association. The tax on each separately owned lot, parcel, or area shall constitute a lien solely thereon and upon the proportionate interest in the common area appurtenant thereto.

(b) Assessment in accordance with subdivision (a) shall only be required with respect to those planned developments that satisfy both of the following conditions:

(1) The development is located entirely within a single tax code area.

(2) The entire beneficial ownership of the common area is reserved as an appurtenance to the separately owned lots, parcels, or areas.

(c) The amendment to subdivision (b) made by Chapter 407 of the Statutes of 1984 shall apply to real property that has been divided into planned developments, as defined in Section 11003 of the Business and Professions Code, on and after the effective date of Chapter 407 of the Statutes of 1984.

SEC. 611. Section 2700 of the Revenue and Taxation Code is amended to read:

2700. Notwithstanding Sections 2605, 2606, 2607, 2617, 2618, 2621, and 2624, if so ordered by a resolution of the board of supervisors of any county, this chapter shall be applicable to that county, provided that the resolution shall be adopted prior to the time the county auditor is required to compute and enter on the secured roll the respective amounts due in installments as taxes for the assessment year in which the resolution becomes effective. This chapter shall apply only to that county

and shall then apply until otherwise ordered by a resolution of the board of supervisors.

SEC. 612. Section 4676 of the Revenue and Taxation Code is amended to read:

4676. (a) When excess proceeds from the sale of tax-defaulted property exceeds one hundred fifty dollars ($150), the county shall provide notice of the right to claim the excess proceeds, as provided in this section.

(b) No later than 90 days after the sale of the property, the county shall mail written notice of the right to claim excess proceeds to the last known mailing address of parties of interest, as defined in Section 4675. The county shall make a reasonable effort to obtain the name and last known mailing address of parties of interest.

(c) If the last known address of a party of interest cannot be obtained, the county shall publish notice of the right to claim excess proceeds in a newspaper of general circulation in the county. The notice shall be published once a week for three successive weeks and shall commence no later than 90 days after the sale of the property.

(d) The cost of obtaining the name and last known mailing address of parties of interest and of mailing or publishing the notices required under this section shall be deducted from the excess proceeds and shall be distributed to the county general fund.

SEC. 613. Section 4703.3 of the Revenue and Taxation Code is amended to read:

4703.3. Notwithstanding any other provision of law, general, special, or local, if Orange County sells or assigns obligations arising out of delinquent assessments or taxes on the secured roll to a joint powers agency pursuant to Section 26220.5 of the Government Code, the Orange County Board of Supervisors may elect to transfer its tax losses reserve fund to the joint powers agency. The tax losses reserve fund shall be maintained by the joint powers agency according to Section 4703 or 4703.2, whichever is applicable, except that the tax losses reserve fund may both be used to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property and, subject to agreements with bondholders, be pledged as a reserve for bonds issued by the joint powers agency to purchase the obligations arising out of delinquent assessments or taxes on the secured roll.

SEC. 614. Section 6067 of the Revenue and Taxation Code is amended to read:

6067. After compliance with Sections 6066 and 6701 by the applicant, and after giving the applicant the notice required by Section 6066.5, the board shall grant and issue to each applicant a separate permit for each place of business within the state. A permit is not assignable and is valid

only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

SEC. 615. Section 6201.2 of the Revenue and Taxation Code is amended to read:

6201.2. (a) In addition to the taxes imposed by Section 6201 and any other provision of this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 15, 1991, for storage, use, or other consumption in this state at the rate of ½ percent of the sales price of the property.

(b) All revenues received pursuant to this section shall be deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code.

(c) This section shall cease to be operative on the first day of the first month of the calendar quarter following notification to the board by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal that the revenues collected pursuant to this section and Section 6051.2 and deposited in the Local Revenue Fund are either of the following:

(1) "General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) "Allocated local proceeds of taxes," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

SEC. 616. Section 6376.1 of the Revenue and Taxation Code is amended to read:

6376.1. (a) On and after July 15, 1991, there is exempted from the taxes imposed by this part an amount equal to an amount that is attributable to a ¼ percent rate of tax with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in this state of the following:

(A) Tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(B) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to July 15, 1991.

(C) For purposes of this section, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

(b) From July 15, 1991, to the date on which the taxes imposed by Sections 6051.2 and 6201.2 cease to be operative pursuant to subdivision (b) of Section 6051.2 or subdivision (b) of Section 6201.2, there is exempted from the taxes imposed by this part an amount equal to an amount that is attributable to a one-half of 1 percent rate of tax with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in this state of the following:

(A) Tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(B) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to July 15, 1991.

(C) For purposes of this section, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease

has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

(c) From July 15, 1991, to the date the taxes imposed by Sections 6051.5 and 6201.5 cease to be operative, there is exempted from the taxes imposed by this part an amount equal to an amount that is attributable to a ½ percent rate of tax with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in the state of the following:

(A) Tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(B) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered into for a fixed price prior to July 15, 1991.

(C) For purposes of this section, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant

to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

(d) On and after July 15, 1991, there is exempted from the taxes imposed by this part an amount equal to the tax imposed by this part on July 14, 1991, with respect to the sale or purchase of any tangible personal property that was exempt prior to the enactment of the act adding this section, with respect to the following:

(1) The gross receipts from the sale of and the storage, use, or other consumption in the state of tangible personal property if the seller is obligated to furnish or the purchaser is obligated to purchase, the property for a fixed price pursuant to a contract entered into prior to July 15, 1991.

(2) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to July 15, 1991. For the purposes of this paragraph, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(3) The possession of, or the exercise of any right or power over, tangible personal property under a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to July 15, 1991. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

SEC. 617. Section 6902.3 of the Revenue and Taxation Code is amended to read:

6902.3. Notwithstanding Section 6902, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for refund is filed within three years of the date of overpayment.

SEC. 618. Section 9270 of the Revenue and Taxation Code is amended to read:

9270. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) This section is not intended to prohibit, restrict, or prevent the exchange of information if the person is being investigated for multiple violations that include use fuel tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

SEC. 619. Section 11317 of the Revenue and Taxation Code is amended to read:

11317. (a) An escape assessment shall be entered on the current private railroad car tax record, and if this is not the record for the year in which the property escaped assessment, the entry shall be followed with "escape assessment for year 20__." The property shall be assessed at the same value and taxed at the same rate as it would have been assessed and taxed had it not escaped.

(b) If the assessments are made as a result of an audit that discloses that property assessed to the party audited has been incorrectly assessed for a past tax year for which taxes have been paid and a claim for refund is not barred by Section 11553, the tax refunds, including applicable interest under Section 11555, resulting from the incorrect assessments shall be an offset against proposed tax liabilities, including accumulated penalties and interest, resulting from escaped assessments for any tax year covered by the audit. If the refunds exceed any proposed tax liabilities, including penalties and interest, the excess shall be processed in accordance with Section 11551.

(c) Beginning with the 1981–82 fiscal year, assessments for the current year and escape assessments for prior years shall be entered using a 100-percent assessment ratio and the tax rates for years prior to the 1981–82 fiscal year shall be divided by four.

SEC. 620. Section 11923 of the Revenue and Taxation Code is amended to read:

11923. (a) Any tax imposed pursuant to this part shall not apply to the making, delivering, or filing of conveyances to make effective any plan of reorganization or adjustment that is any of the following:

(1) Confirmed under the Federal Bankruptcy Act, as amended.

(2) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended.

(3) Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended.

(4) Whereby a mere change in identity, form, or place of organization is effected.

(b) Subdivision (a) shall only apply if the making, delivery, or filing of instruments of transfer or conveyances occurs within five years from the date of the confirmation, approval, or change.

SEC. 621. Section 13153 of the Revenue and Taxation Code is amended to read:

13153. On or before April 1, the State Compensation Insurance Fund shall pay into the State Treasury to the credit of the Insurance Tax Fund the sum required under Section 12203.

SEC. 622. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the "net tax", as defined in Section 17039, an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be a percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
$40,000 or less	63%
Over $40,000 but not over $70,000	53%
Over $70,000 but not over $100,000	42%
Over $100,000	0%

(2) For taxable years beginning on or after January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
$40,000 or less	50%
Over $40,000 but not over $70,000	43%
Over $70,000 but not over $100,000	34%
Over $100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, "adjusted gross income" means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

(e) The credit authorized by this section shall be limited, as follows:

(1) Employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, shall be limited to expenses for household services and care provided in this state.

(2) Earned income, within the meaning of Section 21(d) of the Internal Revenue Code, shall be limited to earned income subject to tax under this part. For purposes of this paragraph, compensation received by a member of the armed forces for active services as a member of the armed forces, other than pensions or retired pay, shall be considered earned income subject to tax under this part, whether or not the member is domiciled in this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child, as defined in Section 151(c)(3) of the Internal Revenue Code, shall be treated, for purposes of Section 152 of the Internal Revenue Code, as applicable for purposes of this section, as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a "custodial parent," within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section, and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who lived apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(g) The amendments to this section made by Section 1.5 of Chapter 824 of the Statutes of 2002 shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 623. Section 19191 of the Revenue and Taxation Code is amended to read:

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified entity, qualified shareholder, qualified member, or qualified beneficiary as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the qualified entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reasonable reliance on the advice of a person in a fiduciary position or other competent advice that the qualified entity or qualified shareholder, qualified member, or qualified beneficiary activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary.

(E) Demonstrations of good faith on the part of the qualified entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified entities, qualified shareholders, qualified members, or qualified beneficiaries, as

authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall with respect to a qualified entity, qualified shareholder, qualified member, or qualified beneficiary, except as provided in paragraph (4), (6), or (9) of subdivision (a) of Section 19192:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141 of this code.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified entity, qualified shareholder, qualified member, or qualified beneficiary shall:

(A) With respect to each of the six taxable years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose on the qualified entity's application all material facts pertinent to the qualified entity's, shareholder's, member's, or beneficiary's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in paragraph (3), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, fee, and penalties, other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement, imposed under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board. Paragraph (1) of subdivision (f) of Section 25153 shall not apply to qualified entities admitted into the voluntary disclosure program.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(3) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement.

(e) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(f) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

(g) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2005.

SEC. 624. Section 20621 of the Revenue and Taxation Code is amended to read:

20621. Each claimant applying for postponement under Article 2 (commencing with Section 20601) shall file a claim under penalty of perjury with the Controller on a form supplied by the Controller. The claim shall contain all of the following:

(a) Evidence acceptable to the Controller that the person was a "senior citizen claimant" or a "blind or disabled claimant."

(b) A statement showing the household income for the period set forth in Section 20503.

(c) A statement describing the residential dwelling in a manner that the Controller may prescribe.

(d) The name of the county in which the residential dwelling is located and the address of the residential dwelling.

(e) The county assessor's parcel number applicable to the property for which the claimant is applying for the postponement of property taxes.

(f) (1) Documentation evidencing the current existence of any abstract of judgment, federal tax lien, or state tax lien filed or recorded against the applicant, and any recorded mortgage or deed of trust that affects the subject residential dwelling, for the purpose of determining that the claimant possesses a 20-percent equity in the subject residential dwelling as required by paragraph (1) of subdivision (b) of Section 20583.

(2) Actual costs, not in excess of fifty dollars ($50), paid by the claimant to obtain the documentation shall, in the event the Controller issues a certificate of eligibility, reduce the amount of the lien for the year, but not the face amount of the payment prescribed in Section 16180 of the Government Code.

(g) Other information required by the Controller to establish eligibility.

SEC. 625. Section 23060 of the Revenue and Taxation Code is amended to read:

23060. Provisions in other codes or General Law Statutes that are related to this part include all of the following:

(a) Chapter 20.6 (commencing with Section 9891) of Division 3 of the Business and Professions Code, relating to tax preparers.

(b) Sections 1502, 2204 to 2206, inclusive, 6210, 6810, 8210, and 8810 of the Corporations Code, relating to the corporation officer statement penalty.

(c) Section 2104 of the Corporations Code, that prevents the application of any provision of this part against any foreign lending institution whose activities in this state are limited to those described in subdivision (d) of Section 191 of the Corporations Code.

(d) Sections 15700 to 15702.1, inclusive, of the Government Code, relating to the Franchise Tax Board.

(e) Part 10 (commencing with Section 17001), relating to the Personal Income Tax Law.

(f) Part 10.2 (commencing with Section 18401), relating to the Administration of Franchise and Income Taxes.

(g) Part 10.7 (commencing with Section 21001), relating to the Taxpayers' Bill of Rights.

(h) Part 18 (commencing with Section 38001), relating to the Multistate Tax Compact.

SEC. 626. Section 23202 of the Revenue and Taxation Code is amended to read:

23202. (a) In the case of a taxpayer who has been a transferee in a reorganization to which Sections 23251 to 23254, inclusive, or corresponding sections of prior laws, were applicable, there shall be allowed as a credit for the taxable year of dissolution or withdrawal, the excess of the tax paid over the minimum tax paid by prior transferors or by the transferee as a transferor under Sections 23222 to 23224, inclusive, or corresponding sections of prior laws, for the first taxable year of the transferors that constituted a full 12 months of doing business and whose income has been included in the measure of tax of a succeeding taxable year.

(b) The credit allowable under this section shall be in addition to any credit that may be allowable to the taxpayer under Section 23201. However, any credit previously allowed under Section 23201, under this section, or for a year in which the taxpayer or transferor ceased doing business, shall not be allowed again in computing a credit under this section.

SEC. 627. Section 23305b of the Revenue and Taxation Code is amended to read:

23305b. Notwithstanding Section 23305, the Franchise Tax Board may revive a corporation to good standing without full payment of the

taxes, penalties, and interest due if it determines that the revivor will improve the prospects for collection of the full amount due. This revivor may be limited as to time or may limit the functions the revived corporation can perform, or both. The corporate powers, rights, and privileges may again be suspended or forfeited if the Franchise Tax Board determines that the prospects for collection of the full amount due have not been improved by the revivor of the corporation.

SEC. 628. Section 32364 of the Revenue and Taxation Code is amended to read:

32364. (a) If the board determines that the amount of tax, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the tax, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

SEC. 629. Section 32475 of the Revenue and Taxation Code is amended to read:

32475. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 5 (commencing with Section 32311) of Chapter 6.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that

the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 630. Section 41120 of the Revenue and Taxation Code is amended to read:

41120. If any person is delinquent in the payment of the amount required to be paid by him or her or if a determination has been made against him or her that remains unpaid, the board may, not later than five years after the payment became delinquent, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or any person against whom a determination has been made that remains unpaid or owing any debts to the delinquent or that person. In the case of any state officer, department, or agency, the notice shall be given to that officer, department, or agency prior to the time it presents the claim of the delinquent to the State Controller.

SEC. 631. Section 41176 of the Revenue and Taxation Code is amended to read:

41176. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated

at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars ($75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

SEC. 632. Section 45304 of the Revenue and Taxation Code is amended to read:

45304. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the 25-percent penalty imposed by subdivision (c) of Section 45201 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the amount of fee for the period for which the increase is asserted was due.

SEC. 633. Section 45451 of the Revenue and Taxation Code is amended to read:

45451. (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. A lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are due and payable on the following dates:

(1) For amounts disclosed on a report received by the board before the date the return is delinquent, the date the amount would have been due and payable.

(2) For amounts disclosed on a report filed on or after the date the return is delinquent, the date the return is received by the board or the year following the fee due date pursuant to Section 45151, whichever is later.

(3) For amounts determined under Section 45351, pertaining to jeopardy assessments, the date the notice of the board's finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

SEC. 634. Section 45872 of the Revenue and Taxation Code is amended to read:

45872. (a) If any officer or employee of the board recklessly disregards board-published procedures, a fee payer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars ($75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the fee payer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon

notice and demand from the board and shall be collected as a tax imposed under this part.

SEC. 635. Section 46442 of the Revenue and Taxation Code is amended to read:

46442. (a) Notice of the sale, and the time and place thereof, shall be given to the delinquent feepayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the feepayer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and deposited in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part hereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(1) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(2) One conspicuous place on the property.

(b) The notice shall contain a description of the property to be sold, a statement of the amount due, including fees, interest, penalties, and costs, the name of the feepayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

SEC. 636. Section 50124 of the Revenue and Taxation Code is amended to read:

50124. (a) If the board determines that the amount of any fees, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fees and penalties, the board may at any time release all, or any portion of, the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds the liability represented by the lien imposed under this article is legally unenforceable, the board may release the lien.

(c) A certificate by the board that any property has been released from a lien or that the lien has been subordinated to other liens and

encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated, as provided in the certificate.

SEC. 637. Section 50145 of the Revenue and Taxation Code is amended to read:

50145. Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board, on the grounds set forth in the claim, in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole, or any part of, the amount with respect to which the claim has been disallowed.

SEC. 638. Section 156.3 of the Streets and Highways Code is amended to read:

156.3. For any project using state or federal transportation funds programmed after January 1, 2006, the department shall ensure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. The department shall submit the assessment to the Department of Fish and Game and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the Department of Fish and Game.

SEC. 639. Section 188.6 of the Streets and Highways Code is amended to read:

188.6. (a) (1) The Legislature finds and declares that on August 16, 2004, the department reported to the Legislature that the funds identified in Section 188.5 are insufficient to complete the state toll bridge seismic retrofit program, including the replacement of the east span of the San Francisco-Oakland Bay Bridge, due to cost overruns for the program now estimated at three billion six hundred million dollars ($3,600,000,000).

(2) By enacting this section, it is the intent of the Legislature to identify additional funds from various sources, as described in subdivision (b), in order to fund this shortfall and so that the toll bridge seismic retrofit and replacement program, as described in Section 188.5, as that section read on January 1, 2005, may proceed to completion without further costly delay.

(b) The following amounts from the following funds shall be allocated until expended in order to eliminate the shortfall identified in subdivision (a) and to complete the seismic retrofit or replacement of state-owned toll bridges as expeditiously as possible:

(1) Not less than two billion one hundred fifty million dollars ($2,150,000,000) from the Bay Area Toll Account, derived from an additional one dollar ($1) surcharge on the state-owned toll bridges within the geographic jurisdiction of the Metropolitan Transportation Commission to be effective no sooner than January 1, 2007.

(2) Not less than eight hundred twenty million dollars ($820,000,000) for the seismic retrofit or replacement of the state-owned toll bridges in the geographic jurisdiction of the Metropolitan Transportation Commission made available through the consolidation of all toll revenues under the management of the Bay Area Toll Authority and from the authorization for the authority to refinance debt secured by toll revenues.

(3) The amount of three hundred million dollars ($300,000,000) to fund the cost of demolition of the existing east span of the San Francisco-Oakland Bay Bridge from funding sources supporting the state highway operations and protection program, from available state resources from transportation project savings, or from the federal Highway Bridge Replacement and Rehabilitation Program.

(4) The amount of three hundred thirty million dollars ($330,000,000) from the following accounts:

(A) One hundred thirty million dollars ($130,000,000) from the State Highway Account from accumulated savings by the department achieved from better efficiency, operational savings, and lower costs.

(B) One hundred twenty-five million dollars ($125,000,000) of any excess funds that would otherwise have been transferred in the 2006–07 fiscal year pursuant to subparagraph (F) of paragraph (1) of subdivision (a) of Section 7102 of the Revenue and Taxation Code, as amended by Chapter 76 of the Statutes of 2005, shall instead be transferred to the Bay Area Toll Account and are hereby appropriated to the department for the purposes of this section. If sufficient funds are not available from this source for this purpose during the 2006–07 fiscal year, the funding required under this paragraph shall be made available from additional accumulated savings by the department achieved from better efficiency, operational savings, or lower costs pursuant to subparagraph (A), or from the federal Highway Bridge Replacement and Rehabilitation Program or the State Highway Account, as determined by the department in consultation with, and with approval of, the California Transportation Commission.

(C) Seventy-five million dollars ($75,000,000) from the fund reserve in the Motor Vehicle Account for the 2005–06 fiscal year, which is hereby appropriated.

