SENATE BILL No. 600

Introduced by Committee on Judiciary (Senators Escutia (Chair), Ackerman, Cedillo, Ducheny, Kuehl, Morrow, and Sher)

February 20, 2003

An act to amend Sections 853, 855, 1766, 1971, 2154.2, 4409, 4848, 19613, and 19617.5 of, and to add a heading to Article 7.5 (commencing with Section 17582) of Chapter 1 of Part 3 of Division 7 of, the Business and Professions Code, to amend Sections 48, 941, 1102.6, 1102.6b, 1714, 1936, 1946.1, 1954, 2924j, and 2941 of the Civil Code, to amend Sections 17, 170.6, 179, 437c, 1208.5, 1420, and 1607 of the Code of Civil Procedure, to amend Sections 2117 and 25118 of the Corporations Code, to amend Sections 430, 446, 8483, 8499.5, 8813, 17073.25, 20091, 22138.5, 25103, 35401, 35534, 35738, 37220.8, 37252.1, 41329.3, 41344, 42127, 42238.46, 42238.53, 44775.4, 44775.6, 44775.7, 44775.8, 44830.3, 47605.3, 47614.5, 47632, 48927, 51122, 51226.1, 51226.3, 51700, 52053, 52056, 52071, 52073, 53082, 54201, 56021.1, 56046, 56341.5, 56383, 59008, 59104, 59205, 60246, 60900, 66025.3, 67385.3, 70010, 94140, 94154, 94771, and 99235 of the Education Code, to amend Sections 13102, 13107, and 19227 of the Elections Code, to amend Sections 3048, 3118, 8802, 9210, 9212, and 17506 of the Family Code, to amend Section 1226 of, and to amend the heading of Article 1 (commencing with Section 3100) of Chapter 17 of Division 1 of, the Financial Code, to amend Sections 1019, 2081.7, 2086, 2118, 3508, and 6954 of the Fish and Game Code, to amend Sections 9221, 12999.5, and 79008 of the Food and Agricultural Code, to amend Sections 3309.5, 3517.61, 3562, 3593, 6527, 7579.5, 8314, 8592.4, 8670.40, 10201, 10202, 10203, 10204, 10206, 11121, 12965, 14838.5, 14838.7, 14981, 19142, 19775.17, 19775.18, 19827, 19867, 19997.3, 20057, 20501, 20610, 20611, 20677, 20677.4, 20752, 20902.5, 21220, 21362.3, 21465, 22009.03, 22009.1, 22018, 22156,