(c) If the amount of the overruns estimated by the department, as described in subdivision (a), is less than three billion six hundred million dollars ($3,600,000,000), the savings shall be shared between the state

and the authority in the same proportion as their proportional contribution to the estimated cost overruns, as provided in paragraphs (1), (3), and (4) of subdivision (b).

(d) If the actual amount of the overruns exceeds the amount estimated by the department, as described in subdivision (a), the authority shall utilize funds generated under the powers granted to it in Sections 30886, 30950.2, 30954, 30961, and 31011 to provide additional financial resources to complete the state toll bridge seismic retrofit program.

(e) Funds made available under this section and Section 188.5 for the replacement of the east span of the San Francisco-Oakland Bay Bridge shall only be expended for the structure described in paragraph (9) of subdivision (b) of Section 188.5 as that section read on January 1, 2005.

SEC. 640. Section 2117 of the Streets and Highways Code is amended to read:

2117. (a) Whenever a school district constructs a school building for which any apportionment is made pursuant to Chapter 4 (commencing with Section 15700) or Chapter 6 (commencing with Section 16000) of Part 10 of the Education Code, and the city or county in which the school building is situated requires the construction of any street or road connected with the school premises on which the school building is constructed, the State Allocation Board shall review the requirement and recommend to the governing body of the city or county a plan of construction adequate to meet the needs of the school district and the safety of the public. If a different plan of improvement or improvement to higher standards than that recommended by the State Allocation Board is required by the governing body of the city or county, the additional cost thereof shall be borne by the city or county in which the school building is situated. Notwithstanding any other provision of this code or any other law limiting the purposes for which money apportioned to cities or counties from the Highway Users Tax Account in the Transportation Tax Fund may be expended, any of the moneys so apportioned may be expended for the construction of the streets or roads referred to in this section.

(b) Nothing in this section requires each cost item included in any charge made pursuant to this section to be separately stated.

SEC. 641. Section 6491.5 of the Streets and Highways Code is amended to read:

6491.5. Upon receipt of the application and fee, the street superintendent shall determine, or cause to be determined, an apportionment of the unpaid assessment to each separate part of the original lot or parcel of land, as if the lot or parcel of land had been so divided at the time the original assessment was made.

SEC. 642. Section 30162 of the Streets and Highways Code is amended to read:

30162. If the department is unable to collect any tolls due to insolvency of the obligor, or if the cost of collection of any tolls would be excessive by reason of the smallness of the amount due, the department may apply to the California Victim Compensation and Government Claims Board for discharge from accountability for the collection thereof in the manner provided in Sections 13940 to 13943, inclusive, of the Government Code.

SEC. 643. Section 1222 of the Unemployment Insurance Code is amended to read:

1222. Within 30 days of service of any notice of assessment or denial of claim for refund or credit under Section 803, 821, or 991, or of any notice under Sections 704.1, 1035, 1055, 1127.5, 1131, 1142, 1143, 1144, 1180, 1184, 1733, and 1735, any employing unit or other person given the notice, or any employing unit affected by a granting or denial of a transfer of reserve account, may file a petition for review or reassessment with an administrative law judge. The administrative law judge may for good cause grant an additional 30 days for the filing of a petition. If a petition for reassessment is not filed within the 30-day period, or within the additional period granted by the administrative law judge, an assessment is final at the expiration of the period. If a petition for review of a termination of elective coverage under Section 704.1 is not filed within the 30-day period, or within the additional period granted by the administrative law judge, the termination is final at the expiration of the period. If the director fails to serve notice of his or her action within 60 days after a claim for refund or credit is filed, the person or employing unit may consider the claim denied and file a petition with an administrative law judge.

SEC. 644. Section 1256.5 of the Unemployment Insurance Code is amended to read:

1256.5. (a) An individual shall be deemed to have left his or her most recent work with good cause if the director finds that he or she leaves employment because of sexual harassment if the individual has taken reasonable steps to preserve the working relationship. No steps shall be required if the director finds it would have been futile. For purposes of this subdivision, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature constitutes sexual harassment when any of the following occur:

(1) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment.

(2) Submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting the individual.

(3) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) Findings of fact and law by the director shall not collaterally estop adjudication of the issue of sexual harassment in another forum.

SEC. 645. Section 1262 of the Unemployment Insurance Code is amended to read:

1262. An individual is not eligible for unemployment compensation benefits, and these benefits shall not be payable to him or her, if the individual left his or her work because of a trade dispute. The individual shall remain ineligible for the period during which he or she continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he or she was employed.

SEC. 646. Section 1855 of the Unemployment Insurance Code is amended to read:

1855. (a) A civil action may be commenced at the request of the director in the name of the State of California to enjoin any individual or entity from conduct that, by solicitation, sale, or advertising, is inducing or otherwise attempting to persuade employers or employees, or potential employers or employees, to violate this code or to otherwise attempt to evade contributions or taxes provided for under this code by scheme, device, or similar activity. Any action under this section shall be brought in the Superior Court of the County of Sacramento or in the superior court of the county in which that individual or entity resides, has its principal place of business, or has engaged in conduct subject to penalty under this code.

(b) In any action under subdivision (a), the court may enjoin the person from engaging in the conduct or in any other activity specified in subdivision (a), if the court finds both of the following:

(1) That the person has engaged in any conduct specified in subdivision (a).

(2) That injunctive relief is appropriate to prevent recurrence of that conduct.

(c) For purposes of the civil action referred to in subdivisions (a) and (b), the court may issue without bond, a temporary restraining order upon the filing of a statement, certified by the director, which contains both of the following:

(1) That a determination has been made that the individual or entity is engaging in conduct described in subdivision (a), accompanied by a detailed description of the reasons for the determination.

(2) That the activity of the individual or entity will result in the nonpayment of contributions or taxes required under this code and that the contributions or taxes would be otherwise payable.

(d) The director shall provide the court clerk with an exact copy of the certified statement upon filing, which copy will be endorsed or certified by the court clerk and returned to the director, along with a certified copy of the court's order. From the time of service of the endorsed or certified copy of the statement and order, that individual or entity shall be temporarily restrained from the activity set forth in the statement. That temporary restraining order will continue in effect unless dissolved after a hearing on a preliminary injunction in the Superior Court of Sacramento County or the county in which the individual or entity resides, has its place of business, or has engaged in the conduct specified in the statement. That hearing or preliminary injunction shall be held under the rules of the superior court.

SEC. 647. Section 3254.5 of the Unemployment Insurance Code is amended to read:

3254.5. A voluntary plan in force and effect at the time a successor employing unit acquires the organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, shall not withdraw without specific request for withdrawal thereof. The successor employing unit and the insurer shall be deemed to have consented to the provisions of the plan unless written request for withdrawal, effective as of the date of acquisition, is transmitted to the Director of Employment Development, by the employer or the insurer, within 30 days after the acquisition date, or within 30 days after notification from the Director of Employment Development that the plan is to continue, whichever is later. Unless the plan is withdrawn as of the date of acquisition by the successor employer or the insurer, a written request for withdrawal shall be effective only on the anniversary of the effective date of the plan next occurring on or after the date of acquisition, except that the plan may be withdrawn on the operative date of any law increasing the benefit amounts provided by Sections 2653 and 2655 or the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the withdrawal of the plan is transmitted to the Director of Employment Development not less than 30 days prior to the operative date of law or change. If the plan is not withdrawn on 30 days' notice because of the enactment of a law increasing benefits or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to the increase or change on the operative date of the increase or change. Promptly, upon notice of change in ownership, any insurer of a plan shall prepare and issue policy forms and amendments as required, unless the plan is withdrawn. Nothing contained in this section

shall prevent future withdrawal of any plans on an anniversary of the effective date of the plan upon 30 days' notice, except that the plan may be withdrawn on the operative date of any law increasing the benefit amounts provided by Sections 2653 and 2655 or the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the withdrawal of the plan is transmitted to the Director of Employment Development not less than 30 days prior to the operative date of the law or change. If the plan is not withdrawn on 30 days' notice because of the enactment of a law increasing benefits or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to the increase or change on the operative date of the increase or change.

SEC. 648. Section 4701 of the Unemployment Insurance Code is amended to read:

4701. (a) (1) Any employer who is entitled under Section 4654 to notice of the filing of an application or additional claim and who, within 10 days after mailing of the notice, submits to the department any facts within its possession disclosing whether the individual left the most recent employment with the employer voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available or whether the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages, shall be entitled to a ruling as prescribed by this section. The period during which the employer may submit these facts may be extended by the director for good cause.

(2) For purposes of this section, "spouse" includes a person to whom marriage is imminent.

(b) The department shall consider the facts together with any information in its possession. If the employer is entitled to a determination pursuant to Section 4655, the department shall promptly issue to the employer its ruling as to the cause of the termination of the individual's most recent employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise,

or excusable neglect. The director shall be an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling, except that any ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(c) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving shall be presumed to be without good cause.

(d) An individual whose employment is terminated under the compulsory retirement provisions of a collective-bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(e) Rulings under this section shall have the effect prescribed by Section 1032.

SEC. 649. Section 9608 of the Unemployment Insurance Code is amended to read:

9608. The director shall, within each community employment development center, establish an intake system to appraise the individual needs of applicants. Each community employment development center shall provide the following services:

(a) Job referral and labor market information services to applicants who are occupationally competitive and qualified by training or experience in the labor market. These applicants shall be encouraged to utilize self-help services.

(b) Employment exploration and job development services to applicants who are employable but need some directed assistance in planning an effective job search or coping with minor barriers to employment. Employment exploration and job development services are designed as follows:

(1) To prepare groups of applicants to use job referral and information services by instructing them in job finding techniques and how to initiate their own job search.

(2) To assist applicants directly by developing job opportunities.

(3) To provide, as necessary, usually on a one-time basis, the following services:

(A) Contacting an employer to explain an applicant's qualifications or limitations, such as a disability not affecting ability to work, in relation to requirements for a particular job and arranging an interview.

(B) A more thorough appraisal of the applicant's capabilities and desires in relation to the job market than is required of an applicant seeking only job referral and labor market information.

(4) To arrange for short-term supplemental services.

(c) Individual employability development and placement services to applicants who are potentially employable but are in need of more intensive services before becoming employable because they have vocational barriers due to disability, lack of skills, obsolescence of job skills, limited education, or poor work habits and attitudes. Intensive employability services shall be provided by case-responsible persons to applicants where case-responsible persons are assigned.

(d) Through case managers or case-responsible persons, case services to applicants to the extent funds are available. Case services funds may be made available for services to the disadvantaged. "Case services" means an applicant's expenses necessary for or incident to training or employability development and includes, but is not limited to, the following:

(1) Medical and dental treatment necessary for employability.

(2) Temporary child care.

(3) Transportation costs.

(4) Wearing apparel.

(5) Books and supplies.

(6) Tools and safety equipment.

(7) Union fees.

(8) Business license fees.

SEC. 650. Section 10200 of the Unemployment Insurance Code is amended to read:

10200. The Legislature finds and declares the following:

(a) California's economy is being challenged by competition from other states and overseas. In order to meet this challenge, California's employers, workers, labor organizations, and government need to invest in a skilled and productive workforce, and in developing the skills of frontline workers. For purposes of this section, "frontline worker" means a worker who directly produces or delivers goods or services.

The purpose of this chapter is to establish a strategically designed employment training program to promote a healthy labor market in a growing, competitive economy that shall fund only projects that meet the following criteria:

(1) Foster creation of high-wage, high-skilled jobs, or foster retention of high-wage, high-skilled jobs in manufacturing and other industries

that are threatened by out-of-state and global competition, including, but not limited to, those industries in which targeted training resources for California's small and medium-sized business suppliers will increase the state's competitiveness to secure federal, private sector, and other nonstate funds. In addition, provide for retraining contracts in companies that make a monetary or in-kind contribution to the funded training enhancements.

(2) Encourage industry-based investment in human resources development that promotes the competitiveness of California industry through productivity and product quality enhancements.

(3) Result in secure jobs for those who successfully complete training. All training shall be customized to the specific requirements of one or more employers or a discrete industry and shall include general skills that trainees can use in the future.

(4) Supplement, rather than displace, funds available through existing programs conducted by employers and government-funded training programs, such as the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.), the Carl D. Perkins Vocational Education Act (P.L. 98-524), CalWORKs (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), and the McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), the California Community Colleges Economic Development Program, or apportionment funds allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that programs developed pursuant to this chapter shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

(b) The Employment Training Panel, in funding projects that meet the requirements of subdivision (a), shall give funding priority to those projects that best meet the following goals:

(1) Result in the growth of the California economy by stimulating exports from the state and the production of goods and services that would otherwise be imported from outside the state.

(2) Train new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers.

(3) Develop workers with skills that prepare them for the challenges of a high performance workplace of the future.

(4) Train workers who have been displaced, have received notification of impending layoff, or are subject to displacement, because of a plant

closure, workforce reduction, changes in technology, or significantly increasing levels of international and out-of-state competition.

(5) Are jointly developed by business management and worker representatives.

(6) Develop career ladders for workers.

(7) Promote the retention and expansion of the state's manufacturing workforce.

(c) The program established through this chapter is to be coordinated with all existing employment training programs and economic development programs, including, but not limited to, programs such as the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.), the California Community Colleges, the regional occupational programs, vocational education programs, joint labor-management training programs, and related programs under the Employment Development Department and the Business, Transportation and Housing Agency.

SEC. 651. Section 13002 of the Unemployment Insurance Code is amended to read:

13002. The following provisions of this code shall apply to any amount required to be deducted, reported, and paid to the department under this division:

(a) Sections 301, 305, 306, 310, 311, 312, 317, and 318, relating to general administrative powers of the department.

(b) Sections 403 to 413, inclusive, Section 1336, and Chapter 8 (commencing with Section 1951) of Part 1 of Division 1, relating to appeals and hearing procedures.

(c) Sections 1110.6, 1111, 1111.5, 1112, 1113, 1113.1, 1114, 1115, 1116, and 1117, relating to the making of returns or the payment of reported contributions.

(d) Article 8 (commencing with Section 1126) of Chapter 4 of Part 1 of Division 1, relating to assessments.

(e) Article 9 (commencing with Section 1176), except Section 1176, of Chapter 4 of Part 1 of Division 1, relating to refunds and overpayments.

(f) Article 10 (commencing with Section 1206) of Chapter 4 of Part 1 of Division 1, relating to notice.

(g) Article 11 (commencing with Section 1221) of Chapter 4 of Part 1 of Division 1, relating to administrative appellate review.

(h) Article 12 (commencing with Section 1241) of Chapter 4 of Part 1 of Division 1, relating to judicial review.

(i) Chapter 7 (commencing with Section 1701) of Part 1 of Division 1, relating to collections.

(j) Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, relating to violations.

SEC. 652. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028. Except as provided in subdivisions (c) and (d), the employer shall file a withholding report and remit the total amount of income taxes withheld during the calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) (1) Effective January 1, 1995, whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than five hundred dollars ($500), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of banking days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(2) Effective January 1, 1996, the five hundred dollar ($500) amount referred to in paragraph (1) shall be adjusted annually as follows, based on the annual average rate of interest earned on the Pooled Money Investment Fund as of June 30 in the prior fiscal year:

Average Rate of Interest	
Greater than or equal to 9 percent:	$ 75
Less than 9 percent, but greater than or equal to 7 percent:	250
Less than 7 percent, but greater than or equal to 4 percent:	400
Less than 4 percent:	500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eight-month periods, as defined under Section 6302 of the Internal Revenue Code and regulations

thereunder, was fifty thousand dollars ($50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eight-month period, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (c), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars ($20,000) or more, the employer shall remit the total amount of income tax withheld within the number of banking days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(3) Notwithstanding paragraph (2), effective January 1, 1995, electronic funds transfer payments that are subject to the one-day deposit rule, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder, shall be deemed timely if the payment settles to the state's demand account within three banking days after the date the employer meets the threshold for the one-day deposit rule.

(4) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those

requirements. The department may grant a waiver only if it determines that the particular amounts paid in excess of fifty thousand dollars ($50,000) or twenty thousand dollars ($20,000), as stated in paragraphs (1) and (2), respectively, were the result of an unprecedented occurrence for that employer, and were not representative of the employer's cumulative average payment in prior years.

(5) Any state agency required to remit payments pursuant to paragraphs (1) and (2) may request a waiver of those requirements from the department. The department may grant a waiver if it determines that there will not be a negative impact on the interest earnings of the General Fund. If there is a negative impact to the General Fund, the department may grant a waiver if the requesting state agency follows procedures designated by the department to mitigate the impact to the General Fund.

(e) Any employer not required to make payment pursuant to subdivision (d) of this section may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the date specified in the notification to the employer of approval.

(3) The election shall be operative from the date specified in the notification of approval, and shall continue in effect until terminated by the employer or the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (d) or as deemed appropriate by the director to encourage use of this payment method.

(f) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (c) or (d) if the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with subdivision (c) or (d).

(g) The department may, if it believes that action is necessary, require any employer to make the report required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) Any employer required to withhold any tax and who is not required to make payment under subdivision (c) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or

before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars ($350) or more.

(i) For purposes of subdivisions (a), (c), and (h), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(j) In addition to the withholding report and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

SEC. 653. Section 1671 of the Vehicle Code is amended to read:

1671. (a) The established place of business of a dealer, remanufacturer, remanufacturer branch, manufacturer, manufacturer branch, distributor, distributor branch, automobile driving school, or traffic violator school shall have an office and a dealer, manufacturer, or remanufacturer shall also have a display or manufacturing area situated on the same property where the business peculiar to the type of license issued by the department is or may be transacted. When a room or rooms in a hotel, roominghouse, apartment house building, or a part of any single- or multiple-unit dwelling house is used as an office or offices of an established place of business, the room or rooms shall be devoted exclusively to and occupied for the office or offices of the dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, automobile driving school, or traffic violator school, shall be located on the ground floor, and shall be so constructed as to provide a direct entrance into the room or rooms from the exterior of the building. A dealer who does not offer new or used vehicles for sale at retail, a dealer who has been issued an autobroker's endorsement to his or her dealer's license and who does not also sell motor vehicles at retail, or a dealer who is a wholesaler involved for profit only in the sale of vehicles between licensed dealers, shall have an office, but a display area is not required.

(b) The established place of business of an automobile dismantler shall have an office and a dismantling area located in a zone properly zoned for that purpose by the city or county.

SEC. 654. Section 2423 of the Vehicle Code is amended to read:

2423. In approving the additional instruction and training required under subdivision (b) of Section 680, the department shall consider the requirements of Chapter 3 (commencing with Section 40080) of Part 23.5 of the Education Code, as those provisions relate to instruction and

training requirements for schoolbus drivers and school pupil activity bus drivers.

SEC. 655. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California. Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars ($45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: "Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge."

(3) For purposes of paragraph (1), "advertisement" means any advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer's Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars ($45) for the document preparation charge and not to exceed fifty dollars ($50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle, as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification, as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. “Free” includes merchandise

or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) (1) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

(2) For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price. However, in no case shall the phrase be printed in less than 8-point type size. The phrase shall be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

(3) The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) Advertise a guaranteed trade-in allowance.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use "invoice," "dealer's invoice," "wholesale price," or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a "commercial purchaser" means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price that exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item that is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) (1) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless

the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

(2) For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner, in at least 10-point boldface type, on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) As used in this section, "make" and "model" have the same meaning as is provided in Section 565.3 of Title 49 of the Code of Federal Regulations.

SEC. 656. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or older, and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or older, and has successfully completed an approved course in automobile driver education and is taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years and 6 months and enrolled and participating in an integrated driver education and training program as provided in subparagraph (B) of paragraph (3) of subdivision (a) of Section 12814.6.

(4) Is over the age of 16 years and is applying for a restricted driver's license pursuant to Section 12814.7.

(5) Is over the age of 17 years and 6 months.