22502, 22754, 22810, 22840.2, 23119, 26608.3, 30061, 30063, 31520.1, 31629.5, 31787.6, 45310.7, 53216.8, 53601.7, 53635, 57116, 68085, 68095, 68115, 68620, 69587, 69588, 70367, 70391, 70392, 71601, 71615, 71632.5, 71636, 71636.3, 73665, 73757, and 82011 of, and to amend and renumber Section 26638.5 of, the Government Code, to amend Sections 1339.63, 1368.015, 1368.02, 1797.115, 1797.196, 11571, 11581, 18943, 25249.7, 42801.1, 44299.80, 50199.74, 52075.1, 100870, 102247, 113995, 115000.1, 115928, 122137, 123418, 123464, and 125116 of, and to amend and renumber Section 121140 of, the Health and Safety Code, to amend Sections 1211 and 10235.52 of the Insurance Code, to amend Sections 98.2, 176, 230.1, 1776, and 3099.3 of the Labor Code, to amend Sections 179, 395.3, 406, and 1035.6 of, and to amend and renumber Sections 411, 412, 413, 414, 415, 416, 417, 418, 419, and 420 of, the Military and Veterans Code, to amend Sections 132.5, 171.5, 337u, 383c, 424, 597*l*, 808, 1089, 1203.3, 1240.1, 1463, 1524.1, 11171, 11199, 11226, 11230, 12087.5, and 13823.9 of, and to repeal Article 4.5 (commencing with Section 12087) of Chapter 1 of Title 2 of Part 4 of, the Penal Code, to amend Sections 10524 and 20103.8 of the Public Contract Code, to amend Sections 4114.5, 4123, 5090.37, 5631, 6307.1, 21098, 25534, 30812, 31119, and 40507 of, and to amend and renumber Sections 21061.0.5 and 30950 of, the Public Resources Code, to amend Sections 334, 345, 346, 350, 360, 362, 394.25, 398.4, 5411.5, 7000, 15704, 132353.2, 132370.5, 132370.6 of, and to amend and renumber Sections 132632 and 132634 of, the Public Utilities Code, to amend Sections 96.1, 408, 426, 998, 2921.5, 7280, 7286.24, 17041, 17052.2, 17052.6, 17062, 17952.5, 18713, 18716, 18831, 19006, 20503, 20563, 23701t, 60361.5, and 60401 of, and to amend and renumber the heading of Chapter 2.98 (commencing with Section 7286.75) of Part 1.7 of Division 2 of, the Revenue and Taxation Code, to amend Sections 216.5, 390, and 27322 of the Streets and Highways Code, to amend Sections 411 and 15051 of the Unemployment Insurance Code, to amend Sections 5068, 9250.19, 9554, 11614.1, 11701, 11711.3, 12509, 21228, 21655.3, 23109.2, and 42011 of the Vehicle Code, to amend Sections 1013, 12949.6, 12994, 13307.1, 22762, 75480, 79420, and 79460 of, and to amend the heading of Article 1 (commencing with Section 71660) of Chapter 3 of Part 5 of Division 20 of, the Water Code, to amend Sections 225.05, 366.4, 1719, 4015, 4094, 4503, 5205, 5346, 5405, 11450, 11451.5, 11462, 14105.95, 14105.96, 14172, 15610.37, and 18969 of the Welfare and Institutions Code, and to amend Sections 12.5, 13, 13.5, 14 of Chapter

1449 of the Statutes of 1951, Section 1 of Chapter 483 of, Section 1 of Chapter 575 of, Section 1 of Chapter 583 of, Section 1 of Chapter 697 of, Section 5 of Chapter 1020 of, and Section 1 of Chapter 1060 of the Statutes of 2002, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 600, as introduced, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make technical, nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. 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 ~~Ginocologia~~ *Ginecología* y Obstetricia, A.C., the Consejo Mexicano de ~~Certificacion~~ *Certificación* en Medicina

Familiar, A.C., the Consejo Mexicano de Medicina Interna, A.C., or the Consejo Mexicano de ~~Certificacion~~ *Certificación* en ~~Pediatria~~ *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 National Autonomous University of Mexico (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 ~~of the Business and Professions Code~~. 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 English as a Second Language (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 Medical Board of California 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, ~~shall be~~ *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~~ *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 ~~Medical Board of California~~ *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:

(A) Be graduates from the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de ~~Odontologia~~ *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 ~~Odontologia~~ *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 which 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 which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iii) Clinical applications which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

~~(iii)~~

(iv) Biomedical sciences which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

~~(iv)~~

(v) Clinical history management which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

~~(v)~~

(vi) Special patient care which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

~~(vi)~~

(vii) Sedation techniques which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

~~(vii)~~

(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.

~~(viii)~~

(ix) Introduction to health care systems in California.

~~(ix)~~

(x) Introduction to community clinic operations.

(2) Upon satisfactory completion to a competency level of the requirements in paragraph (1), 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.

(3) 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)).

(4) 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)~~ of this subdivision~~.

(5) (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 which 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 heath 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.

(6) The program shall also include issues dealing with program operations, and shall be developed in consultation by representatives of community clinics, approved dental schools, and the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de ~~Odontologia~~ *Odontología*).

(7) The Dental Board of California shall provide oversight review of the implementation of this program and the evaluation required pursuant to subdivision (j). The Dental 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 Dental Board of California 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 the National Autonomous University of Mexico *(UNAM)* in consultation with the Medical Board of California and the Dental 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~~ *limited-English-speaking* patient populations and increases in the number of ~~limited English-speaking~~ *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. 2. Section 855 of the Business and Professions Code is amended to read:

855. (a) Up to 70 international medical graduates who have passed their United States medical license examination on the first attempt and who have been working in the medical field in the capacity of a medical assistant, a nurse practitioner, a nurse-midwife, a physician assistant, a dental hygienist, or a quality assurance and peer review specialist for not less than three years, shall be selected to participate in a pilot program. Preference shall be given to international medical graduates who are residents of California, have experience working in communities whose language is other than English and whose culture is not from the dominant society, and have a proven level of literacy in the foreign language of a medically underserved community.

(b) If there are not 70 international medical graduates who meet the criteria of subdivision (a), the remaining openings may be filled by participants who have passed the United States medical license examination on two or more attempts, have been working in the medical field in the capacity of a medical assistant, a nurse practitioner, a nurse-midwife, a physician assistant, a dental hygienist, or a quality assurance and peer review specialist for not less than three years, and who pass an additional test to be

determined by the medical facility and the medical school participating in the pilot program. Preference shall be given to international medical graduates who are residents of California, have experience working in communities whose language is other than English and whose culture is not from the dominant society, and have a proven level of literacy in the foreign language of a medically underserved community.

(c) An international medical graduate shall not be eligible for this program if he or she has not graduated from a school in good standing that is recognized by the Medical Board of California.

(d) Upon selection for the pilot program, participants may submit an application to the International Medical Graduate Liaison of the Medical Board of California's Division of Licensing, with the appropriate fee, to initiate the medical licensing review process, providing the participant time to remediate any deficiency during the three-year international medical graduates pilot program.

(e) All program participants shall be required to have the foreign language fluency and the cultural knowledge necessary to serve the non-English-speaking community at the nonprofit community health center where they practice.

(f) The Medical Board of California shall issue an applicant status letter to participating and qualifying international medical graduates.

(g) International medical graduates shall be required to participate and satisfactorily complete a six-month orientation program that will address 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. International medical graduates who have passed the Educational Commission for Foreign Medical Graduates (ECFMG) language exam shall not be required to be enrolled in English language classes. However, if a participating international medical graduate has not passed the ECFMG language exam, he or she shall be enrolled in English language acquisition classes until he or she obtains a level of English language proficiency equivalent to the ECFMG language exam.

(h) (1) Upon satisfactorily completing the orientation program and the one-year residency training program, international medical graduates shall be selected by nonprofit community health centers to work in nonprofit community health centers and disproportionate share hospitals whose service areas include federally designated Health Professional Shortage Areas, Dental Professional Shortage Areas, Medically Underserved Areas, and Medically Underserved Populations for a period not to exceed three years.

(2) There shall be two residency programs operated under the auspices of a medical school in good standing, with one in southern California and one in northern California. These residency programs shall be in family practice, internal medicine, or obstetrics and gynecology.

(3) After successfully completing the one-year residency program, the training institution for the one-year residency program for international medical graduates may transfer the program participant into an approved residency program.

(i) (1) All program participants shall be required to satisfy the medical curriculum requirements of Section 2089, the clinical instruction requirements of Section 2089.5, and the examination requirements of Section 2170 prior to being admitted into an approved residency program.

(2) Those international medical graduates who are transferred into an approved residency program shall be required to work in nonprofit community health centers or disproportionate share hospitals whose service areas include federally designated Health Professional Shortage Areas, Dental Professional Shortage Areas, Medically Underserved Areas, and Medically Underserved Populations for not less than three years after being fully licensed.

(j) For individuals in this program as specified in this section, the applicant status letter shall be deemed a license in good standing pursuant to the provisions of this article for the purpose of participation and reimbursement in all federal, state, and local health programs, including managed care organizations and health maintenance organizations.

(k) (1) The Director of General Medical Education or an equivalent position in the training institution of the one-year residency program for international medical graduates shall have the authority to make a recommendation to the Medical Board of

California for the full medical licensure of an international medical graduate who has successfully completed the one-year residency program if the director believes, based on the performance and competency of *the* international medical graduate, that the international medical graduate should be fully licensed.

(2) After reviewing the recommendation for full licensure from the director, the Medical Board of California shall have the authority to issue a permanent license to practice medicine in this state to the international medical graduate.