(b) The applicant shall qualify for, and be issued, an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Except as provided in Section 12814.6, a person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), may operate a motor vehicle, other than a motorcycle, motorized scooter, or a motorized bicycle, when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) A person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), who is age 15 years and 6 months or older and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and a person, while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), who is age 17 years and 6 months or older, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle, motorized scooter, or a motorized bicycle, except that the person shall not operate a motorcycle, motorized scooter, or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade, and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 41907 of the Education Code.

(f) A person, while having in his or her immediate possession a valid permit issued pursuant to paragraph (4) of subdivision (a), may only

operate a government-owned motor vehicle, other than a motorcycle, motorized scooter, or a motorized bicycle, when taking a driver training instruction administered by the California National Guard.

(g) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(h) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 657. Section 12811 of the Vehicle Code, as amended by Section 1 of Chapter 665 of the Statutes of 2005, is amended to read:

12811. (a) (1) (A) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

(B) Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

(C) The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words "provisional until age 18."

(b) (1) The front of an application for an original or renewal of a driver's license or identification card shall contain a space for any applicant, age 16 years or older, to give his or her consent to be an organ and tissue donor upon death. An applicant who gives consent shall be directed to read a statement on the back of the application that shall contain the following statement:

"If you marked on the front of the application that you want to be an organ and tissue donor upon death, your consent shall serve as a legally binding document as outlined under the California Uniform Anatomical Gift Act. Except in the case where the donor is under the age of 18, the donation does not require the consent of any other person. For donors under the age of 18, the legal guardian of the donor shall make the final decision regarding the donation. If you want to change your decision to

consent in the future, or if you want to limit the donation to specific organs or tissues, you must contact Donate Life California by mail at 1760 Creekside Oaks Drive, #160, Sacramento, CA 95833, or through the World Wide Web at www.donateLIFEcalifornia.org, or www.doneVIDAcalifornia.org."

(2) Notwithstanding any other provision of law, a person under the age of 18 years may register as a donor. However, the legal guardian of that person shall make the final decision regarding the donation.

(3) The department shall collect donor designation information on all applications for an original or renewal driver's license or identification card.

(4) The department shall print the word "DONOR" or another appropriate designation on the face of a driver's license or identification card for a person who registered as a donor on a form issued under this section.

(5) On a weekly basis, the department shall electronically transmit to Donate Life California, a nonprofit organization established and designated as the California Organ and Tissue Donor Registrar pursuant to Section 7152.7 of the Health and Safety Code, all of the following information on every applicant that has indicated his or her willingness to participate in the organ donation program:

(A) His or her true full name.

(B) His or her residence or mailing address.

(C) His or her date of birth.

(D) His or her California driver's license number or identification card number.

(6) (A) A person who applies for an original or renewal driver's license or identification card may designate a voluntary contribution of two dollars ($2) for the purpose of promoting and supporting organ and tissue donation. This contribution shall be collected by the department, and treated as a voluntary contribution to Donate Life California and not as a fee for the issuance of a driver's license or identification card.

(B) The department may use the donations collected under this paragraph to cover its actual administrative costs incurred under paragraphs (3) to (5), inclusive. The department shall deposit all revenue derived under this paragraph and remaining after the department's deduction for administrative costs in the Donate Life California Trust Subaccount, which is hereby created in the Motor Vehicle Account in the State Transportation Fund. Notwithstanding Section 13340 of the Government Code, all revenue in this subaccount is continuously appropriated, without regard to fiscal years, to the Controller for allocation to Donate Life California and shall be expended for the purpose of increasing participation in organ donation programs.

(7) The enrollment form shall be posted on the Internet Web sites for the department and the California Health and Human Services Agency.

(8) The enrollment shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation. Except as provided in paragraph (2), the donation does not require the consent of any other person.

(9) Donate Life California shall ensure that all additions and deletions to the California Organ and Tissue Donor Registry, established pursuant to Section 7152.7 of the Health and Safety Code, occur within 30 days of receipt.

(10) Information obtained by Donate Life California for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by Donate Life California.

(c) A public entity or employee shall not be liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) A contract shall not be awarded to any nongovernmental entity for the processing of driver's licenses, unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

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

SEC. 658. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) (1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

(2) The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days'

impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or his or her agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1) or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) (A) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency shall not require any documents to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(B) No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph. The impounding agency shall not require any documents to be notarized.

(C) As used in this paragraph, "foreclosure documents" means an "assignment" as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner

or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with this section.

SEC. 659. Section 15242 of the Vehicle Code is amended to read:

15242. (a) A person who is self-employed as a commercial motor vehicle driver shall comply with both the requirements of this chapter pertaining to employers and those pertaining to employees.

(b) Notwithstanding subdivision (a), a motor carrier that engages a person who owns, leases, or otherwise operates not more than one motor vehicle listed in Section 34500 to provide transportation services under the direction and control of that motor carrier is responsible for the compliance of that person with this chapter and for purposes of the regulations adopted by the department pursuant to Section 34501 during the period of that direction and control.

(c) For the purposes of subdivision (b), "direction and control" means either of the following:

(1) The person is operating under the motor carrier's interstate operating authority issued by the United States Department of Transportation.

(2) The person is operating under a subcontract with the motor carrier that requires the person to operate in intrastate commerce and the person has performed transportation services for a minimum of 60 calendar days within the past 90 calendar days for the motor carrier and has been on duty for that carrier for no less than 36 hours within any week in which transportation services were provided.

(d) Subdivision (b) shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any purpose.

SEC. 660. Section 17155 of the Vehicle Code is amended to read:

17155. If two or more persons are injured or killed in one accident, the owner, bailee of an owner, or personal representative of a decedent may settle and pay any bona fide claims for damages arising out of personal injuries or death, whether reduced by judgment or not, and the payments shall diminish, to the extent of those payments, the person's total liability on account of the accident. Payments aggregating the full sum of thirty thousand dollars ($30,000) shall extinguish all liability of the owner, bailee of an owner, or personal representative of a decedent for death or personal injury arising out of the accident that exists pursuant to this chapter, and did not arise through the negligent or wrongful act or omission of the owner, bailee of an owner, or personal representative of a decedent nor through the relationship of principal and agent or master and servant.

SEC. 661. Section 23109 of the Vehicle Code is amended to read:

23109. (a) A person shall not engage in a motor vehicle speed contest on a highway. As used in this section, a motor vehicle speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device. For purposes of this section, an event in which the time to cover a prescribed route of more than 20 miles is measured, but where the vehicle does not exceed the speed limits, is not a speed contest.

(b) A person shall not aid or abet in any motor vehicle speed contest on any highway.

(c) A person shall not engage in a motor vehicle exhibition of speed on a highway, and a person shall not aid or abet in a motor vehicle exhibition of speed on any highway.

(d) A person shall not, for the purpose of facilitating or aiding or as an incident to any motor vehicle speed contest or exhibition upon a highway, in any manner obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction upon any highway.

(e) (1) A person convicted of a violation of subdivision (a) shall be punished by imprisonment in a county jail for not less than 24 hours nor more than 90 days or by a fine of not less than three hundred fifty-five dollars ($355) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment. That person shall also be required to perform 40 hours of community service. The court may order the privilege to operate a motor vehicle suspended for 90 days to six months, as provided in paragraph (8) of subdivision (a) of Section 13352. The person's privilege to operate a motor vehicle may be restricted for 90 days to six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. This subdivision does not interfere with the court's power to grant probation in a suitable case.

(2) If a person is convicted of a violation of subdivision (a) and that violation proximately causes bodily injury to a person other than the driver, the person convicted shall be punished by imprisonment in a county jail for not less than 30 days nor more than six months or by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) (1) If a person is convicted of a violation of subdivision (a) for an offense that occurred within five years of the date of a prior offense that resulted in a conviction of a violation of subdivision (a), that person shall be punished by imprisonment in a county jail for not less than four days nor more than six months, and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(2) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes bodily injury to a person other than the driver, a person convicted of that second violation shall be imprisoned in a county jail for not less than 30 days nor more than six months and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(3) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes serious bodily injury, as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code, to a person other than the driver, a person convicted of that second violation shall be imprisoned in the state prison, or in a county jail for not less than 30 days nor more than one year, and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(4) The court shall order the privilege to operate a motor vehicle of a person convicted under paragraph (1), (2), or (3) suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section

13352. In lieu of the suspension, the person's privilege to operate a motor vehicle may be restricted for six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(5) This subdivision does not interfere with the court's power to grant probation in a suitable case.

(g) If the court grants probation to a person subject to punishment under subdivision (f), in addition to subdivision (f) and any other terms and conditions imposed by the court, which may include a fine, the court shall impose as a condition of probation that the person be confined in a county jail for not less than 48 hours nor more than six months. The court shall order the person's privilege to operate a motor vehicle to be suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section 13352 or restricted pursuant to subdivision (f).

(h) If a person is convicted of a violation of subdivision (a) and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

(i) A person who violates subdivision (b), (c), or (d) shall upon conviction of that violation be punished by imprisonment in a county jail for not more than 90 days, by a fine of not more than five hundred dollars ($500), or by both that fine and imprisonment.

(j) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this section, the court shall clearly mark the restriction and the dates of the restriction on that person's driver's license and promptly notify the Department of Motor Vehicles of the terms of the restriction in a manner prescribed by the department. The Department of Motor Vehicles shall place that restriction in the person's records in the Department of Motor Vehicles and enter the restriction on a license subsequently issued by the Department of Motor Vehicles to that person during the period of the restriction.

(k) The court may order that a person convicted under this section, who is to be punished by imprisonment in a county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(*l*) This section shall be known and may be cited as the Louis Friend Memorial Act.

SEC. 662. Section 24011.3 of the Vehicle Code is amended to read:

24011.3. (a) Every manufacturer or importer of new passenger vehicles for sale or lease in this state, shall affix to a window or the

windshield of the vehicle a notice with either of the following statements, whichever is appropriate:

(1) "This vehicle is equipped with bumpers that can withstand an impact of 2.5 miles per hour with no damage to the vehicle's body and safety systems, although the bumper and related components may sustain damage. The bumper system on this vehicle conforms to the current federal bumper standard of 2.5 miles per hour. "

(2) "This vehicle is equipped with a front bumper of a type that has been tested at an impact speed of (here specify the appropriate number) miles per hour, and a rear bumper of a type that has been tested at an impact speed of (here specify the appropriate number) miles per hour, resulting in no damage to the vehicle's body and safety systems and minimal damage to the bumper and attachment hardware. 'Minimal damage to the bumper' means minor cosmetic damage that can be repaired with the use of common repair materials and without replacing any parts. The stronger the bumper, the less likely the vehicle will require repair after a low-speed collision. This vehicle exceeds the current federal bumper standard of 2.5 miles per hour."

(b) The impact speed required to be specified in the notice pursuant to paragraph (2) of subdivision (a) is the maximum speed of impact upon the bumper of the vehicle at which the vehicle sustains no damage to the body and safety systems and only minimal damage to the bumper when subjected to the fixed barrier and pendulum impact tests, and when subjected to the corner impact test at not less than 60 percent of that maximum speed, conducted pursuant to Part 581 of Title 49 of the Code of Federal Regulations.

(c) (1) A manufacturer who willfully fails to affix the notice required by subdivision (a), or willfully misstates any information in the notice, is guilty of a misdemeanor, which shall be punishable by a fine of not more than five hundred dollars ($500). Each failure or misstatement is a separate offense.

(2) A person who willfully defaces, alters, or removes the notice required by subdivision (a) prior to the delivery of the vehicle, to which the notice is required to be affixed, to the registered owner or lessee is guilty of a misdemeanor, which shall be punishable by a fine of not more than five hundred dollars ($500). Each willful defacement, alteration, or removal is a separate offense.

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

(1) "Manufacturer" is any person engaged in the manufacture or assembly of new passenger vehicles for distribution or sale, and includes an importer of new passenger vehicles for distribution or sale and any

person who acts for, or is under the control of, a manufacturer in connection with the distribution or sale of new passenger vehicles.

(2) "Passenger vehicle" means, notwithstanding Section 465, a motor vehicle subject to impact testing conducted pursuant to Part 581 of Title 49 of the Code of Federal Regulations.

(3) "No damage" means that, when a passenger vehicle is subjected to impact testing, conducted pursuant to the conditions and test procedures of Sections 581.6 and 581.7 of Part 581 of Title 49 of the Code of Federal Regulations, the vehicle sustains no damage to the body and safety systems.

(4) For purposes of paragraph (2) of subdivision (a) and subdivision (b), "minimal damage to the bumper and attachment hardware" means damage that can be repaired with the use of common repair materials and without replacing any parts. In addition, not later than 30 minutes after completion of each pendulum or barrier impact test, the bumper face bar shall have no permanent deviation greater than three-quarters of one inch from its original contour and position relative to the vehicle frame and no permanent deviation greater than three-eighths of one inch from its original contour on areas of contact with the barrier face or impact ridge of the pendulum test device, measured from a straight line connecting the bumper contours adjoining the contact area.

(e) The notice required by this section may be included in any notice or label required by federal law to be affixed to a window or windshield of the vehicle.

SEC. 663. Section 27360 of the Vehicle Code is amended to read:

27360. (a) A parent or legal guardian, when present in a motor vehicle, as defined in Section 27315, may not permit his or her child or ward to be transported upon a highway in the motor vehicle without properly securing the child or ward in a rear seat in a child passenger restraint system meeting applicable federal motor vehicle safety standards, unless the child or ward is one of the following:

(1) Six years of age or older.

(2) Sixty pounds or more.

(b) (1) A driver may not transport on a highway a child in a motor vehicle, as defined in Section 27315, without properly securing the child in a rear seat in a child passenger restraint system meeting applicable federal motor vehicle safety standards, unless the child is one of the following:

(A) Six years of age or older.

(B) Sixty pounds or more.

(2) This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c) (1) For purposes of subdivisions (a) and (b), and except as provided in paragraph (2), a child or ward under the age of six years who weighs less than 60 pounds may ride in the front seat of a motor vehicle, if properly secured in a child passenger restraint system that meets applicable federal motor vehicle safety standards, under any of the following circumstances:

(A) There is no rear seat.

(B) The rear seats are side-facing jump seats.

(C) The rear seats are rear-facing seats.

(D) The child passenger restraint system cannot be installed properly in the rear seat.

(E) All rear seats are already occupied by children under the age of 12 years.

(F) Medical reasons necessitate that the child or ward not ride in the rear seat. The court may require satisfactory proof of the child's medical condition.

(2) A child or ward may not ride in the front seat of a motor vehicle with an active passenger airbag if the child or ward is one of the following:

(A) Under one year of age.

(B) Less than 20 pounds.

(C) Riding in a rear-facing child passenger restraint system.

(d) (1) (A) A first offense under this section is punishable by a fine of one hundred dollars ($100), except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead, refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of a child passenger restraint system for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

(B) The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(2) (A) A second or subsequent offense under this section is punishable by a fine of two hundred fifty dollars ($250), no part of which may be waived by the court, except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead, refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of child passenger restraint systems for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803.

(B) The court may require a defendant described under this section to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards.

(e) Notwithstanding any other provision of law, the fines collected for a violation of this section shall be allocated as follows:

(1) (A) Sixty percent to health departments of local jurisdictions where the violation occurred, to be used for a community education program that includes, but is not limited to, demonstration of the installation of a child passenger restraint system for children of all ages and also assists an economically disadvantaged family in obtaining a restraint system through a low-cost purchase or loan. The county or city health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the court system to facilitate the transfer of funds to the program. The county or city may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall attend an education program that includes demonstration of proper installation and use of a child passenger restraint system.

(B) As the proceeds from fines become available, county or city health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county or city shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency and the courts, birthing centers, community child health and disability prevention programs,

county clinics, prenatal clinics, women, infants, and children programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county or city for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

SEC. 664. Section 29008 of the Vehicle Code is amended to read:

29008. Sections 29004 and 29005 shall not apply to trailers or dollies used to support booms attached to truck cranes if the following conditions are met:

(a) The trailer or dolly is connected to the boom by a pin, coupling device, or fifth wheel assembly.

(b) The trailer is secured to the boom with a chain, cable, or equivalent device of sufficient strength to control the trailer or dolly in case of failure of the connection consisting of a pin, coupling device, or fifth wheel assembly.

SEC. 665. Section 35106 of the Vehicle Code is amended to read:

35106. (a) Motor coaches or buses may have a maximum width not exceeding 102 inches.

(b) Notwithstanding subdivision (a), motor coaches or buses operated under the jurisdiction of the Public Utilities Commission in urban or suburban service may have a maximum outside width not exceeding 104 inches, when approved by order of the Public Utilities Commission for use on routes designated by it. Motor coaches or buses operated by common carriers of passengers for hire in urban or suburban service and not under the jurisdiction of the Public Utilities Commission may have a maximum outside width not exceeding 104 inches.

SEC. 666. Section 40512 of the Vehicle Code is amended to read:

40512. (a) (1) Except as specified in paragraph (2), if at the time the case is called for arraignment before the magistrate the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may, in his or her discretion, order that no further proceedings be had in the case, unless the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of the same offense, except if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.

(2) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars ($700).

(b) Upon the making of the order that no further proceedings shall be had, all sums deposited as bail shall be paid into the city or county treasury, as the case may be.

(c) If a guaranteed traffic arrest bail bond certificate has been filed, the clerk of the court shall bill the issuer for the amount of bail fixed by the uniform countywide schedule of bail required under subdivision (c) of Section 1269b of the Penal Code.

(d) Upon presentation by a court of the bill for a fine or bail assessed against an individual covered by a guaranteed traffic arrest bail bond certificate, the issuer shall pay to the court the amount of the fine or forfeited bail that is within the maximum amount guaranteed by the terms of the certificate.

(e) The court shall return the guaranteed traffic arrest bail bond certificate to the issuer upon receipt of payment in accordance with subdivision (d).

SEC. 667. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in subdivision (e) of Section 21464, or Section 42000.5, 42001.1, 42001.2, 42001.3, 42001.5, 42001.7, 42001.8, 42001.9, 42001.11, 42001.12, 42001.13, 42001.14, 42001.15, or 42001.16, or subdivision (a) of Section 42001.17, Section 42001.18, or Section 42001.20, or subdivision (b), (c), or (d) of this section, or Article 2 (commencing with Section 42030), every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished as follows:

(1) By a fine not exceeding one hundred dollars ($100).

(2) For a second infraction occurring within one year of a prior infraction that resulted in a conviction, a fine not exceeding two hundred dollars ($200).

(3) For a third or any subsequent infraction occurring within one year of two or more prior infractions that resulted in convictions, a fine not exceeding two hundred fifty dollars ($250).

(b) Every person convicted of a misdemeanor violation of Section 2800, 2801, or 2803, insofar as that violation affects failure to stop and submit to inspection of equipment or for an unsafe condition endangering any person, shall be punished as follows:

(1) By a fine not exceeding fifty dollars ($50) or imprisonment in a county jail not exceeding five days.

(2) For a second conviction within a period of one year, a fine not exceeding one hundred dollars ($100) or imprisonment in a county jail not exceeding 10 days, or both that fine and imprisonment.

(3) For a third or any subsequent conviction within a period of one year, a fine not exceeding five hundred dollars ($500) or imprisonment in a county jail not exceeding six months, or both that fine and imprisonment.

(c) A pedestrian convicted of an infraction for a violation of this code or any local ordinance adopted pursuant to this code shall be punished by a fine not exceeding fifty dollars ($50).

(d) A person convicted of a violation of subdivision (a) or (b) of Section 27150.3 shall be punished by a fine of two hundred fifty dollars ($250), and a person convicted of a violation of subdivision (c) of Section 27150.3 shall be punished by a fine of one thousand dollars ($1,000).