(*l*) If an international medical graduate desires to secure a permanent license to practice medicine from the board, he or she shall, among other things, be required to be admitted into an approved residency program.

(m) The Medical Board of California, in consultation with medical schools located in California, executive and medical directors of nonprofit community health centers, and with hospital administrators, shall provide oversight review of the implementation of this program. The Medical Board of California shall ensure that funding proposals by appropriate institutions to implement these provisions meet the necessary funding thresholds to fulfill the intent of this program. Implementation of this program ~~shall~~ *may* not proceed unless appropriate funding is secured. The Medical Board of California shall report to the Legislature every January 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.

SEC. 3. Section 1766 of the Business and Professions Code is amended to read:

1766. (a) The board shall license as a registered dental hygienist a person who satisfies all of the following requirements:

(1) Completion of an educational program for registered dental hygienists~~,~~ approved by the board, ~~and~~ accredited by the Commission on Dental Accreditation, and conducted by a degree-granting, postsecondary institution.

(2) Satisfactory performance on an examination required by the board.

(3) Satisfactory completion of a national written dental hygiene examination approved by the board.

(b) The board may grant a license as a registered dental hygienist to an applicant who has not taken an examination before the board, if the applicant submits all of the following to the board:

(1) A completed application form and all fees required by the board.

(2) Proof of a current license as a registered dental hygienist issued by another state that is not revoked, suspended, or otherwise restricted.

(3) Proof that the applicant has been in clinical practice as a registered dental hygienist or has been a full-time faculty member in an accredited dental hygiene education program for a minimum of 750 hours per year for at least five years preceding the date of his or her application under this section. The clinical practice requirement shall be deemed met if the applicant provides proof of at least three years of clinical practice and commits to completing the remaining two years of clinical practice by filing with the board a copy of a pending contract to practice dental hygiene in any of the following facilities:

(A) A primary care clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code.

(B) A primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code.

(C) A clinic owned or operated by a public hospital or health system.

(D) A clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(4) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed as a registered dental hygienist or dentist. If the applicant has been subject to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant.

(5) Proof of graduation from a school of dental hygiene accredited by the Commission on Dental Accreditation.

(6) Proof of satisfactory completion of the Dental Hygiene National Board Examination and of a state or regional clinical licensure examination.

(7) Proof that the applicant has not failed the examination for licensure to practice dental hygiene under this chapter more than

once or once within five years prior to the date of his or her application for a license under this section.

(8) Documentation of completion of a minimum of 25 units of continuing education earned in the two years preceding application, including completion of any continuing education requirements imposed by the board on registered dental hygienists licensed in this state at the time of application.

(9) Any other information as specified by the board to the extent that it is required of applicants for licensure by examination under this article.

(c) The board may periodically request verification of compliance with the requirements of paragraph (3) of subdivision (b), and may revoke the license upon a finding that the employment requirement or any other requirement of paragraph (3) has not been met.

(d) The board shall provide in the application packet to each out-of-state dental hygienist pursuant to this section the following information:

(1) The location of dental manpower shortage areas in the state.

(2) Any not-for-profit clinics, public hospitals, and accredited dental hygiene education programs seeking to contract with licensees for dental hygiene service delivery or training purposes.

(e) The board shall review the impact of this section on the availability of actively practicing dental hygienists in California and report to the appropriate policy and fiscal committees of the Legislature by January 1, 2006. The report shall include a separate section providing data specific to dental hygienists who intend to fulfill the alternative clinical practice requirements of subdivision (b). The report shall include, but not be limited to, the following:

(1) The number of applicants from other states who have sought licensure.

(2) The number of dental hygienists from other states licensed pursuant to this section, the number of licenses not granted under this section, and the reason why the license was not granted.

(3) The practice location of dental hygienists licensed pursuant to this section.

(4) The number of dental hygienists licensed pursuant to this section who establish a practice in a rural area or in an area designated as having a shortage of practicing dental hygienists or

no dental hygienists or in a safety net facility identified in paragraph (3) of subdivision (b).

(5) The length of time dental hygienists licensed pursuant to this section practiced in the reported location.

(f) In identifying a dental hygienist's location of practice, the board shall use medical service study areas or other appropriate geographic descriptions for regions of the state.

SEC. 4. Section 1971 of the Business and Professions Code is amended to read:

1971. For the purposes of this article, the following terms have the following meanings:

(a) ''Board'' means the Dental Board of California.

(b) ''Office'' means the Office of Statewide Health Planning and Development.

(c) ''Program'' means the California Dental Corps Loan Repayment Program.

(d) ''Dentally underserved area'' means a geographic area eligible to be designated as having a shortage of dental professionals pursuant to Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for dentists exist as determined by the Health Manpower Policy Commission pursuant to Section 128224 of the Health and Safety Code.

(e) ''Dentally underserved population'' means persons without dental insurance and persons eligible for the Denti-Cal and Healthy Families Programs who are population groups described as having a shortage of dental care professionals in Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations.

(f) ''Practice setting'' means *either of the following*:

(1) A community clinic, as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206 of the Health and Safety Code, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, which is located in a dentally underserved area and at least 50 percent of whose patients are from a dentally underserved population~~; or~~.

(2) A dental practice or dental corporation, as defined in Section 1800 of this code, located in a dentally underserved area and at least 50 percent of whose patients are from a dentally underserved population.

(g) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(h) ''Fund'' means the ~~Community Healthcare Service Expansion~~ *State Dentistry* Fund.

(i) ''Account'' means the Dentally Underserved Account which is contained within the fund.

SEC. 5. Section 2154.2 of the Business and Professions Code is amended to read:

2154.2. For the purposes of this article, the following terms have the following meanings:

(a) ''Division'' means the Division of Licensing.

(b) ''Office'' means the Office of Statewide Health Planning and Development (OSHPD).

(c) ''Program'' means the California Physician Corps Loan Repayment Program.

(d) ''Medically underserved area'' means an area as defined in Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the Health Manpower Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(e) ''Medically underserved population'' means the Medi-Cal, Healthy Families, and uninsured populations.

(f) ''Practice setting'' means *either of the following*:

(1) A community clinic as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206 of the Health and Safety Code, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, which is located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(2) A medical practice located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(g) ''Primary specialty'' means family practice, internal medicine, pediatrics, or obstetrics/gynecology.

(h) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(i) ''Fund'' means the ~~Community Healthcare Services Expansion~~ *Contingent* Fund *of the Medical Board of California*.

(j) ''Account'' means the Medically Underserved Account which is contained within the fund.

SEC. 6. Section 4409 of the Business and Professions Code is amended to read:

4409. At the time a pharmacy license is renewed pursuant to subdivision (a) of Section 4110 or a pharmacist license is renewed pursuant to Section 4401, the pharmacy or pharmacist may make a twenty-five dollar ($25) contribution, to be submitted to the board, for the sole purpose of funding the California Pharmacist Scholarship and Loan Repayment Program established pursuant to Article ~~5~~ *2* (commencing with Section ~~128050)~~ *129198)* of Chapter ~~2~~ *3* of Part 3 of Division 107 of the Health and Safety Code. The contribution submitted pursuant to this section shall be paid into the State Treasury and credited to the California Pharmacist Scholarship and Loan Repayment Program Fund established pursuant to Section ~~128051~~ *129198.5* of the Health and Safety Code.

SEC. 7. Section 4848 of the Business and Professions Code is amended to read:

4848. (a) (1) The board shall, by means of examination, ascertain the professional qualifications of all applicants for licenses to practice veterinary medicine in this state and shall issue a license to every person whom it finds to be qualified. No license shall be issued to anyone who has not demonstrated his or her competency by examination.

(2) The examination shall consist of each of the following:

(A) A licensing examination that is administered on a national basis.

(B) A California state board examination.

(C) An examination concerning those statutes and regulations of the Veterinary Medicine Practice Act administered by the board. The examination shall be administered by mail and provided to applicants within 10 to 20 days of eligibility determination. The board shall have 10 to 20 days from the date of receipt to process the examination and provide candidates with the results of the examination. The applicant shall certify that he or she personally completed the examination. Any false statement is a violation subject to Section 4831. University of California and Western University of Health Sciences veterinary medical students who have successfully completed a board approved course on veterinary law and ethics covering the Veterinary Medicine Practice Act shall be exempt from this provision.