(e) Notwithstanding any other provision of law, any local public entity that employs peace officers, as designated under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, the California State University, and the University of California may, by ordinance or resolution, establish a schedule of fines applicable to infractions committed by bicyclists within its jurisdiction. Any fine, including all penalty assessments and court costs, established pursuant to this subdivision shall not exceed the maximum fine, including penalty assessments and court costs, otherwise authorized by this code for that violation. If a bicycle fine schedule is adopted, it shall be used by the courts having jurisdiction over the area within which the ordinance or resolution is applicable instead of the fines, including penalty assessments and court costs, otherwise applicable under this code.

SEC. 668. Section 359 of the Water Code is amended to read:

359. (a) Notwithstanding any other provision of law that requires an election for the purpose of authorizing a contract with the United States, or for incurring the obligation to repay loans from the United States, and except as otherwise limited or prohibited by the California Constitution, a public water agency, as an alternative procedure to submitting the proposal to an election, upon affirmative vote of four-fifths of the members of the governing body thereof, may apply for, accept, provide for the repayment together with interest thereon, and use funds made available by the federal government pursuant to Public Law 95-18, pursuant to any other federal act subsequently enacted during 1977 that specifically provides emergency drought relief financing, or pursuant to existing federal relief programs receiving budget augmentations in 1977 for drought assistance, and may enter into contracts that are required to obtain those federal funds pursuant to the provisions of those federal acts if the following conditions exist:

(1) The project is undertaken by a state, regional, or local governmental agency.

(2) As a result of the severe drought now existing in many parts of the state, the agency has insufficient water supply needed to meet necessary agricultural, domestic, industrial, recreational, and fish and wildlife needs within the service area or area of jurisdiction of the agency.

(3) The project will develop or conserve water before October 31, 1978, and will assist in mitigating the impacts of the drought.

(4) The agency affirms that it will comply, if applicable, with Sections 1602, 1603, and 1605 of the Fish and Game Code.

(5) The project will be completed on or before the completion date, if any, required under the federal act providing the funding, but not later than March 1, 1978.

(b) Any obligation to repay loans shall be expressly limited to revenues of the system improved by the proceeds of the contract.

(c) No application for federal funds pursuant to this section shall be made on or after March 1, 1978.

(d) Notwithstanding the provisions of this section, a public agency shall not be exempt from any provision of law that requires the submission of a proposal to an election if a petition requesting such an election signed by 10 percent of the registered voters within the public agency is presented to the governing board within 30 days following the submission of an application for federal funds.

(e) Notwithstanding the provisions of this section, a public water agency that applied for federal funds for a project before January 1, 1978, may make application to the Director of the Drought Emergency Task Force for extension of the required completion date specified in paragraph (5) of subdivision (b). Following receipt of an application for extension, the Director of the Drought Emergency Task Force may extend the required completion date specified in paragraph (5) of subdivision (b) to a date not later than September 30, 1978, if the director finds that the project has been delayed by factors not controllable by the public water agency. If the Drought Emergency Task Force is dissolved, the Director of Water Resources shall exercise the authority vested in the Director of the Drought Emergency Task Force pursuant to this section.

(f) For the purposes of this section, "public water agency" means a city, district, agency, authority, or any other political subdivision of the state, except the state, that distributes water to the inhabitants thereof, is otherwise authorized by law to enter into contracts or agreements with the federal government for a water supply or for financing facilities for a water supply, and is otherwise required by law to submit those agreements or contracts or any other project involving long-term debt to an election within that public water agency.

SEC. 669. Section 5003 of the Water Code is amended to read:

5003. No prescriptive right that might otherwise accrue to extract ground water shall arise or accrue to, nor shall any statute of limitations operate in regard to the ground water in the four counties after the year 1956 in favor of any person required to file a notice of extraction and diversion of water, until that person files with the board the first "Notice of Extraction and Diversion of Water" substantially in the form mentioned in Section 5002. As to each person who fails to file that notice by the end of the year in 1957, it shall be deemed for the period from that time until the first notice of the person is filed, that no claim of right to the extraction of ground water from any source in the four counties has been made by the person, and that water extracted by the person from the ground water source during that period has not been devoted to or used for any beneficial use. The beneficial use of water from any ground water source within the four counties in any year by the person shall be deemed not to exceed the quantity reported in the notice filed for that year.

SEC. 670. Section 8617.5 of the Water Code is amended to read:

8617.5. (a) In connection with any work done on projects authorized by the board in the repair or reconstruction of levees or other flood control works completed before June 30, 1957, the board may provide for and pay the cost of the relocation, reconstruction, or replacement of improvements, structures, or utilities that have actually existed and been in use for over 20 years, which has been rendered necessary by the work, unless payment would be contrary to any written authorization or agreement under which the improvement, structure, or utility was constructed or maintained.

(b) This section shall not apply to the relocation, reconstruction, or replacement of improvements, structures, or utilities if the work has been financed, in whole or in part, with funds under the Flood Relief Law of 1956 (former Article 6 (commencing with Section 54150) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code) or Public Law 81-875.

SEC. 671. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) (1) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(A) An average water year.

(B) A single dry water year.

(C) Multiple dry water years.

(2) For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors, including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single-dry, and multiple-dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Describe the opportunities for development of desalinated water, including, but not limited to, ocean water, brackish water, and groundwater, as a long-term supply.

(j) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding

Urban Water Conservation in California," dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

(k) Urban water suppliers that rely upon a wholesale agency for a source of water shall provide the wholesale agency with water use projections from that agency for that source of water in five-year increments to 20 years or as far as data is available. The wholesale agency shall provide information to the urban water supplier for inclusion in the urban water supplier's plan that identifies and quantifies, to the extent practicable, the existing and planned sources of water as required by subdivision (b), available from the wholesale agency to the urban water supplier over the same five-year increments, and during various water-year types in accordance with subdivision (c). An urban water supplier may rely upon water supply information provided by the wholesale agency in fulfilling the plan informational requirements of subdivisions (b) and (c).

SEC. 672. Section 12625 of the Water Code is amended to read:

12625. In determining the cost of any project, damage to fish and wildlife that will probably result shall be included in the amount of the cost.

SEC. 673. Section 12879.2 of the Water Code is amended to read:

12879.2. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Water Conservation Finance Committee created pursuant to Section 12879.9.

(b) "Department" means the Department of Water Resources.

(c) "Fund" means the 1988 Water Conservation Fund created pursuant to Section 12879.3.

(d) "Local agency" means any city, county, city and county, district, joint powers authority, or other political subdivision of the state involved in water management.

(e) "Eligible project" means any dam, reservoir, or other construction or improvement by a local agency for the diversion, storage, or primary distribution of water, or facilities for groundwater extraction, primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes. "Eligible project" also means any reservoir, pipeline, or other construction or improvement by a local agency for the storage or distribution of reclaimed water for reuse.

(f) (1) "Groundwater recharge facilities" means land and facilities for artificial groundwater recharge through methods that include, but are not limited to, either percolation using basins, pits, ditches, and

furrows, modified streambed, flooding, and well injection, or in-lieu recharge. "Groundwater recharge facilities" also means capital outlay expenditures to expand, renovate, or restructure land and facilities already in use for the purpose of groundwater recharge.

(2) Groundwater recharge facilities may include either of the following:

(A) Instream facilities for regulation of water levels, but not regulation of streamflow by storage to accomplish diversion from the waterway.

(B) Conveyance facilities to the recharge site, including devices for flow regulation and measurement of recharge waters.

(3) Any part or all of the project facilities, including land under the facilities, may consist of separable features, or an appropriate share of multipurpose features of a larger system, or both.

(g) "In-lieu recharge" means accomplishing increased storage of groundwater by providing surface water to a user who relies on groundwater as a primary supply, in order to accomplish groundwater storage through the direct use of that surface water in lieu of pumping groundwater. In-lieu recharge shall be used rather than continuing pumping while artificially recharging with surface waters. However, bond proceeds shall not be used to purchase surface waters for use in lieu of pumping groundwater.

(h) "Voluntary cost-effective capital outlay water conservation programs" means those feasible capital outlay measures to improve the efficiency of water use through benefits that exceed their costs. The programs include, but are not limited to, lining or piping of ditches; improvements in water distribution system controls such as automated canal control, construction of small reservoirs within distribution systems that conserve water that already has been captured for reuse, and related physical improvements; tailwater pumpback recovery systems to reduce leakage; and capital changes in on-farm irrigation systems that improve irrigation efficiency, such as sprinkler or subsurface drip systems. In each case, the department shall determine that there is a net savings of water as a result of each proposed project and that the project is cost-effective.

SEC. 674. Section 12899.6 of the Water Code is amended to read:

12899.6. (a) Unless a person is otherwise authorized, by permit or agreement, to do so, it is unlawful for any person to do any of the following acts:

(1) Drain water, or permit water to be drained, from the person's lands onto the State Water Resources Development System right-of-way by any means, which results in damage to the system or the department's right-of-way, except where the water naturally drains onto the department's right-of-way.

(2) Obstruct any natural watercourse in a manner that does any of the following:

(A) Prevents, impedes, or restricts the natural flow of waters from any portion of the department's right-of-way into and through the watercourse or State Water Resources Development System cross drainage structures, unless other adequate and proper drainage is provided.

(B) Causes waters to be impounded within the department's right-of-way that damages the State Water Resources Development System or the department's right-of-way, except where the water naturally drains onto the department's right-of-way.

(C) Causes interference with, or damages or makes hazardous the operation, maintenance, and rehabilitation of, the State Water Resources Development System.

(3) Stores or distributes water for any purpose so as to permit the water to overflow onto, causing damage to, or to obstruct or damage any portion of, the State Water Resources Development System or the department's right-of-way.

(b) When notice is given by the department, in the manner provided in Section 12899.5, to any person permitting a condition to exist, as described in subdivision (a), the person shall immediately cease and discontinue the diversion of waters or shall discontinue and prevent the drainage, seepage, or overflow and shall repair, or pay for the repair of, any damage to the State Water Resources Development System or the department's right-of-way. The person to whom the notice is provided may challenge, administratively in accordance with regulations adopted pursuant to Section 12899.9, or in a court of competent jurisdiction, the propriety of the determination by the department.

(c) If any person is notified pursuant to subdivision (b) and fails, neglects, or refuses to cease and discontinue the diversion, drainage, seepage, or overflow of the waters or to make or pay for the repairs, the department may make repairs and perform work as it determines necessary to prevent the further drainage, diversion, overflow, or seepage of the waters.

(d) The department may recover in an action at law, in any court of competent jurisdiction, the amount expended for those repairs and work, and in addition, the sum of one thousand dollars ($1,000) for each day the drainage, diversion, overflow, or seepage of the waters is permitted to continue, after the service of the notice in the manner specified in this chapter, together with the costs and expenses, including attorney's fees, incurred in the action.

SEC. 675. Section 12899.7 of the Water Code is amended to read:

12899.7. Any person who by any means willfully or negligently injures or damages any feature of the State Water Resources Development System or the department's right-of-way is liable for necessary repairs, and the department may recover in an action at law the amount expended for the repairs, together with the costs and expenses, including attorney's fees, incurred in that action.

SEC. 676. Section 12929.12 of the Water Code is amended to read:

12929.12. (a) It is the intent of the Legislature that sixty-five million dollars ($65,000,000) of the funds that may be transferred, pursuant to paragraph (3) of subdivision (b) of Section 12937, to the California Water Fund from the California Water Resources Development Bond Fund, shall be appropriated to the Environmental Water Fund. It is the intent of the Legislature, subject to subdivision (b), to appropriate to the Environmental Water Fund one million dollars ($1,000,000) in the 1990–91 fiscal year and eight million dollars ($8,000,000) per year in fiscal years 1991–92 to 1998–99, inclusive. However, the director, in consultation with the Department of Finance, may accelerate payments to the California Water Fund for appropriation to the Environmental Water Fund if the director deems it appropriate to do so.

(b) It is the further intent of the Legislature that if the director determines that all or any portion of the amount that would otherwise be appropriated in any fiscal year to the Environmental Water Fund in accordance with subdivision (a), or to the Delta Flood Protection Fund pursuant to Section 12303, is required for continued construction of the State Water Resources Development System pursuant to Section 12938, the entire amount that would otherwise be appropriated to the Environmental Fund for that fiscal year shall be reduced to zero before any reduction is made in the amount to be appropriated to the Delta Flood Protection Fund. It is also the intent of the Legislature that any reduction in funds appropriated to the Environmental Water Fund and the Delta Flood Protection Fund pursuant to this subdivision be made up from funds transferred to the California Water Fund pursuant to paragraph (3) of subdivision (b) of Section 12937 in subsequent fiscal years.

SEC. 677. Section 13385.1 of the Water Code is amended to read:

13385.1. (a) (1) For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

(2) Paragraph (1) applies only to violations that occur on or after January 1, 2004.

(b) (1) Notwithstanding any other provision of law, moneys collected pursuant to this section for a failure to timely file a report, as described in subdivision (a), shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(2) The funds described in paragraph (1) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in responding to significant water pollution problems.

(c) For the purposes of this section, paragraph (2) of subdivision (f) of Section 13385, and subdivisions (h), (i), and (j) of Section 13385 only, "effluent limitation" means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

SEC. 678. Section 13465 of the Water Code is amended to read:

13465. Notwithstanding Sections 13458 and 13459, the committee may prescribe further terms and conditions for loan contracts to authorize a deferment on payment of all or part of the principal.

SEC. 679. Section 13611 of the Water Code is amended to read:

13611. (a) The notification required by Section 13611.5 does not apply to a discharge that is in compliance with this division, or to a water agency conveying water in compliance with all state and federal drinking water standards.

(b) Any person who fails to provide the notifications required by Section 13271 relating to perchlorate or by Section 13611.5 may be civilly liable in accordance with subdivision (c).

(c) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation described in subdivision (b) in an amount that does not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation described in subdivision (b) in an amount that is not less than five hundred dollars ($500), nor more than five thousand dollars ($5,000), for each day in which the violation occurs.

(d) Notwithstanding Section 13441, all moneys collected by the state pursuant to this section shall be available to the state board upon appropriation by the Legislature.

SEC. 680. Section 13999.8 of the Water Code is amended to read:

13999.8. (a) The sum of two hundred fifty million dollars ($250,000,000) of the moneys in the fund shall be deposited in the Clean Water Construction Grant Account and is appropriated for grants and loans to municipalities to aid in construction of eligible projects and the purposes set forth in this section.

(b) If the federal Clean Water Act authorizes a federal loan program for providing assistance for construction of treatment works, which requires state matching funds, the board may establish a State Water Pollution Control Revolving Fund to provide loans in accordance with the federal Clean Water Act. The board, with the approval of the committee, may transfer funds from the Clean Water Construction Grant Account to the revolving fund for the purposes of meeting federal requirements for state matching funds.

(c) Any contract entered into pursuant to this section may include any provisions that the board determines, provided that any contract concerning an eligible project shall include, in substance, all of the following provisions:

(1) An estimate of the reasonable cost of the eligible project.

(2) An agreement by the board to pay to the municipality, during the progress of construction or following completion of construction as agreed upon by the parties, an amount that equals at least 12½ percent of the eligible project cost determined pursuant to federal and state laws and regulations.

(3) An agreement by the municipality to proceed expeditiously with, and complete, the eligible project; commence operation of the treatment works upon completion and to properly operate and maintain the works in accordance with applicable provisions of law; apply for and make reasonable efforts to secure federal assistance for the eligible project; secure the approval of the board before applying for federal assistance in order to maximize the assistance received in the state; and provide for payment of the municipality's share of the cost of the eligible project.

(d) The board may, with the approval of the committee, transfer moneys in the Clean Water Construction Grant Account to the State Water Quality Control Fund, to be made available for loans to public agencies pursuant to Chapter 6 (commencing with Section 13400).

(e) Grants may be made pursuant to this section to reimburse municipalities for the state share of construction costs for eligible projects that received federal assistance, but that did not receive an appropriate state grant due solely to depletion of the State Clean Water and Water

Conservation Fund created pursuant to the Clean Water and Water Conservation Bond Law of 1978 (Chapter 12.5 (commencing with Section 13955)). Eligibility for reimbursement under this section is limited to the actual construction capital costs incurred.

(f) To the extent funds are available, if the federal share of construction funding under Title II of the federal Clean Water Act is reduced below 75 percent, municipalities otherwise eligible for a grant under this section shall also be entitled to a loan from the Clean Water Construction Grant Account of up to 12 ½ percent of the eligible project cost.

(g) To the extent funds are available, if the federal Clean Water Act authorizes a federal loan program for providing assistance for construction of treatment works, the board may make those loans in accordance with the federal Clean Water Act and state law. The Legislature may enact legislation that it deems necessary to implement the state loan program.

(h) Notwithstanding any other provision of law, and to the extent funds are available, if federal funding under Title II of the federal Clean Water Act ceases, municipalities shall only be entitled to a loan from the Clean Water Construction Grant Account of 25 percent of the eligible project cost.

(i) All loans pursuant to this section are subject to all of the following provisions:

(1) Municipalities seeking a loan shall demonstrate, to the satisfaction of the board, that an adequate opportunity for public participation regarding the loan has been provided.

(2) Any election held with respect to the loan shall include the entire municipality except where the municipality proposes to accept the loan on behalf of a specified portion, or portions, of the municipality, in which case the referendum shall be held in that portion or portions of the municipality only.

(3) Any loan made pursuant to this section shall be up to 25 years with an interest rate set annually by the board at 50 percent of the average interest rate paid by the state on general obligation bonds for the calendar year immediately preceding the year in which the loan agreement is executed.

(4) The first thirty million dollars ($30,000,000) in principal and interest from loans made pursuant to this section shall be paid to the Water Reclamation Account. All remaining principal and interest from the loans shall be returned to the Clean Water Construction Grant Account for new obligations.

SEC. 681. Section 20527.11 of the Water Code is amended to read:

20527.11. (a) The Board of Directors of the Richvale Irrigation District may adopt a resolution that authorizes persons holding title to

real property within the district, or their legal representative, to vote. Holders of title need not be residents of the district in order to qualify as voters. Each eligible voter shall be entitled to cast only one vote.

(b) The last equalized county assessment roll is conclusive evidence of ownership of the real property.

(c) (1) If land is owned in joint tenancy, tenancy in common, community property, or any other multiple ownership, the owners of the land shall designate, in writing, which one of the owners is deemed the owner of the land for purposes of qualifying as a voter.

(2) The designation shall be made upon a form provided by the district, shall be filed with the district at least 40 days prior to the election, and shall remain in effect until amended or revoked. No amendment or revocation may occur within the period of 39 days prior to any election.

(d) The district shall provide to the elections clerk a list of eligible voters pursuant to Section 10525 of the Elections Code at least 35 days prior to an election.

(e) The legal representative of a corporation or estate owning real property may vote on behalf of the corporation or estate.

(f) (1) Every voter, or his or her legal representative, may vote at any district election either in person or by a person appointed as his or her proxy.

(2) Voting by legal representatives and the appointment of a proxy shall be allowed in accordance with Sections 35005 and 35006 of the Water Code.

(g) Notwithstanding Section 21100, any eligible voter, as specified in this section, may be a member of the Board of Directors of the Richvale Irrigation District.

(h) (1) As used in this section, "legal representative" means an official of a corporation owning real property or a guardian, conservator, executor, or administrator of the estate of the holder of title to real property who is all of the following:

(A) Appointed under the laws of this state.

(B) Entitled to the possession of the estate's real property.

(C) Authorized by the appointing court to exercise the particular right, privilege, or immunity that the legal representative seeks to exercise.

(2) As used in this section, "eligible voter" means a person who meets the requirements of Section 20527 or a person who is a holder of title to real property within the district.

(3) The Board of Directors of the Richvale Irrigation District may, not less than 120 days before the next general district election, abolish the divisions of the district for that election. The abolishment of the divisions shall be effective only for that general election, unless the question of abolishing the divisions is presented to the voters at that

election and a majority of the votes cast on that question are in favor of abolishing the divisions for future elections.

(i) (1) This section shall be operative as long as the district does not provide water, drainage services, electricity, flood control services, or sewage disposal services for domestic purposes for residents of the district.