(3) The examinations may be given at the same time or at different times as determined by the board. For examination purposes, the board may make contractual arrangements on a sole source basis with organizations furnishing examination material as it may deem desirable and shall be exempt from Section 10115 of the Public Contract Code.

(4) The licensing examination may be waived by the board in any case in which it determines that the applicant has taken and passed an examination for licensure in another state substantially equivalent in scope and subject matter to the licensing examination last given in California before the determination is made, and has achieved a score on the out-of-state examination at least equal to the score required to pass the licensing examination administered in California.

(5) Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program, as determined by the board, in a veterinary college recognized by the board under Section 4846 to take any examination or any part thereof prior to satisfying the requirements for application for a license established by Section 4846.

(b) The board shall waive the examination requirements of subdivision (a), and issue a temporary license valid for one year to an applicant to practice veterinary medicine under the

supervision of another licensed California veterinarian in good standing if the applicant meets all of the following requirements and would not be denied issuance of a license by any other provision of this code:

(1) The applicant holds a current valid license in good standing in another state, Canadian province, or United States territory and has practiced clinical veterinary medicine for a minimum of four years full time within the five years immediately preceding filing an application for licensure in this state. Experience obtained while participating in an American Veterinary Medical Association (AVMA) accredited institution's internship, residency, or specialty board training program shall be valid for meeting the minimum experience requirement.

The term ''in good standing'' means that an applicant under this section:

(A) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of veterinary medicine by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of veterinary medicine that the board determines constitutes evidence of a pattern of incompetence or negligence.

(B) Has no physical or mental impairment related to drugs~~,~~ *or* alcohol,~~ or~~ *and* has not been found mentally incompetent by a physician so that the applicant is unable to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public.

(2) At the time of original licensure, the applicant passed the national licensing requirement in veterinary science with a passing score or scores on the examination or examinations equal to or greater than the passing score required to pass the national licensing examination or examinations administered in this state.

(3) The applicant has either graduated from a veterinary college recognized by the board under Section 4846 or possesses a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG).

(4) The applicant passes an examination concerning the statutes and regulations of the Veterinary Medicine Practice Act, administered by the board, pursuant to subparagraph (C) of paragraph (2) of subdivision (a).

(5) The applicant agrees to complete an approved educational curriculum on regionally specific and important diseases and conditions during the period of temporary licensure. The board, in consultation with the California Veterinary Medical Association (CVMA), shall approve educational curricula that cover appropriate regionally specific and important diseases and conditions that are common in California. The curricula shall focus on small and large animal diseases consistent with the current proportion of small and large animal veterinarians practicing in the state. The approved curriculum shall not exceed 30 hours of educational time. The board shall approve a curriculum as soon as practical, but not later than June 1, 1999. The approved curriculum may be offered by multiple providers so that it is widely accessible to candidates licensed under this subdivision.

(c) Upon receipt of acknowledgment of successful completion of the requirements set forth in subdivision (b), the board shall issue a license to the applicant. Any applicant who does not meet the requirements of subdivision (b) shall take a California state board examination as specified in subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 8. A heading is added as Article 7.5 (commencing with Section 17582) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 7.5. Automotive Products

SEC. 9. Section 19613 of the Business and Professions Code, as amended by Section 4 of Chapter 922 of the Statutes of 2002, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting, and may include obtaining, providing, or defraying the cost of workers' compensation coverage for stable employees and jockeys of licensed trainers.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered by the trainers' organization equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan *for* the trainers' organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board. Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred trainers' organization.

(e) Any association other than a fair that conducts a quarter horse racing meeting shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence, for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) ''Owner'' means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) ''Trainer'' means a person currently licensed by the board as an owner and trainer or as a trainer of a thoroughbred racehorse.

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

SEC. 10. Section 19617.5 of the Business and Professions Code is amended to read:

19617.5. (a) Any association conducting a quarter horse or harness racing meeting shall pay the sums required to be paid by Section 19567 out of the amounts deducted from the parimutuel

pool for license fees, commissions, and purses in the same proportion as the distribution of the license fees, commissions, and purses.

Those sums deducted for quarter horse meetings shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

(b) Notwithstanding subdivision (a), any association conducting a fair racing meeting other than a harness meeting or conducting a mixed breed meeting shall deduct an additional 0.34 of 1 percent of the total amount handled in its daily conventional and exotic parimutuel pools for all races for payment of breeder and stallion awards provided for in this chapter. Following the close of the meeting, the respective official registering agency or officially recognized horsemen's organization shall distribute the amounts so deducted as follows:

(1) With respect to thoroughbred races, the amounts deducted shall be paid as breeder awards, owners' premiums, and stallion awards as provided in Section 19617.2.

(2) With respect to quarter horse races, the amounts deducted shall be paid as breeder premiums, and owners' and stallion awards, as provided in Section 19617.7.

(3) With respect to Arabian races, the amounts deducted shall be paid as breeder premiums, and owners' and stallion awards as provided in Section 19617.8.

(4) With respect to Appaloosa races, the amounts deducted shall be paid as breeder premiums, and owners' and stallion awards, as provided in Section 19617.9.

(5) With respect to paint *horse* races, the amounts deducted shall be paid as breeder and owners' premiums, and stallion awards, as provided in Section 19617.3.

SEC. 11. Section 48 of the Civil Code is amended to read:

48. In the case provided for in subdivision ~~3 of the preceding section~~ *(c) of Section 47*, malice is not inferred from the communication.

SEC. 12. Section 941 of the Civil Code is amended to read:

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after

substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, ''action'' includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant, or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure shall not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivisions (a) or (b) ~~if~~ *of Section* 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivisions (a) or (b) ~~if~~ *of* Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this chapter does not apply are not limited by this section. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the

burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.

SEC. 13. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

NOTE TO PRINTING OFFICE: INSERT CAMERA-READY COPY HERE

for Real Estate Transfer Disclosure Statement

as printed on pages 9 to 13 of Chapter 926, 1996 Statutes.

SEC. 14. Section 1102.6b of the Civil Code is amended to read:

1102.6b. (a) This section applies to all transfers of real property for which all of the following apply:

(1) The transfer is subject to this article.

(2) The property being transferred is subject to a continuing lien securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or to a fixed lien assessment collected in installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) A notice is not required pursuant to Section 53341.5 of the Government Code.

(b) In addition to any other disclosure required pursuant to this article, the seller of any real property subject to this section shall make a good faith effort to obtain a disclosure notice concerning the special tax as provided for in Section 53340.2 of the Government Code, or a disclosure notice concerning an assessment installment as provided in Section 53754 of the Government Code, from each local agency that levies a special tax pursuant to the Mello-Roos Community Facilities Act, or that collects assessment installments to secure bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), on the property being transferred, and shall deliver that notice or those notices to the prospective purchaser, as long as the notices are made available by the local agency.

(c) The seller of real property subject to this section may satisfy the disclosure notice requirements in regard to the bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) by delivering a disclosure notice that is substantially equivalent and obtained from another source, until December 31, 2004. For the purposes of this section, a substantially equivalent disclosure notice includes, but is not limited to, a copy of the most recent year's property tax bill or an itemization of current assessment amounts applicable to the property.

(d) (1) Notwithstanding subdivision (c), at any time after the effective date of this section, the seller of real property subject to this section may satisfy the disclosure notice requirements of this section by delivering a disclosure notice obtained from a nongovernmental source that satisfies the requirements of paragraph (2).