(2) (A) This section shall become inoperative if the district commences to provide any of the services described in paragraph (1).

(B) The district shall notify the Secretary of State 30 days prior to commencing to provide any of the services described in paragraph (1). The notice required by this subparagraph shall state that it is being made pursuant to this subdivision.

SEC. 682. Section 23178 of the Water Code is amended to read:

23178. Article 35 (commencing with Section 20560) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code does not apply in the case of any contract between a district and the United States.

SEC. 683. Section 41027 of the Water Code is amended to read:

41027. (a) The board shall hold a public hearing to receive any testimony regarding the preliminary election roll. The hearing may be continued from time to time. Following the hearing and deliberations, the board shall make any changes to the preliminary election roll and shall adopt the election roll.

(b) If the preliminary election roll was prepared pursuant to paragraph (1) of subdivision (b) of Section 41026, the adopted election roll shall be deemed the final election roll.

(c) If the preliminary election roll was prepared pursuant to paragraph (2) of subdivision (b) of Section 41026, the secretary shall send the adopted election roll to the board of supervisors of the principal county. Upon receiving the adopted election roll, the board of supervisors of the principal county shall set the date, time, and place for a public hearing to receive any testimony regarding the adopted election roll. The board of supervisors shall publish a notice of its public hearing pursuant to Section 39057. At the hearing, the board of supervisors shall receive any testimony regarding the adopted election roll. The hearing may be continued from time to time. Following the hearing and deliberations, the board of supervisors shall either approve or disapprove the adopted election roll. If the board of supervisors approves the adopted election roll, it shall send the final election roll to the board. If the board of supervisors disapproves the adopted election roll, the board of supervisors shall notify the board of its disapproval and may recommend changes to the adopted election roll for the board to consider. The district shall compensate the principal county for any costs incurred by the board of supervisors pursuant to this chapter.

(d) The secretary shall certify and file the final election roll not later than the date of the first publication of the notice provided pursuant to Section 41308.

SEC. 684. Section 241.1 of the Welfare and Institutions Code is amended to read:

241.1. (a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(b) The probation department and the child welfare services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, which requirements shall not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies that have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child welfare services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status.

(c) Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 by another county, the county probation department or child welfare services department in the county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child welfare services department of the county alleging the minor to be within one of those sections shall initially determine which status will best serve the best interests of the

minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. In making their recommendation to the juvenile court, the departments shall conduct an assessment consistent with the requirements of subdivision (b). Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(d) Except as provided in subdivision (e), nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

(e) Notwithstanding subdivision (d), the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court. This protocol shall be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to its implementation. No juvenile court may order that a child is simultaneously a dependent child and a ward of the court pursuant to this subdivision unless and until the required protocol has been created and entered into. This protocol shall include:

(1) A description of the process to be used to determine whether the child is eligible to be designated as a dual status child.

(2) A description of the procedure by which the probation department and the child welfare services department will assess the necessity for dual status for specified children and the process to make joint recommendations for the court's consideration prior to making a determination under this section. These recommendations shall ensure a seamless transition from wardship to dependency jurisdiction, as appropriate, so that services to the child are not disrupted upon termination of the wardship.

(3) A provision for ensuring communication between the judges who hear petitions concerning children for whom dependency jurisdiction has been suspended while they are within the jurisdiction of the juvenile court pursuant to Section 601 or 602. A judge may communicate by providing a copy of any reports filed pursuant to Section 727.2

concerning a ward to a court that has jurisdiction over dependency proceedings concerning the child.

(4) A plan to collect data in order to evaluate the protocol pursuant to Section 241.2.

(5) Counties that exercise the option provided for in this subdivision shall adopt either an "on-hold" system as described in subparagraph (A) or a "lead court/lead agency" system as described in subparagraph (B). In no case shall there be any simultaneous or duplicative case management or services provided by both the county probation department and the child welfare services department. It is the intent of the Legislature that judges, in cases in which more than one judge is involved, shall not issue conflicting orders.

(A) In counties in which an on-hold system is adopted, the dependency jurisdiction shall be suspended or put on hold while the child is subject to jurisdiction as a ward of the court. When it appears that termination of the court's jurisdiction, as established pursuant to Section 601 or 602, is likely and that reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and the child welfare services department shall jointly assess and produce a recommendation for the court regarding whether the court's dependency jurisdiction shall be resumed.

(B) In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.

SEC. 685. Section 319 of the Welfare and Institutions Code is amended to read:

319. (a) At the initial petition hearing, the court shall examine the child's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the child, as provided in Section 350.

(b) The social worker shall report to the court on the reasons why the child has been removed from the parent's physical custody, the need, if any, for continued detention, the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents or guardians, and whether there are any relatives who are able and willing to take temporary physical custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent's or guardian's

home is contrary to the child's welfare, and any of the following circumstances exist:

(1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parent's or guardian's physical custody.

(2) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(3) The child has left a placement in which he or she was placed by the juvenile court.

(4) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

(c) If the matter is continued pursuant to Section 322 or for any other reason, the court shall find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare at the initial petition hearing or order the release of the child from custody.

(d) (1) The court shall also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) and Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention.

(2) If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the physical custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child, and has been assessed pursuant to paragraph (1) of subdivision (d) of Section 309.

(e) Whenever a court orders a child detained, the court shall state the facts on which the decision is based, specify why the initial removal was necessary, reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent or legal guardian is contrary to the child's welfare, order temporary placement and care of the child to be vested with the county child welfare department pending the hearing held pursuant to Section 355 or further order of the court, and order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

(f) (1) When the child is not released from custody, the court may order that the child shall be placed in the assessed home of a relative, in an emergency shelter or other suitable licensed place, in a place exempt from licensure designated by the juvenile court, or in the assessed home of a nonrelative extended family member as defined in Section 362.7 for a period not to exceed 15 judicial days.

(2) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or sibling of the child.

(3) The court shall consider the recommendations of the social worker based on the assessment pursuant to paragraph (1) of subdivision (d) of Section 309 of the relative's home, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

(g) (1) At the initial hearing upon the petition filed in accordance with subdivision (c) of Rule 1406 of the California Rules of Court or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition, the court may temporarily limit the right of the parent or guardian to make educational decisions for the child and temporarily appoint a responsible adult to make educational decisions for the child if all of the following conditions are found:

(A) The parent or guardian is unavailable, unable, or unwilling to exercise educational rights for the child.

(B) The county placing agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational decisionmaking.

(C) The child's educational needs cannot be met without the temporary appointment of a responsible adult.

(2) If the court cannot identify a responsible adult to make educational decisions for the child and the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, the court may, with the input of any interested person, make educational decisions for the child. If the court makes educational decisions for the child, the court shall also issue appropriate orders to ensure that every effort is made to identify a responsible adult to make future educational decisions for the child.

(3) Any temporary appointment of a responsible adult and temporary limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. Any order made under this section shall expire at the conclusion of the hearing held pursuant to Section 361 or upon dismissal of the petition. Upon the entering of disposition orders, any additional needed limitation on the parent's or guardian's educational rights shall be addressed pursuant to Section 361.

SEC. 686. Section 1752.81 of the Welfare and Institutions Code is amended to read:

1752.81. (a) Whenever the Chief Deputy Secretary for Juvenile Justice has in his or her possession in trust funds of a ward committed to the division, the funds may be released for any purpose when authorized by the ward. When the sum held in trust for any ward by the Chief Deputy Secretary for Juvenile Justice exceeds five hundred dollars ($500), the amount in excess of five hundred dollars ($500) may be expended by the chief deputy secretary pursuant to a lawful order of a court directing payment of the funds, without the authorization of the ward thereto.

(b) Whenever an adult or minor is committed to or housed in a Division of Juvenile Facilities facility and he or she owes a restitution fine imposed pursuant to Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1202.4 or 1203.04 of the Penal Code, as operative on or before August 2, 1995, or pursuant to Section 729.6, 730.6 or 731.1, as operative on or before August 2, 1995, the Chief Deputy Secretary for Juvenile Justice shall deduct the balance owing on the fine amount from the trust account deposits of a ward, up to a maximum of 50 percent of the total amount held in trust, unless prohibited by federal law. The chief deputy secretary shall transfer that amount to the California Victim Compensation and Government

Claims Board for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(c) Whenever an adult or minor is committed to, or housed in, a Division of Juvenile Facilities facility and he or she owes restitution to a victim imposed pursuant to Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1202.4 or 1203.04 of the Penal Code, as operative on or before August 2, 1995, or pursuant to Section 729.6, 730.6, or 731.1, as operative on or before August 2, 1995, the Chief Deputy Secretary for Juvenile Justice shall deduct the balance owing on the order amount from the trust account deposits of a ward, up to a maximum of 50 percent of the total amount held in trust, unless prohibited by federal law. The chief deputy secretary shall transfer that amount directly to the victim. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the chief deputy secretary shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(d) Any compensatory or punitive damages awarded by trial or settlement to a minor or adult committed to the Division of Juvenile Facilities in connection with a civil action brought against any federal, state, or local jail or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against the minor or adult. The balance of any award shall be forwarded to the minor or adult committed to the Division of Juvenile Facilities after full payment of all outstanding restitution orders and restitution fines subject to subdivision (e). The Division of Juvenile Facilities shall make all reasonable efforts to notify the victims of the crime for which the minor or adult was committed concerning the pending payment of any compensatory or punitive damages. This subdivision shall apply to cases settled or awarded on or after April 26, 1996, pursuant to Sections 807 and 808 of Title VIII of the federal Prison Litigation Reform Act of 1995 (P.L. 104-134; 18 U.S.C. Sec. 3626 (Historical and Statutory Notes)).

(e) The chief deputy secretary shall deduct and retain from the trust account deposits of a ward, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred pursuant to subdivision (b) and (c), or 5 percent of any amount transferred

pursuant to subdivision (d). The chief deputy secretary shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution and victims program of the Division of Juvenile Facilities. The chief deputy secretary, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the division's administrative and support costs for the restitution and victims program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(f) When a ward has both a restitution fine and a restitution order from the sentencing court, the Division of Juvenile Facilities shall collect the restitution order first pursuant to subdivision (c).

(g) Notwithstanding subdivisions (a), (b), and (c), whenever the Chief Deputy Secretary for Juvenile Justice holds in trust a ward's funds in excess of five dollars ($5) and the ward cannot be located, after one year from the date of discharge, absconding from the Division of Juvenile Facilities supervision, or escape, the Division of Juvenile Facilities shall apply the trust account balance to any unsatisfied victim restitution order or fine owed by that ward. If the victim restitution order or fine has been satisfied, the remainder of the ward's trust account balance, if any, shall be transferred to the Benefit Fund to be expended pursuant to Section 1752.5. If the victim to whom a particular ward owes restitution cannot be located, the moneys shall be transferred to the Benefit Fund to be expended pursuant to Section 1752.5.

SEC. 687. Section 1773 of the Welfare and Institutions Code is amended to read:

1773. (a) No condition or restriction upon the obtaining of an abortion by a female committed to the Division of Juvenile Facilities, pursuant to the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code), other than those contained in that act, shall be imposed. Females found to be pregnant and desiring abortions shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion.

(b) The rights provided for females by this section shall be posted in at least one conspicuous place to which all females have access.

SEC. 688. Section 1800 of the Welfare and Institutions Code is amended to read:

1800. (a) Whenever the Division of Juvenile Facilities determines that the discharge of a person from the control of the division at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous

behavior, the division, through its Chief Deputy Secretary for Juvenile Justice, shall request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the division beyond that time. The petition shall be filed at least 90 days before the time of discharge otherwise required. The petition shall be accompanied by a written statement of the facts upon which the division bases its opinion that discharge from control of the division at the time stated would be physically dangerous to the public, but the petition may not be dismissed and an order may not be denied merely because of technical defects in the application.

(b) The prosecuting attorney shall promptly notify the Division of Juvenile Facilities of a decision not to file a petition.

SEC. 689. Section 1800.5 of the Welfare and Institutions Code is amended to read:

1800.5. Notwithstanding any other provision of law, the Board of Parole Hearings may request the Chief Deputy Secretary for Juvenile Justice to review any case in which the Division of Juvenile Facilities has not made a request to the prosecuting attorney pursuant to Section 1800 and the board finds that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior. Upon the board's request, a mental health professional designated by the chief deputy secretary shall review the case and thereafter may affirm the finding or order additional assessment of the ward. If, after review, the mental health designee affirms the initial finding, concludes that a subsequent assessment does not demonstrate that a ward is subject to extended detention pursuant to Section 1800, or fails to respond to a request from the board within the timeframe mandated by this section, the board thereafter may request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the division pursuant to Section 1800 if the board continues to find that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior. The board's request to the prosecuting attorney shall be accompanied by a copy of the ward's file and any documentation upon which the board bases its opinion, and shall include any documentation of the division's review and recommendations made pursuant to this section. Any request for review pursuant to this section shall be submitted to the chief deputy secretary not less than 120 days before the date of final discharge, and the review shall be completed and transmitted to the board not more than 15 days after the request has been received.

SEC. 690. Section 2017 of the Welfare and Institutions Code is amended to read:

2017. Proposals for both youth centers and youth shelters shall do all of the following:

(1) Document the need for the applicant's proposal.

(2) Contain a written commitment and a plan for the delivery of programs, including, where appropriate, plans for innovative nontraditional programs designed to meet the needs of the youth of the targeted community.

(3) (A) Contain a match for funding as follows:

(i) Equal to 25 percent of the total amount requested, when the applicant is a public agency or joint venture involving a public agency.

(ii) Equal to 15 percent of the total amount requested, when the applicant is a private nonprofit agency.

(B) The match may be in cash or in kind.

(4) Document the cost effectiveness of the proposal.

(5) Contain a written commitment and plan to develop and implement a process to receive and consider feedback and suggestions from the community served including a separate mechanism for the youth it serves. A board of directors reflecting broad representation of the community will satisfy the requirement for community input.

(6) Document plans to utilize and coordinate with other organizations serving the same youth population, including making available center facilities where possible.

SEC. 691. Section 3150 of the Welfare and Institutions Code is amended to read:

3150. (a) Commencing July 1, 2005, any reference to the Narcotic Addict Evaluation Authority refers to the Board of Parole Hearings, any reference to the chairperson of the authority is to the chair of the board, and any reference to a member of the authority is to a commissioner of the board.

(b) The board shall conduct a full and complete study of the cases of all patients who are certified by the Secretary of the Department of Corrections and Rehabilitation to the board as having recovered from addiction or imminent danger of addiction to such an extent that release in an outpatient status is warranted.

(c) Members of other similar boards may be assigned to hear cases and make recommendations to the board on these matters. Those recommendations shall be made in accordance with policies established by a majority of the total membership of the board.

SEC. 692. Section 3151 of the Welfare and Institutions Code is amended to read:

3151. (a) Commencing July 1, 2005, after an initial period of observation and treatment, and subject to the rules and policies established by the secretary, whenever a person committed under Article 2 (commencing with Section 3050) or Article 3 (commencing with Section 3100) has recovered from his or her addiction or imminent danger of addiction to such an extent that, in the opinion of the secretary, release in an outpatient status is warranted, the secretary shall certify that fact to the board. If the secretary has not so certified within the preceding 12 months, in the anniversary month of the commitment of any person committed under this chapter, his or her case shall automatically be referred to the board for consideration of the advisability of release in outpatient status. Upon certification by the secretary or upon automatic certification, the board may release the person in an outpatient status subject to all rules and regulations adopted by the board, and subject to all conditions imposed by the board, whether of general applicability or restricted to the particular person released in outpatient status, and subject to being retaken and returned to inpatient status as prescribed in those rules, regulations, or conditions. The supervision of those persons while in an outpatient status shall be administered by the department. Those persons are not subject to Section 2600 of the Penal Code.

(b) A single commissioner of the board may, by written or oral order, suspend the release in outpatient status of a person and cause him or her to be retaken, until the next meeting of the board. The written order of any commissioner shall be a sufficient warrant for any peace officer to return persons to physical custody.

(c) It is the duty of all peace officers to execute any order under this section in the same manner as ordinary criminal process.

SEC. 693. Section 4127 of the Welfare and Institutions Code is amended to read:

4127. (a) Whenever any patient in any state institution subject to the jurisdiction of the State Department of Mental Health escapes, is discharged, or is on leave of absence from the institution, and any personal funds or property of the patient remains in the hands of the superintendent, and no demand is made upon the superintendent by the owner of the funds or property or his or her legally appointed representative, all money and other intangible personal property of the patient, other than deeds, contracts, or assignments, remaining in the custody or possession of the superintendent shall be held by him or her for a period of seven years from the date of the escape, discharge, or leave of absence, for the benefit of the patient or his or her successors in interest. Unclaimed personal funds or property of minors on leave of absence may be exempted from this section during the period of their

minority and for a period of one year thereafter, at the discretion of the Director of Mental Health.

(b) Upon the expiration of the seven-year period, any money and other intangible property, other than deeds, contracts, or assignments, remaining unclaimed in the custody or possession of the superintendent shall be subject to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(c) Upon the expiration of one year from the date of the escape, discharge, or parole, the following shall apply:

(1) All deeds, contracts, or assignments shall be filed by the superintendent with the public administrator of the county of commitment of the patient.

(2) All tangible personal property other than money, remaining unclaimed in the superintendent's custody or possession, shall be sold by the superintendent at public auction, or upon a sealed-bid basis, and the proceeds of the sale shall be held by him or her subject to Section 4125 of this code and Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. If the superintendent deems it expedient to do so, the superintendent may accumulate the property of several patients and may sell the property in lots that the superintendent determines, provided that the superintendent makes a determination as to each patient's share of the proceeds.

(d) If any tangible personal property covered by this section is not salable at public auction or upon a sealed-bid basis, or if it has no intrinsic value or its value is not sufficient to justify its retention by the superintendent to be offered for sale at public auction or upon a sealed-bid basis at a later date, the superintendent may order it destroyed.

SEC. 694. Section 4242 of the Welfare and Institutions Code is amended to read:

4242. As used in this chapter, the following definitions apply:

(a) "Family" means persons whose children, spouses, siblings, parents, grandparents, or grandchildren have a serious mental disorder.

(b) "Serious mental disorder" means a mental disorder that is severe in degree and persistent in duration and that may cause behavioral disorder or impair functioning so as to interfere substantially with activities of daily living. Serious mental disorders include schizophrenia, major affective disorders, and other severely disabling mental disorders.

SEC. 695. Section 4461 of the Welfare and Institutions Code is amended to read:

4461. (a) All expenses incurred in returning such persons to other states shall be paid by this state, the person, or his or her relatives, but the expense of returning residents of this state shall be borne by the state making the returns.

(b) The cost and expense incurred in effecting the transportation of the nonresident persons to the states in which they have residence shall be advanced from the funds appropriated for that purpose or, if necessary, from the money appropriated for the care of developmentally disabled persons upon vouchers approved by the California Victim Compensation and Government Claims Board.

SEC. 696. Section 4839 of the Welfare and Institutions Code is amended to read:

4839. The State Department of Developmental Services may study and prepare a plan in cooperation with the State Council on Developmental Disabilities. The plan should consider the following:

(a) Necessary technical assistance, training, and evaluation to assure standards of quality and program success.

(b) Maximization of existing state and federal resources available to assist persons with developmental special needs to live in the least restrictive environment possible, including the following:

(1) Federal housing subsidy and assistance.

(2) Supplemental security income.

(3) Local social services.

(4) Local and state health services and related resources.

(c) Procedural standards for designated agencies, including the following:

(1) Program development process.

(2) Training for workers in the developmental services field.

(3) Management information system.

(4) Fiscal accountability and cost benefit control.

(5) Establishment of contractual relationships.

(6) Evaluation.

SEC. 697. Section 5723.5 of the Welfare and Institutions Code is amended to read:

5723.5. Notwithstanding any other provision of state law, and to the extent permitted by federal law and consistent with federal regulations governing these claims, the state may seek federal reimbursement for back claims under the Short-Doyle Medi-Cal program.

SEC. 698. Section 7328 of the Welfare and Institutions Code is amended to read:

7328. Whenever a person who is committed to an institution subject to the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, under one of the commitment laws that provides for reimbursement for care and treatment to the state by the county of commitment of the person, is accused of committing a crime while confined in the institution and is committed by the court in which the crime is charged to another institution under the jurisdiction

of the State Department of Mental Health or the Department of Corrections and Rehabilitation, the state rather than the county of commitment shall bear the subsequent cost of supporting and caring for the person.

SEC. 699. Section 7515 of the Welfare and Institutions Code is amended to read:

7515. The medical director may, with the approval of the department having jurisdiction, cause the peremptory discharge of any person who has been a patient for the period of one month.

SEC. 700. Section 10053 of the Welfare and Institutions Code is amended to read:

10053. (a) "Services" means those activities and functions performed by social work staff and related personnel of the department and county departments with or in behalf of individuals or families, which are directed toward the improvement of the capabilities of the individuals or families maintaining or achieving a sound family life, rehabilitation, self-care, and economic independence.

(b) Services for children shall include the coordinated efforts of the State Departments of Social Services and Education to ensure that all children in receipt of aid under CalWORKs are afforded the opportunity to participate and progress under an educational program that will lead to their functioning at full capacity upon reaching maturity. The educational services aspect of public social services includes education for parents in food preparation and provision for nutritional supplements to the extent necessary and as authorized by Article 9 (commencing with Section 49510 of Chapter 9 of Part 27 of the Education Code.

SEC. 701. Section 11212 of the Welfare and Institutions Code is amended to read:

11212. (a) The state, through the county welfare department, shall reimburse the foster parent or foster parents for the cost of the burial plot and funeral expenses incurred for any child who, at the time of death, is receiving foster care, as defined in Section 11251, to the extent that the foster parent or foster parents are not otherwise reimbursed for costs incurred for those purposes.

(b) The state, through the county welfare department, shall pay the burial costs and funeral expenses directly to the funeral home and the burial plot owner when either one of the following conditions exists:

(1) The foster parent or foster parents request the direct payment.

(2) The child's death is due to alleged criminal negligence or other alleged criminal action on the part of the foster parent or foster parents.

(c) The foster parent, or the funeral home and burial plot provider, shall file a claim for reimbursement of costs with the county welfare department at the time and in the manner specified by the department.

The county welfare department shall pay the claims in an amount not to exceed the level of reimbursement allowed by the California Victim Compensation and Government Claims Board for burial costs and funeral expenses under its Victims of Violent Crimes program, which is contained in Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. Claims for the burial costs and funeral expenses for a foster child shall be paid out of funds appropriated annually to the department for those purposes.

SEC. 702. Section 11450.019 of the Welfare and Institutions Code is amended to read:

11450.019. Effective the first day of the month following 90 days after a change in federal law that allows states to reduce aid payments without any risk to federal funding under Title XIX of the Social Security Act contained in Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, the reductions in maximum aid payments specified in Sections 11450.01, 11450.015, and 11450.017 shall not be applied when all of the parents or caretaker relatives of the aided child living in the home of the aided child meet one of the following conditions:

(a) The individual is disabled and receiving benefits under Section 12200 or 12300.

(b) The individual is a nonparent caretaker who is not included in the assistance unit with the child.

(c) The individual is disabled and is receiving State Disability Insurance benefits or Worker's Compensation Temporary Disability benefits.

SEC. 703. Section 11495.25 of the Welfare and Institutions Code is amended to read:

11495.25. Sworn statements by a victim of past or present abuse shall be sufficient to establish abuse unless the agency documents in writing an independent, reasonable basis to find the recipient not credible. Evidence may also include, but is not limited to: police, government agency, or court records or files; documentation from a domestic violence program, legal, clerical, medical or other professional from whom the applicant or recipient has sought assistance in dealing with abuse; or other evidence, such as a statement from any other individual with knowledge of the circumstances that provide the basis for the claim, physical evidence of abuse, or any other evidence that supports the statement.

SEC. 704. Section 14092.35 of the Welfare and Institutions Code is amended to read:

14092.35. To the extent that this article proves to be effective in reducing the cost of uncoordinated primary care delivered in the hospital

emergency room or the costs of duplicative, unnecessary, or avoidable services, program savings may be shared with primary care providers who enroll beneficiaries under this article.

SEC. 705. Section 14125.9 of the Welfare and Institutions Code is amended to read:

14125.9. Nothing in this article shall be interpreted as limiting or interfering in any way with the department's authority to contract for the provision of incontinence medical supplies pursuant to subdivision (b) of Section 14105.3.

SEC. 706. Section 14148.9 of the Welfare and Institutions Code, as added by Section 14 of Chapter 278 of the Statutes of 1991, is amended to read:

14148.9. (a) The Legislature finds and declares that there is a strong statistical relationship between early entry into prenatal care and healthy birth outcomes. An investment in early intervention is highly cost-effective and prevents untold suffering.

(b) It is the intent of the Legislature that the goals of the program established pursuant to this article, in combination with other programs for pregnant women and children, shall be as follows:

(1) To improve access to and quality of prenatal care by making existing programs serving poor women more accessible through outreach, coordination, and removal of barriers to care.

(2) To combine efforts with other programs to measurably reduce the number of women who smoke, use drugs, or engage in other unhealthy practices during pregnancy.

(c) In order to achieve these goals, it is the intent of the Legislature to improve and coordinate existing programs for pregnant women and infants and to remove barriers to care with an intense focus on women who are at high risk of delivering a low or high birth weight baby or a baby who will suffer from major health problems or disabilities.

(d) The program implemented pursuant to this article shall focus on those target populations that are comprised of pregnant high risk women or potentially pregnant teenagers, pregnant women, and women of childbearing age who are likely to become pregnant who smoke, consume alcoholic beverages, or use controlled substances, Black, Hispanic, Native American, and Asian-Pacific Island women who are pregnant or of childbearing age, and uninsured women of childbearing age.

SEC. 707. Section 14166.18 of the Welfare and Institutions Code is amended to read:

14166.18. (a) With respect to each project year, the director shall determine a baseline funding amount for each nondesignated public hospital that was an eligible hospital under paragraph (3) of subdivision (a) of Section 14105.98 for both the 2004–05 fiscal year and the project

year. A hospital's baseline funding amount shall be an amount equal to the total amount paid to the hospital for inpatient hospital services rendered to Medi-Cal beneficiaries during the 2004–05 fiscal year, including the following Medi-Cal payments, but excluding payments received under the Medi-Cal Specialty Mental Health Services Consolidation Program:

(1) Base payments under the selective provider contracting program as provided for under Article 2.6 (commencing with Section 14081) or the Medi-Cal state plan cost reimbursement system for inpatient hospital services for noncontracting hospitals.

(2) Emergency Services and Supplemental Payments Fund payments as provided for under Section 14085.6.

(3) Medi-Cal Medical Education Supplemental Payment Fund payments and Large Teaching Emphasis Hospital and Children's Hospital Medi-Cal Medical Education Supplemental Payment Fund payments as provided for under Sections 14085.7 and 14085.8, respectively.

(4) Small and Rural Hospital Supplemental Payments Fund payments as provided for under Section 14085.9.

(5) Disproportionate share hospital payment adjustments as provided for under Section 14105.98.

(6) Administrative day payments as provided for under Section 51542 of Title 22 of the California Code of Regulations.

(b) The aggregate nondesignated public hospital baseline funding amount shall be the sum of all baseline funding amounts determined under subdivision (a).

(c) With respect to each project year beginning after the 2005–06 project year, an aggregate nondesignated public hospital adjusted baseline funding amount shall be determined as follows:

(1) The department shall determine the aggregate total Medi-Cal revenue, using amounts determined under subdivision (a), with respect to inpatient hospital services rendered during the 2004–05 fiscal year for nondesignated public hospitals that were eligible hospitals under paragraph (3) of subdivision (a) of Section 14105.98 on the last day of the project year less the total amount of disproportionate share hospital payments identified in paragraph (5) of subdivision (a) for those hospitals.

(2) The department shall determine the aggregate total Medi-Cal revenue, using amounts determined under subdivision (a), with respect to inpatient hospital services rendered during the fiscal year preceding the project year for which the nondesignated public hospital adjusted baseline funding amount is being calculated for the nondesignated public hospitals described in paragraph (1), less the total amount of disproportionate share hospital payments in paragraph (5) of subdivision (a) for those hospitals.

(3) The department shall:

(A) Calculate the difference between the amount determined under paragraph (1) and the amount determined under paragraph (2).

(B) Determine the percentage increase or decrease by dividing the difference in subparagraph (A) by the amount in paragraph (1).

(C) Apply the percentage in subparagraph (B) to the aggregate nondesignated public hospital baseline funding amount determined under subdivision (b) less the total amount of disproportionate share hospital payments in paragraph (5) of subdivision (a) for those hospitals.

(D) The aggregate nondesignated public hospital adjusted baseline funding amount is the amount determined in subdivision (b), plus the amount determined in subparagraph (C).

SEC. 708. Section 14171.5 of the Welfare and Institutions Code is amended to read:

14171.5. Any institutional provider of health care services that obtained reimbursement under this chapter to which it is not entitled shall be subject to the following interest charges or penalties:

(a) When it is established upon audit that the provider has claimed payments under this chapter to which it is not entitled, the provider shall pay, in addition to the amount improperly received, interest at the rate specified by subdivision (h) of Section 14171.

(b) When it is established upon audit that the provider claimed payments related to services or costs that the department had previously notified the provider in an audit report that the costs or services were not reimbursable, the provider shall pay in addition to the amount improperly claimed, a penalty of 10 percent of the amount improperly claimed after this notice, plus the cost of the audit. In addition, interest shall be assessed at the rate specified in subdivision (h) of Section 14171. Providers who wish to preserve appeal rights or to challenge the department's positions regarding appeal issues, may claim the cost or services and not be reimbursed therefor if they are identified and presented separately on the cost report.

(c) When it is established that the provider fraudulently claimed and received payments under this chapter, the provider shall pay a penalty of 25 percent of the amount improperly claimed, plus the cost of the audit, in addition to the amount thereof. In addition, interest will be assessed at the rate specified by subdivision (h) of Section 14171. A fraudulent claim is a claim upon which the provider has been convicted of fraud upon the program. Nothing in this section shall prevent the imposition of any other civil or criminal penalties to which the provider may be liable.

(d) Appeals to action taken in subdivisions (a), (b), and (c) of Section 14171.5 above are subject to the administrative appeals process provided by Section 14171.

(e) Penalties paid by providers under subdivisions (a), (b), and (c) of Section 14171.5 are not reimbursable by the program.

(f) As used in this section, "the cost of the audit" includes actual hourly wages, travel, and incidental expenses at rates allowable by California Victim Compensation and Government Claims Board rules, and applicable overhead costs.

SEC. 709. Section 14171.6 of the Welfare and Institutions Code is amended to read:

14171.6. (a) (1) Any provider, as defined in paragraph (3), that obtains reimbursement under this chapter to which it is not entitled shall be subject to interest charges or penalties as specified in this section.

(2) When it is established upon audit that the provider has not received reimbursement to which the provider is entitled, the department shall pay the provider interest assessed at the rate, and in the manner, specified in subdivision (g) of Section 14171.

(3) For purposes of this section, "provider" means any provider, as defined in Section 14043.1.

(b) When it is established upon audit that the provider has claimed payments under this chapter to which it is not entitled, the provider shall pay, in addition to the amount improperly received, interest at the rate specified by subdivision (h) of Section 14171.

(c) (1) When it is established upon audit that the provider claimed payments related to services or costs that the department had previously notified the provider in an audit report that the costs or services were not reimbursable, the provider shall pay, in addition to the amount improperly claimed, a penalty of 10 percent of the amount improperly claimed after receipt of the notice, plus the cost of the audit.

(2) In addition to the penalty and costs specified by paragraph (1), interest shall be assessed at the rate specified in subdivision (h) of Section 14171.

(3) Providers that wish to preserve appeal rights or to challenge the department's positions regarding appeal issues may claim the costs or services and not be reimbursed therefor if they are identified and presented separately on the cost report.

(d) (1) When it is established that the provider fraudulently claimed and received payments under this chapter, the provider shall pay, in addition to that portion of the claim that was improperly claimed, a penalty of 300 percent of the amount improperly claimed, plus the cost of the audit.

(2) In addition to the penalty and costs specified by paragraph (1), interest shall be assessed at the rate specified by subdivision (h) of Section 14171.

(3) For purposes of this subdivision, a fraudulent claim is a claim upon which the provider has been convicted of fraud upon the Medi-Cal program.

(e) Nothing in this section shall prevent the imposition of any other civil or criminal penalties to which the provider may be liable.

(f) Any appeal to any action taken pursuant to subdivision (b), (c), or (d) is subject to the administrative appeals process provided by Section 14171.

(g) As used in this section, "cost of the audit" includes actual hourly wages, travel, and incidental expenses at rates allowable by rules adopted by the California Victim Compensation and Government Claims Board and applicable overhead costs that are incurred by employees of the state in administering this chapter with respect to the performance of audits.

(h) This section shall not apply to any clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code, clinics exempt from licensure under Section 1206 of the Health and Safety Code, health facilities licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or to any provider that is operated by a city, county, or school district.

SEC. 710. Section 14504 of the Welfare and Institutions Code is amended to read:

14504. (a) The Male Involvement Program shall be a continuing program within the Office of Family Planning with the goal of reducing teenage pregnancy through promoting primary prevention skills and motivation in adolescent boys and young men. In order to accomplish this goal, the program shall assist local programs to do all of the following:

(1) Increase community and individual awareness regarding the importance of the roles and responsibilities of adolescent boys and young men in the reduction of teenage pregnancies.

(2) Reinforce community values that support these roles and responsibilities.

(3) Increase knowledge, skills, and motivation of at-risk adolescent boys and young adult men in order to actively promote their role in reducing teenage pregnancies.

(b) Grants shall be made available to qualifying public or private nonprofit providers for implementation of the Male Involvement Program.

(c) This section shall be implemented to the extent funding is made available through the federal government, or in the annual Budget Act or another state statute, or any combination of any sources of funding.

SEC. 711. Section 15634 of the Welfare and Institutions Code, as added by Section 8 of Chapter 140 of the Statutes of 2005, is amended to read:

15634. (a) No care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of the suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected elder or dependent adult abuse, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law enforcement agency may present to the California Victim Compensation and Government Claims Board a claim for reasonable attorney's fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action

upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

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

SEC. 712. Section 15655.5 of the Welfare and Institutions Code, as added by Section 12 of Chapter 140 of the Statutes of 2005, is amended to read:

15655.5. A county adult protective services agency shall provide the organizations listed in paragraphs (v), (w), and (x) of Section 15610.17 with instructional materials regarding elder and dependent adult abuse and neglect and their obligation to report under this chapter. At a minimum, the instructional materials shall include the following:

(a) An explanation of elder and dependent adult abuse and neglect, as defined in this chapter.

(b) Information on how to recognize potential elder and dependent adult abuse and neglect.

(c) Information on how the county adult protective services agency investigates reports of known or suspected abuse and neglect.

(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective services agency with its investigation of the report.

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

SEC. 713. Section 16500.1 of the Welfare and Institutions Code is amended to read:

16500.1. (a) It is the intent of the Legislature to use the strengths of families and communities to serve the needs of children who are alleged to be abused or neglected, as described in Section 300, to reduce the necessity for removing these children from their home, to encourage speedy reunification of families when it can be safely accomplished, to locate permanent homes and families for children who cannot return to their biological families, to reduce the number of placements experienced by these children, to ensure that children leaving the foster care system have support within their communities, to improve the quality and homelike nature of out-of-home care, and to foster the educational progress of children in out-of-home care.

(b) In order to achieve the goals specified in subdivision (a), the state shall encourage the development of approaches to child protection that do all of the following:

(1) Allow children to remain in their own schools, in close proximity to their families.

(2) Increase the number and quality of foster families available to serve these children.

(3) Use a team approach to foster care that permits the biological and foster family and the child to be part of that team.

(4) Use team decisionmaking in case planning.

(5) Provide support to foster children and foster families.

(6) Ensure that licensing requirements do not create barriers to recruitment of qualified, high-quality foster homes.

(7) Provide training for foster parents and professional staff on working effectively with families and communities.

(8) Encourage foster parents to serve as mentors and role models for biological parents.

(9) Use community resources, including community-based agencies and volunteer organizations, to assist in developing placements for children and to provide support for children and their families.

(10) Ensure an appropriate array of placement resources for children in need of out-of-home care.

(11) Ensure that no child leaves foster care without a lifelong connection to a committed adult.

(12) Ensure that children are actively involved in the case plan and permanency planning process.

(c) In carrying out the requirements of subdivision (b), the department shall do all of the following:

(1) Consider the existing array of program models provided in statute and in practice, including, but not limited to, wraparound services, as defined in Section 18251, children's systems of care, as provided for in Section 5852, the Oregon Family Unity or Santa Clara County Family Conference models, which include family conferences at key points in the casework process, such as when out-of-home placement or return home is considered, and the Annie E. Casey Foundation Family to Family initiative, which uses team decisionmaking in case planning, community-based placement practices requiring that children be placed in foster care in the communities where they resided prior to placement, and involve foster families as team members in family reunification efforts.

(2) Ensure that emergency response services, family maintenance services, family reunification services, and permanent placement services

are coordinated with the implementation of the models described in paragraph (1).

(3) Ensure consistency between child welfare services program regulations and the program models described in paragraph (1).

(d) The department, in conjunction with stakeholders, including, but not limited to, county child welfare services agencies, foster parent and group home associations, the California Youth Connection, and other child advocacy groups, shall review the existing child welfare services program regulations to ensure that these regulations are consistent with the legislative intent specified in subdivision (a). This review shall also determine how to incorporate the best practice guidelines for assessment of children and families receiving child welfare and foster care services, as required by Section 16501.2.

(e) The department shall report to the Legislature on the results of the actions taken under this section on or before January 1, 2002.

SEC. 714. Section 16583 of the Welfare and Institutions Code is amended to read:

16583. The Judicial Council shall develop the forms necessary to implement this chapter.

SEC. 715. Section 16800.7 of the Welfare and Institutions Code is amended to read:

16800.7. Agencies responsible for conducting fiscal or program audits or inspections of grants or subventions pursuant to any of the following provisions shall, to the extent practicable and consistent with federal law, endeavor to cooperate and consolidate efforts so as to conduct a single fiscal or compliance audit for any program affected by these provisions, thereby maximizing audit efficiency and minimizing the inconvenience to the program being audited:

(a) The Child Health Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code).

(b) The Maternal and Child Health program as set forth in subdivision (c) of Section 27 of the Health and Safety Code.

(c) The Tobacco Use Prevention program (Article 1 (commencing with Section 104350) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code).

(d) AIDS programs (former Part 1 (commencing with Section 100) of Division 1 of the Health and Safety Code).

(e) The County Health Care for Indigents program (Part 4.7 (commencing with Section 16900)), including, but not limited to, county health care reporting requirements pursuant to Chapter 2 (commencing with Section 16910) and Chapter 2.5 (commencing with Section 16915) of that part.

SEC. 716. Section 17800 of the Welfare and Institutions Code is amended to read:

17800. A not-for-profit hospital that elects to participate in the drug discount program established under Section 340B of the federal Public Health Service Act (42 U.S.C. Sec. 256b) may enter into an agreement with the State Department of Health Services for that purpose, which shall be subject to this part.

SEC. 717. Section 18325.5 of the Welfare and Institutions Code is amended to read:

18325.5. It is the intention of the Legislature that the State of California through state, local governmental, and private agencies shall make a maximum contribution of their in-kind resources and in-kind facilities in order to implement this chapter under Title III of the Older Americans Act of 1965, as amended, provided however that should federal funds become available under Title VII of the Older Americans Act of 1965 (42 U.S.C. Sec. 3021 et seq.), as amended, the Legislature intends that programs provided pursuant to this chapter be implemented to the maximum extent feasible under Title VII (former 42 U.S.C. Sec. 3045 et seq.) in order to secure the maximum federal financial participation. The Older Americans Act of 1965 (42 U.S.C. Sec. 3001 et seq.), as amended, states that the federal government will share in the cost of approved programs and that the local or state share may be "in-kind" contributions.

SEC. 718. Section 18906.5 of the Welfare and Institutions Code is amended to read:

18906.5. (a) The state shall pay 70 percent of the nonfederal costs of administering the Food Stamp Program, subject to Sections 18906 and 18906.7. The counties shall pay the remaining share of the nonfederal costs.

(b) The state shall pay 85 percent of the nonfederal share of the costs of AFDC fraud investigation subject to Section 15204.5. The counties shall pay the remaining share of the nonfederal costs.

SEC. 719. Section 1 of Chapter 260 of the Statutes of 2004, as amended by Chapter 19 of the Statutes of 2005, is amended to read:

Section 1. For purposes of making reductions, initiated during the 2004–05 or 2005–06 school year pursuant to Section 44955 of the Education Code, in the number of employees because of a reduction in services or elimination of a juvenile camp program, a county superintendent of schools in a county of the first class may retain those employees until the effective date of the closure or reduction in services of that juvenile camp program.

SEC. 720. Section 31.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), as amended by Chapter 41 of the Statutes of 2002, is amended to read:

Sec. 31.5. (a) Basin equity assessments and production requirements and limitations on persons and operators within the district are declared to be in furtherance of district activities in the protection of water supplies for users within the district that are necessary for the public health, welfare, and safety of the people of this state. The basin equity assessments and the production requirements and limitations provided for in this act may be imposed upon, and applied to, all persons and producers within the district for the benefit of all who rely directly or indirectly upon the groundwater supplies of the district.

(b) The basin equity assessments imposed pursuant to this act against all persons and operators within the district may be uniform or nonuniform in amount, as determined by the board of directors of the district, in order to effectuate the goals and purposes of the district. The proceeds of the basin equity assessments imposed and collected shall be used to equalize the cost of water to all persons and operators within the district and to acquire water to replenish the groundwater supplies of the district.

(c) As used in this act:

(1) "Supplemental sources" means sources of water outside the watershed of the Santa Ana River, excepting that portion of that watershed on and along Santiago Creek upstream of the downstream toe of the slope of the Villa Park Flood Control Dam, such as, but not limited to, water produced from the Metropolitan Water District of Southern California.

(2) "Basin production percentage" means the ratio that all water to be produced from groundwater supplies within the district bears to all water to be produced by persons and operators within the district from supplemental sources and from groundwater within the district during the ensuing water year.

(d) The district shall annually order an engineer employed by the district to prepare an investigation and report. The investigation and report shall set forth all of the following information, together with other information requested by the district, relating to the preceding water year:

(1) Amount of water produced by persons and operators from groundwater within the district.

(2) Amount of water produced by persons and operators from supplemental sources.

(3) Amount of water produced by persons and operators from all other sources.

(4) Condition of groundwater supplies within the district.

(5) Information as to the probable availability of water from supplemental sources during the next succeeding fiscal year.

(6) The cost of producing water from groundwater within the district, including any replenishment assessment of the district.

(7) The cost of water produced within the district from supplemental sources.

(e) (1) On the second Wednesday in February of each year, the engineering investigation and report shall be delivered to the secretary of the district.

(2) The secretary shall publish, pursuant to Section 6061 of the Government Code, a notice of the receipt of the report and of the public hearing to be held on the date of a meeting of the board of directors in March, in a newspaper of general circulation printed and published within the district, at least 10 days prior to the date at which the public hearing regarding water supplies within the district is to be held.

(3) The notice, among any other information that the district may provide, shall include an invitation to all persons or operators within the district to call at the offices of the district to examine the engineering investigation and report.

(4) The board of directors shall hold on the date of a meeting of the board in March of each year, a public hearing at which a person or operator within the district, or any person interested in the amounts and source from which all persons and operators produce their total supply of water, as well as the estimated difference in the cost of water produced from groundwater within the district or supplemental sources, may appear and be heard, in person or by representative.

(f) (1) On the date of a meeting of the board of directors in April of each year, the board of directors shall hold a public hearing to determine the need and desirability of imposing basin equity assessments and the amounts thereof, the need for establishing production requirements and limitations, and the extent of those requirements and limitations as to each person or operator within the district for the ensuing water year.

(2) In computing and fixing the amount of any basin equity assessment for any person or operator within the district, the board may allow a percentage for delinquencies, not to exceed 10 percent, as determined by the board.

(3) Notice of the proposed hearing shall be published in the district pursuant to Section 6061 of the Government Code at least 10 days prior to the date set for the hearing.

(4) The notice shall set forth all of the following:

(A) That a report regarding water supplies within the district has been prepared.

(B) The date, time, and place of the proposed hearing.

(C) A statement that the board will consider at the hearing the need and desirability of imposing basin equity assessments and the amounts of those assessments, as well as establishing production requirements and limitations, on persons and operators within the district for the ensuing water year and surcharges in connection with those requirements and limitations.

(D) An invitation to all persons and operators to appear at the public hearing and be heard in regard to any of the foregoing matters.

(g) (1) At the hearing, the board shall hear, take, and receive all competent evidence presented regarding the need for basin equity assessments, production requirements and limitations in general, and specifically, the extent of those requirements or limitations as to each person or operator within the district, the amount of the basin equity assessment which shall be imposed upon each person and operator for all purposes other than irrigation at uniform or nonuniform rates and may be imposed upon each person and operator for irrigation purposes at uniform or nonuniform rates for the ensuing water year, and the amount of surcharges for production in excess of the basin production limitations.

(2) After the hearing, the board may, by a resolution adopted by a vote of not fewer than eight members of the board, find and determine for the ensuing water year all of the following:

(A) The estimated total amount of water to be produced by all persons and operators within the district from the groundwater within the district and the estimated amount to be produced by persons and operators from supplemental sources.

(B) The basin production percentage.

(C) That a basin equity assessment and production requirement and limitation from groundwater within the district are necessary for the protection of the water supply of the district.

(D) The surcharge, in an amount to be determined in the discretion of the board, for production in excess of the production limitations.

(E) The amount of the basin equity assessment to be imposed upon each person and operator in a dollar amount per acre-foot of water produced from the groundwater supply for all purposes other than irrigation, which need not be uniform as to each person or operator within the district, and that the amount is reasonable.

(F) The amount of the basin equity assessment to be imposed upon each person and operator in a dollar amount per acre-foot of water produced from the groundwater supply for irrigation purposes, which need not be uniform as to each person or operator within the district, and that the amount is reasonable.

(G) Production requirements or limitations and the surcharge for production in excess of the basin production limitations on persons and operators within the district that will apply during the ensuing water year. The requirements and limitations shall be on the amount of groundwater produced by those persons and operators expressed in a percentage of overall water produced or obtained by those persons or operators from groundwater within the district and from supplemental sources.

(H) That during the ensuing water year, upon the district giving published notice pursuant to Section 6061 of the Government Code in a newspaper of general circulation printed and published within the district at least 10 days prior to such a hearing, a subsequent public hearing may be held to modify the basin production percentage, any basin equity assessment, any production requirement or limitation, or the surcharge for production in excess of the production limitation established by the district. A modification, if any, shall be effective on the date established by the board and the district. The district shall give notice of the modification 10 days prior to the effective date of the modification pursuant to subdivision (e).

(h) (1) The board may exclude all persons and operators who produced 25 acre-feet or less of water from groundwater within the district during the ensuing water year from the imposition of the basin equity assessment and the production requirements and limitations.

(2) All findings and determinations made by the board pursuant to this section are final, conclusive, and binding upon all persons and parties.

(i) (1) The district shall thereafter, and in any event prior to July 1 in each year, give notice to each person or operator within the district. The notice shall include all of the following information:

(A) The amount of the basin equity assessment imposed upon that person or operator per acre-foot of water produced for purposes other than irrigation and the amount of the basin equity assessment imposed upon that person or operator per acre-foot of water produced for irrigation purposes.

(B) The basin production percentage.

(C) The production requirement or limitation upon the person or operator.

(D) The amount of surcharge imposed for production in excess of the basin production limitations.

(2) The notice required by this subdivision and the notice of any subsequent modifications may be sent by postcard or by other first-class mail with postage prepaid by the district.

(j) (1) Each person or operator within the district not excluded from the imposition of a basin equity assessment and the production

requirements and limitations, shall file with the district, on or before September 30 of each year, a basin equity assessment report in the form prescribed by the district setting forth the total amounts of water produced from groundwater within the district and from supplemental sources during the preceding water year by the person or operator. The statement shall be verified by a written declaration under penalty of perjury.

(2) If the person or operator has been required by the district to produce, or has in fact produced, more water from groundwater within the district than the equivalent of the basin production percentage determined by the district, that person or operator shall pay to the district, on or before September 30, an amount determined by the number of acre-feet of water which the person or operator has produced from groundwater within the district in excess of the acre-foot equivalent of the basin production percentage multiplied by the basin equity assessment rate applicable to that person or operator, plus the amount of surcharge due for production in excess of the production limitations.

(3) (A) If a person or operator, pursuant to the requirement of the district, has produced from groundwater within the district less than the equivalent of the basin production percentage, the district shall pay the person or operator, on or before November 30, from the basin equity assessment fund, an amount determined by the number of acre-feet by which the production of the person or operator from groundwater as required by the district is less than the acre-foot equivalent of the basin production percentage multiplied by the basin equity assessment rate applicable to that person or operator.

(B) If the production of the person or operator from groundwater is more than the production required by the district and less than the equivalent of the basin equity production percentage, then the district shall pay the person or operator an amount determined by the number of acre-feet by which the actual production of the person or operator from groundwater is less than the acre-foot equivalent of the basin production percentage multiplied by the basin equity assessment applicable to that person or operator.

(k) If any person or operator fails to pay, when due, the applicable basin equity assessment or surcharge due for production in excess of the production limitations, the district shall charge interest on the delinquent amount at the rate of 1 percent each month or fraction thereof for which the amount remains delinquent. Should any person or operator within the district fail to file a basin equity assessment report on or before November 30 of any year, the district shall, in addition to charging interest, assess a penalty charge against that person or operator in the amount of 10 percent of the amount found by the district to be due.

(*l*) (1) The district may require other reports from persons and operators as necessary and desirable in the application of the basin equity assessment procedures.

(2) Upon good cause shown, an amendment to any report required under this section may be filed, or a correction of any report may be made, within six months after the date the report was filed with the district.

SEC. 721. Section 12 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), as amended by Chapter 89 of the Statutes of 1999, is amended to read:

Sec. 12. (a) The board may institute proceedings for the formation of single zones and also institute projects for single zones and joint projects for two or more zones that may involve the financing, constructing, maintaining, operating, extending, repairing, or otherwise improving any work or improvement of common benefit to that zone or participating zones. The board may also institute separate projects for operation and maintenance of works or improvements for any zones, whether the works or improvements have been constructed by the board or by the state or the federal government or both. Any zone shall include, as far as practicable, all lands that will be benefited by any project proposed for that zone.

(b) Proceeding for the formation of any zone and for the establishment of any project for that zone may be conducted jointly. For the purpose of establishing any zone or participating zones or of acquiring authority to proceed with that project, the board shall adopt a resolution specifying its intention to establish that zone or zones or to undertake that project, or both thereof, together with the engineering and other estimates of the cost of same to be borne by the particular zone and, in the case of participating zones, the proportionate cost to be borne by each of the participating zones and fixing a time and place for public hearing of that resolution; and that resolution shall refer to a map or maps showing the boundaries of each zone and the general location and general construction of that project. The resolution shall also describe the boundaries of any zone proposed to be established; otherwise adequate reference to any established zone involving the project shall be sufficient.

(c) Notice of the hearing shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation, circulated in that zone or each of those participating zones, if there is a newspaper of general circulation, or if there is no newspaper of general circulation, then by posting notice for two consecutive weeks prior to that hearing in five public places designated by the board, in that zone or in each of those participating zones. Publication shall be completed at least seven days before the date of the hearing. The notice

shall contain a copy of the resolution. The notice shall designate a public place in the zone or in each of the participating zones where a copy or copies of the map or maps of each proposed single zone and any project for a single zone or the joint project for participating zones may be seen by any interested person, and the map shall be posted in each of the public places so designated in the notice at least two weeks prior to the hearing.

(d) At the time and place fixed for the hearing, or at any time to which the hearing may be continued, the board shall consider all written and oral objections to the proposed zone or project.

(e) If it is shown that any land is improperly included in the boundaries proposed for the zone, the board, in its order for formation of the zone, shall exclude the land therefrom. If the board concludes that lands that will be benefited by the zone are improperly omitted from the proposed zone, and the owners thereof have not appeared at the hearing, the board shall continue the hearing and direct that notice be given to nonappearing landowners to appear before the board and show cause why their lands should not be included in the proposed zone. The notice shall be given either by publication or posting in the same manner and for the same period as the original notice of hearing or by personal service on each landowner. Any personal service shall be made at least three days prior to the date fixed for further hearing. Proof of the notice given shall be filed with the clerk of the board on or before the day to which the hearing is continued.

(f) The board may continue the hearing from time to time, by order entered upon its minutes, to the end that a full hearing may be had.

(g) If an order for formation of the zone is made at the conclusion of the hearing, the order shall describe the exterior boundaries of the zone as determined by the board, shall be signed by the chairman of the board and attested by the clerk thereof, and shall be recorded by the county recorder in his or her official records.

(h) Upon the conclusion of the hearing, the board may abandon the proposed zone or project or proceed with the proposed zone or project, unless prior to the conclusion of the hearing, a written protest against the proposed zone or project signed by a majority in number of the holders of title to real property, or holders of assessable rights in real property, or holders of evidence of title to real property, representing one-half or more of the assessed valuation of the real property within the zone or within any of the participating zones, is filed with the board. In this case, further proceedings relating to the zone or project shall be suspended for not less than six months following the date of the conclusion of the hearing, or the proceeding may be abandoned in the discretion of the board.

(i) For the purposes of this section, the last equalized assessment roll of the County of Lake next preceding the filing of the protest shall be prima facie evidence as to the ownership of real property, the names and numbers of the persons who are the holders of title, evidence of title, or assessable rights in title to real property, and as to the assessed valuation of real property within the zone or within any of the participating zones for which the project was initiated.

(j) Executors, administrators, special administrators, and guardians may sign the protest provided for in this act on behalf of the estate represented by them. If the property is assessed in the name of those representatives, that fact shall establish the right of those representatives to sign the protest. If assessed in the name of the decedent, minor, or incompetent person, certified copies of the letters or other evidence satisfactory to the board shall be produced.

(k) If real property appears to be owned in common or jointly or by a partnership, or if letters of representatives of decedents, minors, or guardians are joint, only one of the owners, representatives, or partners may sign the protest for all joint owners, representatives, or partners if the party claiming the right to protest for all produces the written consent of his or her coowners, representatives, or partners to do so, duly acknowledged by the consenting coowners, representatives, or partners in the manner that deeds of real property are required to be acknowledged to entitle those deeds to be recorded in the recorder's office of the county. Any joint owner, partner, or tenant in common may sign and thus be counted independently for this proportionate share of the assessed valuation of that real property as shall be determined by division of the evaluation by the number of jointly interested owners of the real property.

(*l*) If real property is assessed in the name of a trustee or trustees, the trustee or trustees shall be deemed to be the person entitled to sign the protest, and if assessed in the name of more than one trustee, the right to sign the protest shall be determined in like manner as provided in subdivision (k) with respect to coowners.

(m) The protest of any public or quasi-public corporation, private corporation or unincorporated association may be signed by any person authorized by the board of directors, trustees, or other managing body of the corporation or association, which authorization shall be in writing. A proxy executed by an officer or officers of the association or corporation, attested by its seal, and duly acknowledged shall constitute sufficient evidence of that authority, and shall be filed with the board.

(n) The owner of any real property or interest in real property, appearing upon the assessment roll, which has been assessed in the wrong name or to unknown owners, or which has passed from the owner appearing on the last equalized assessment roll, since the last equalized

assessment was made, shall be entitled to sign the protest represented thereby, either by the production of a proxy from the former owner, or by furnishing evidence of his or her ownership by a conveyance duly acknowledged showing the title to be vested in the person claiming the right to sign the protest, accompanied by a certificate of a competent searcher of titles, certifying that a search of the official records of the county, since the date of the conveyance, discloses no conveyance or transfer out from the grantee or transferee named in the conveyance.

(o) If the real property has been contracted to be sold, the vendee shall be entitled to sign the protest, unless that real property is assessed in the name of the vendor, in which event the vendor shall be entitled to so do.

(p) The board may inquire and take evidence for the purpose of identifying any person claiming the right to sign the protest as being the person shown on the assessment roll or otherwise as entitled thereto. Unless satisfactory evidence is furnished, the right to sign the protest may be denied.

(q) In its resolution of intention on the institution of any project for operation and maintenance of works or improvements for any zone and in the order of adoption of the project, the board shall fix a total amount that it will raise annually thereafter by assessments under Section 13.1 of this act to pay the expenses of that operation and maintenance.

(r) If the board determines that it is necessary to increase the annual assessments to meet operational and maintenance requirements of the works or improvements of any zone, it may increase the assessments in the manner in which the assessments were originally established and in accordance with other applicable provisions of law.

SEC. 722. Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), as amended by Section 18 of Chapter 399 of the Statutes of 1996, is amended to read:

Sec. 87. (a) The tide and submerged lands conveyed to the district by any city included in the district shall be held by the district and its successors in trust and may be used for purposes in which there is a general statewide purpose, as follows:

(1) For the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation.

(2) For all commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities.

(3) For the establishment, improvement, and conduct of airport and heliport or aviation facilities, including, but not limited to, approach, takeoff, and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance, and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of air commerce and air navigation.

(4) For the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient for the promotion and accommodation of any of the uses set forth in this section.

(5) For the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses.

(6) For the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds, and similar recreational facilities, and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses, including, but not limited to, snack bars, cafes, restaurants, motels, launching ramps, and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways, and landscaped areas.

(7) For the establishment and maintenance of those lands for open space, ecological preservation, and habitat restoration.

(b) The district or its successors shall not, at any time, grant, convey, give, or alienate those lands, or any part thereof, to any individual, firm, or corporation for any purposes whatever. However, the district, or its successors, may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes, and may lease those lands, or any part thereof, for limited periods, not

exceeding 66 years, for purposes consistent with the trusts upon which those lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from those leases, franchises, and privileges. Those lease or leases, franchises, and privileges may be for any and all purposes that do not interfere with commerce and navigation.

(c) Those lands shall be improved without expense to the state. However, nothing in this section shall preclude expenditures for the development of those lands for any public purpose not inconsistent with commerce, navigation, and fishery, by the state, or any board, agency, or commission thereof, when authorized or approved by the district, or preclude expenditures by the district of any funds received for that purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of those lands or any improvements, betterments, or structures thereon, the district or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments, or structures constructed upon those lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on those lands with the right of convenient access to that water over those lands for that purpose.

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in those lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove deposits from those lands.

(h) Those lands shall be held subject to the express reservation and condition that the state may at any time in the future use those lands or any portion for highway purposes without compensation to the district, its successors or assigns, or any person, firm, or public or private corporation claiming under it, except that in the event improvements, betterments, or structures have been placed upon the property taken by the state for those purposes, compensation shall be made to the district, its successors, or assigns, or any person, firm, or public or private corporation entitled thereto for the value of his or her or its interest in the improvements, betterments, or structures taken or the damages to that interest.

(i) The State Lands Commission, at the cost of the district, shall survey and monument those lands and record a description and plat thereof in the office of the County Recorder of San Diego County.

(j) As to any tide and submerged lands conveyed to the district by a city that are subject to a condition contained in a grant of those lands to the city by the state that those lands shall be substantially improved within a designated period or else they shall revert to the state, that condition shall remain in effect as to those lands and shall be applicable to the district.

As to any tide and submerged lands conveyed to the district by a city that are not subject to this condition contained in a grant by the state and that have not heretofore been substantially improved, those lands, within 10 years from July 12, 1962, shall be substantially improved by the district without expense to the state. If the State Lands Commission determines that the district has failed to improve the lands as herein required, all right, title, and interest of the district in and to those lands shall cease and the lands shall revert and rest in the state.

SEC. 723. Section 26.9 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), as amended by Section 31.5 of Chapter 1195 of the Statutes of 1993, is amended to read:

Sec. 26.9. (a) After the establishment of a zone in which a groundwater charge may be levied, each owner or operator of a water-producing facility within the zone, until the time that the water-producing facility has been permanently abandoned, shall file with the district, on or before the 30th day following the end of collection periods established by the board, a water production statement setting forth the total production in acre-feet of water for the preceding collection period, a general description or number locating each water-producing facility, the method or basis of the computation of the water production, and the amount of the groundwater charge based on the computation. The collection periods may be established at intervals of not more than one year or less than one month. If no water has been produced from the water-producing facility during a preceding collection period, this statement shall be filed as provided for in this section, setting forth that no water has been produced during the applicable period. The statement shall be verified by a written declaration under penalty of perjury.

(b) The groundwater charge is payable to the district on or before the last date upon which the water production statements shall be filed, and is computed by multiplying the production in acre-feet of water for each classification as disclosed in the statement by the groundwater charge for each classification of water. The owner or operator of a water-producing facility that is being permanently abandoned shall give written notice of the abandonment to the district. If any owner or operator of a water-producing facility fails to pay the groundwater charge when due, the district shall charge interest at the rate of 1 percent each month on the delinquent amount of the groundwater charge.

(c) If any owner or operator of a water-producing facility fails to register each water-producing facility, or fails to file the water production statements as required by this act, the district shall, in addition to charging interest, assess a penalty charge against the owner or operator in an amount of 10 percent of the amount found by the district to be due. The board may adopt regulations to provide that in excusable or justifiable circumstances the penalty may be reduced or waived.

(d) If any owner or operator of a water-producing facility fails to file a water production statement as required by this act, the district shall, in addition to charging interest and assessing a penalty charge, assess an administrative charge to recover the costs of collection. The board may adopt regulations to provide that in excusable or justifiable circumstances the administrative charge may be reduced or waived.

(e) If a water-measuring device is permanently attached to a water-producing facility, the record of production as disclosed by the water-measuring device shall be presumed to be accurate and shall be used as the basis for computing the water production of the water-producing facility in completing the water production statement, unless it can be shown that the water-measuring device is not measuring accurately.

(f) If a water-measuring device is not permanently attached to a water-producing facility, the board may establish a method or methods to be used in computing the amount of water produced from the water-producing facilities. The methods may be based upon any or all of the following criteria: the minimum charge sufficient to cover administrative costs of collection, size of water-producing facility discharge opening, area served by the water-producing facility, number of persons served by the water-producing facility, use of land served by the water-producing facility, crops grown on land served by the water-producing facility, or any other criteria that may be used to determine with reasonable accuracy the amount of water produced from that water-producing facility. The district may levy an annual charge upon a water-producing facility for which no production has been recorded but that has not been permanently abandoned if that charge does not exceed the annual cost to the district of maintaining and administering the registration of that facility.

SEC. 724. Section 8 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), as amended by Chapter 1208 of the Statutes of 1992, is amended to read:

Sec. 8. (a) The board of supervisors of the district may, in any year, do any of the following:

(1) (A) Levy taxes or assessments in each or any of the zones of the district to pay the cost and expenses of administering, engineering,

constructing, maintaining, operating, extending, repairing or otherwise improving any or all works or improvements established, or to be established, within or on behalf of the zone or zones, according to the benefits derived or to be derived by the respective zones, by either of the following methods:

(i) By a levy or assessment upon all property within a zone or participating zone, including land, improvements on the land, and personal property.

(ii) By a levy or assessment upon all real property within a zone or participating zone, including both land and improvements.

(B) It is declared that for the purposes of any tax or assessment levied under this subdivision, the property so taxed or assessed within a given zone is equally benefited.

(2) Levy taxes or assessments by either method authorized by paragraph (1) in each or any of the zones, according to the special benefits derived or to be derived by the specific properties in a zone or zones, to pay the cost and expenses of carrying out any of the objects or purposes of this act of special benefit to the zone or zones, including the constructing, administering, engineering, maintaining, operating, extending, repairing, or otherwise improving any or all works of improvement established, or to be established, within or on behalf of the zone or zones.

(3) Levy taxes or assessments within a zone within which one or more subzones are established pursuant to Section 10.1 of this act in the manner provided by, and subject to the limitations of, that section.

(b) The taxes or assessments shall be levied and collected together with, and not separately from, taxes for county purposes, the revenues derived from the taxes shall be paid into the county treasury to the credit of the district, and the board of supervisors shall have the power to control and order the expenditure for these purposes. However, no revenues, or portions thereof, derived in any of the several zones from the taxes or assessments levied under paragraph (1) of subdivision (a) shall be expended for administering, engineering, constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements located in any other zone except as provided in Section 11. Moreover, the aggregate taxes or assessments levied in any zone or subzone established under this act for any fiscal year shall not exceed forty cents ($0.40) on each one hundred dollars ($100) of assessed valuation of the taxable property in the zone or subzone, exclusive of any tax levied to meet the bonded indebtedness of any zone or subzone and the interest on the bonded indebtedness. The maximum rate of forty cents ($0.40) set forth in this subdivision supersedes any maximum tax or assessment rate previously fixed by the board in a resolution

establishing any zone or subzone pursuant to Section 10, and may be levied within any zone or subzone irrespective of any maximum tax or assessment rate so fixed.

(c) (1) The board may also, by an ordinance approved by two-thirds of the board, impose charges in any zone or subzone for the specific purpose of funding flood control, storm drainage, water conservation or supply, or water pollution abatement projects or programs either adopted or modified pursuant to Section 10.3 or 10.4.

(2) Revenues derived under this subdivision shall be used for acquisition, construction, repair, maintenance, replacement, operation, and administration of flood control, storm drainage, water conservation or supply, or sewer systems, or water pollution abatement projects for benefit of any zone or subzone.

(3) Charges may be collected together with the charges imposed for any other utility service furnished by a department or agency over which the board does not exercise control, or with a publicly or privately owned public utility, with the written consent and agreement of that department, agency, or public utility owner, which agreement shall establish the terms and conditions upon which the collections shall be made. The agreement, in the discretion of the department, agency, or public utility owner making the collections, also may provide that those rates shall be itemized, billed upon the same bill, and collected as one item, together with, and not separately from, the other utility service charge.

(4) If the board has adopted an ordinance pursuant to this subdivision, it may, by that ordinance or by separate ordinance or resolution, approved by a two-thirds vote of the board, elect to have the charges collected on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, its general taxes. In that event, it shall cause a written report to be prepared each year and filed with the clerk, which shall contain a description of each parcel of real property receiving the services and facilities and the amount of the charge for each parcel for the year, computed in conformity with the charges prescribed by the ordinance or resolution.

(5) Any ordinance or resolution adopted pursuant to this subdivision, authorizing the collection of charges on the tax roll, shall remain in effect for the time specified in the ordinance or resolution or, if no time is specified in the ordinance or resolution, until repealed or until a change is made in the rates.

(6) The real property may be described by reference to maps prepared in accordance with Section 327 of the Revenue and Taxation Code, and on file with the Office of the Assessor of San Mateo County or by reference to plats or maps on file in the office of the clerk.

(7) On or before August 10 of each year following the final determination upon each charge, the clerk shall file with the auditor a copy of the report prepared pursuant to this subdivision with a statement endorsed on the report over his or her signature that the report has been finally adopted by the board. The auditor shall enter the amounts of the charges against the respective lots or parcels of land, as they appear on the current assessment roll.

(8) The board may impose a basic penalty of not more than 10 percent for nonpayment of the charges within the time and in the manner prescribed by it, and in addition may provide for a penalty, not exceeding 1 ½ percent per month, for nonpayment of the charges and basic penalty. The board may provide for the collection of these penalties.

SEC. 725. Section 26.7 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), as amended by Chapter 664 of the Statutes of 1992, is amended to read:

Sec. 26.7. (a) (1) Prior to the end of the water year in which the hearing is held, and based upon the findings and determinations from the hearing, the board shall determine whether or not a groundwater charge should be levied in any zone or zones.

(2) If the board determines that a groundwater charge should be levied, it shall levy, assess, and affix the charge or charges against all persons operating groundwater-producing facilities within the zone or zones during the ensuing water year.

(3) (A) The charge shall be computed at a fixed and uniform rate or rates per acre-foot for agriculture water, and at a fixed and uniform rate or rates per acre-foot for all water other than agricultural water.

(B) Different rates may be established in different zones, except that in each zone the rate or rates for agricultural water shall be fixed and uniform.

(C) The rate or rates, as applied to operators who produce groundwater above a specified annual amount, may, except in the case of any person extracting groundwater in compliance with a government-ordered program of cleanup of hazardous waste contamination, be subject to prescribed, fixed, and uniform increases in proportion to increases by that operator in groundwater production over the production of that operator for a prior base period to be specified by the board, upon a finding by the board that conditions of drought and water shortage require the increases. The increases shall be related directly to the reduction in the affected zone groundwater levels in the same base period.

(D) The rates shall be established each year in accordance with a budget for that year submitted by the district to the Board of Supervisors of Santa Clara County pursuant to this act, or amendments or adjustments to that budget, and shall be fixed and uniform rates for agricultural water

and for all water other than agricultural water, respectively, except that each rate for agricultural water shall not exceed one-fourth of the rate for all water other than agricultural water.

(b) (1) The board may also impose or adjust any groundwater charge, and the rate of any charge, on or before January 1 of each water year if the board determines that the imposition or adjustment is necessary.

(2) The board shall prepare a supplemental report to the annual report prepared pursuant to Section 26.5, explaining the reasons for the imposition or adjustment of the charge. The board shall file the supplemental report with the clerk of the board at least 45 days before the date the new or adjusted charge is proposed to take effect.

(3) (A) The clerk shall publish in a newspaper of general circulation published within the district, pursuant to Section 6061 of the Government Code, a notice of the receipt of the supplemental report and a hearing to be held on the proposed imposition or adjustment of the groundwater charge at least 31 days before the date on which the new or adjusted charge is proposed to take effect and at least 10 days before the date of the hearing.

(B) The notice shall invite any operator of a water-producing facility within the district and other interested parties to examine the supplemental report prepared pursuant to paragraph (2) at the district office.

(4) (A) A public hearing shall be held, at least 21 days before the date on which the new or adjusted groundwater charge is proposed to take effect, in the chambers of the board.

(B) Any operator of a water-producing facility within the district may, in person or by means of a representative, present evidence at the hearing concerning the imposition or adjustment of the groundwater charge.

(c) Any groundwater charge levied pursuant to this section shall be in addition to any general tax or assessment levied within the district or any zone or zones thereof.

(d) Clerical errors occurring or appearing in the name of any person or in the description of the water-producing facility if the production of water is otherwise properly charged, or in the making or extension of any charge upon the records that do not affect the substantial rights of the assessee or assessees, shall not invalidate the groundwater charge.

SEC. 726. Section 45 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), as amended by Chapter 1130 of the Statutes of 1991, is amended to read:

Sec. 45. The board shall appoint a task force to recommend a water allocation formula for urban and agricultural areas in the county that are not within the jurisdiction of the Monterey Peninsula Water Management District and the Pajaro Valley Water Management Agency. An urban

allocation formula is necessary to preserve agricultural access to an adequate water supply and to preserve agriculture as a mainstay of the Salinas Valley economy. The task force shall make the recommendation to the agency on or before January 1, 1992.

SEC. 727. Section 510 of the Pajaro Valley Water Management Agency Act (Chapter 257 of the Statutes of 1984), as amended by Chapter 387 of the Statutes of 1988, is amended to read:

Sec. 510. The agency may do any of the following:

(a) Enter into contracts and employ and retain personal services. The board may cause construction or other work to be performed or carried out by contracts or by the agency under its own supervision.

(b) Contract for and perform contracts with public entities for the performance of administration of the agency and perform or contract for the performance of tests, studies, and investigations as necessary and proper to carry out the objects and purposes of the agency.

(c) All contracts for the construction of any unit of work estimated to cost over ten thousand dollars ($10,000) shall be let to the lowest responsible bidder in accordance with Chapter 2 (commencing with Section 22000) of Part 3 of Division 2 of the Public Contract Code. If the cost of the project will not exceed ten thousand dollars ($10,000) the agency may have the work done by force account. The agency may purchase in the open market, without advertising for bids, materials, supplies, and professional services for use in any work either under contract or by force account.

(d) Create, establish, and maintain offices and positions that the board determines are necessary and convenient for the transaction of the business of the agency.

SEC. 728. Section 408 of Chapter 688 of the Statutes of 1984 is amended to read:

SEC. 408. (a) All contracts for the construction of any unit of work, except as provided, estimated to cost in excess of ten thousand dollars ($10,000) shall be let to the lowest responsible bidder in accordance with this section.

(b) The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material in connection with the contract. The board may reject any and all bids.

(c) If all proposals are rejected or no proposals are received pursuant to advertisement, the estimated cost of the work does not exceed the sum of ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work necessary to protect life and property from impending flood damage, the board, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. The district may purchase in the open market, without advertising for bids thereof, materials and supplies for use in any work either under contract or by force account.

(d) This section does not apply to a contract entered into with the United States or to a contract authorized by a vote of the eligible voters of the district or a zone.

(e) The district shall comply with Chapter 2 (commencing with Section 22000) of Part 3 of Division 2 of the Public Contract Code, which shall control over this act to the extent of any inconsistency.

SEC. 729. Section 408 of Chapter 689 of the Statutes of 1984 is amended to read:

SEC. 408. (a) All contracts for the construction of any unit of work, except as provided, estimated to cost in excess of ten thousand dollars ($10,000) shall be let to the lowest responsible bidder in accordance with this section.

(b) The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material in connection with the contract. The board may reject any and all bids.

(c) If all proposals are rejected or no proposals are received pursuant to advertisement, the estimated cost of the work does not exceed the sum of ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work necessary to protect life and property from impending flood damage, the board, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(d) This section does not apply to a contract entered into with the United States or to a contract authorized by a vote of the eligible voters of the district or a zone.

(e) The district shall comply with Chapter 2 (commencing with Section 22000) of Part 3 of Division 2 of the Public Contract Code, which shall control over this act to the extent of any inconsistency.

SEC. 730. Section 602 of Chapter 1023 of the Statutes of 1982 is amended to read:

Sec. 602. (a) The agency shall develop and adopt a lower aquifer management plan for future extractions from the lower aquifer system. As a part of this plan, the agency shall determine the hydrologic characteristics of the lower aquifer system in the following geographical areas:

(1) Las Posas Basin.

(2) Pleasant Valley Basin.

(3) Oxnard Plain Basin, including forebay.

(4) Offshore area.

(b) For each area described in subdivision (a), the lower aquifer system management plan shall estimate the following:

(1) Existing groundwater storage.

(2) The average annual change in storage for the period 1980–2010.

(3) Groundwater storage for the year 2010.

(4) Long-term recoverable storage, including an estimate of nonrecoverable storage.

(5) The expected adverse effects of projected extractions.

(c) The lower aquifer system management plan shall include a policy for the issuance of new well permits for lower aquifer system wells that takes into consideration the location of proposed wells and area of use, projected extractions from the wells, and the effect of the extractions on existing users and on storage in the lower aquifer system. In developing the lower aquifer system management plan, the agency shall consider a ban on new irrigated acreage or new municipal water system wells. As a further part of the lower aquifer system management plan, the agency shall develop a contingency plan to deal with the possible occurrence of on-land seawater intrusion within the lower aquifer system. This contingency plan shall consider the possibility that new demands could result from upper aquifer system wells that may become inoperative.

(d) Notwithstanding any other provision of this act, the agency shall not regulate existing extraction from the lower aquifer system until the agency has completed and adopted its lower aquifer system management plan, unless it has determined at a noticed public hearing that there is evidence of inland seawater intrusion in the lower aquifer system or that there is less than 50 years of water supply remaining in any one of the groundwater basins listed in subdivision (a) that comprise the lower aquifer system. If the agency makes the requisite findings and seeks to regulate extractions prior to adoption of the lower aquifer system

management plan, it may regulate extractions from one or more of the groundwater basins comprising the lower aquifer system without having to regulate extractions from the others by adopting basin management plan. The impacts associated with regulating extractions within one or more basins upon all other basins in the system must be evaluated by the agency and incorporated in the basin management plan before it can be adopted and implemented.

SEC. 732. Section 5.5 of the Santa Barbara County Flood Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), as added by Chapter 234 of the Statutes of 1978, is amended to read:

Sec. 5.5. (a) In addition to the powers described elsewhere in this act, the district shall have the power by ordinance or resolution, subject to referendum pursuant to Article 2 (commencing with Section 9340) of Chapter 4 of Division 9 of the Elections Code, to prescribe, revise, and collect fees and charges in any zone, established pursuant to Section 3 or Section 11, as a condition of development of land. Land to be developed within a zone shall be subject to the fees and charges of the zone in which it is located. Development of land for the purposes of this section shall include, but not be limited to, subdivision development as governed by the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code); construction of new buildings, structures, and improvements for residential, commercial, or industrial purposes; and any development of land requiring either zone variance or special use permit. The amount of fees and charges levied for each zone shall be determined separately and shall be based upon the need created by development of land for flood control facilities within the zone. The amount of fees and charges levied for any zone shall not exceed five hundred dollars ($500) for each acre or portion of an area of land to be developed. Fees and charges prescribed as a condition of development of land pursuant to this section shall be in addition to any other conditions imposed on that development by any other agency having power to prescribe other conditions.

(b) Except as otherwise provided in this act, revenues derived from fees and charges prescribed for any zone may be used only for the acquisition, engineering, design, construction, reconstruction, maintenance, or operation of flood control or storm drainage facilities, or the installation or maintenance of landscaping as authorized by Section 5.4, within that zone, or used to pay the interest on or reduce the principal of any bonded indebtedness of that zone.

(c) Whenever the development of land within any zone is made subject to fees and charges by the board of directors pursuant to this section, the board of directors may allow a credit against those fees for the

acquisition, engineering, design, construction, reconstruction, maintenance, or operation costs of any flood control or storm drain facility within that zone that has been constructed or paid for in connection with the development of land within that zone. The board of directors may also reduce fees or charges prescribed for any part of the land to be developed within that zone if it finds that because of special circumstances the payment would be inequitable or would cause undue hardship and the reduction of the fees would be in the public interest.

(d) The consent and approval of the legislative body of a city shall be necessary before any fees or charges may be levied on the development of land located within the corporate boundaries of a city that are higher than any fees or charges levied on the development of land located outside and contiguous to the corporate boundaries of that city.

SEC. 733. Section 13 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970) is amended to read:

Sec. 13. Except as otherwise provided in this act, the formation election shall be conducted in accordance with the general election laws of this state so far as applicable. An election called pursuant to this act may be consolidated with any other election pursuant to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code.

SEC. 734. Section 16 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970) is amended to read:

Sec. 16. Except as otherwise provided in this act, the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10 of the Elections Code), shall be applicable to general district elections of elected members of the board.

SEC. 735. Any section of any act enacted by the Legislature during the 2006 calendar year that takes effect on or before January 1, 2007, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2006 calendar year and takes effect on or before January 1, 2007, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.