(2) A notice provided by a private entity other than a designated office, department, or bureau of the levying entity may be modified as needed to clearly and accurately describe a special tax pursuant to the Mello-Roos Community Facilities Act levied against the property or to clearly and accurately consolidate information about two or more districts that levy or are authorized to levy a special tax pursuant to the Mello-Roos Community Facilities Act against the property, and shall include the name of the Mello-Roos *entity* levying taxes against the property, the annual tax due for the Mello-Roos *entity* for the current tax year, the maximum tax that may be levied against the property in any year, the percentage by which the maximum tax for the Mello-Roos *entity* may increase per year, and the date until the tax may be levied against the property for the Mello-Roos *entity* and a contact telephone number, if available, for further information about the Mello-Roos *entity.* A notice provided by a private entity other than a designated office, department, or bureau of the levying entity may be modified as needed to clearly and accurately describe special assessments and bonds pursuant to the Improvement Bond Act of 1915 levied against the property, or to clearly and accurately consolidate information about two or more districts that levy or are authorized to levy special assessments and bonds pursuant to the Improvement Bond Act of 1915 against the property, and shall include the name of the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915, the current annual tax on the property for the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915 and a contact telephone number, if available, for further information about the special assessments and bonds issued pursuant to the Improvement Bond Act of 1915.

(3) This section does not change the ability to make disclosures pursuant to Section 1102.4 of the Civil Code.

(e) If a disclosure received pursuant to subdivision (b), (c), or (d) has been delivered to the transferee, a seller or his or her agent

is not required to provide additional information concerning, and information in the disclosure shall be deemed to satisfy the responsibility of the seller or his or her agent to inform the transferee regarding the special tax or assessment installments and the district. Notwithstanding subdivision (b), (c), or (d), nothing in this section imposes a duty to discover a special tax or assessment installments or the existence of any levying district not actually known to the agents.

SEC. 15. Section 1714 of the Civil Code is amended to read:

1714. (a) ~~Every one~~ *Everyone* is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager ~~(5 Cal.3d 153)~~ *(1971) 5 Cal.3d 153*, Bernhard v. Harrah's Club ~~(16 Cal.3d 313)~~ *(1976) 16 Cal.3d 313*, and Coulter v. Superior Court ~~(21 Cal.3d 144)~~ *(1978) 21 Cal.3d 144* and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person ~~shall~~ *may* be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.

SEC. 16. Section 1936 of the Civil Code, as added by Section 3 of Chapter 948 of the Statutes of 2002, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) ‘‘Rental company’’ means any person or entity in the business of renting passenger vehicles to the public.

(2) ‘‘Renter’’ means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) ‘‘Authorized driver’’ means (A) the renter, (B) the renter’s spouse if that person is a licensed driver and satisfies the rental company’s minimum age requirement, (C) the renter’s employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company’s minimum age requirement, and (D) any person expressly listed by the rental company on the renter’s contract as an authorized driver.

(A) ‘‘Customer facility charge’’ means a fee required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) The fee shall be used to finance, design, and construct consolidated airport car rental facilities.

(ii) The fee shall be used to finance, design, construct, and provide common use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary and Committees on Transportation. In the case of a transportation system, the audit shall also consider the reasonable costs of providing the transit system or busing network. At the Burbank Airport, and at all other airports, the fees designated as a Customer Facility Charge may not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) The authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(4) ‘‘Damage waiver’’ means a rental company’s agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented

vehicle, or any storage, impound, towing, or administrative charges.

(5) ''Estimated time for replacement'' means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as ''crash books.''

(6) ''Estimated time for repair'' means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(7) ''Passenger vehicle'' means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection

with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) ~~shall~~ *may* not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). No administrative charge ~~shall~~ *may* be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle ~~shall~~ *may* not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company ~~shall~~ *may* not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and may not assert or collect any claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim ~~shall~~ *may* not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's

applicable personal or business insurance carrier. The rental company ~~shall~~ *may* not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company ~~shall~~ *may* not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other

than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides damage waiver shall, on that part of the contract where the renter indicates his or her acceptance or declination of the damage waiver, indicate that the purchase of the damage waiver is optional.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

''NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown.

You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions).''

(A) When the above notice is printed in the contract or contractholder, the following shall be printed immediately following the notice:

''The cost of an optional damage waiver is $____ for every (day or week).''

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

''The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented.''

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an ''economy car,'' ''subcompact car,'' ''compact car,'' or any other term having similar meaning when offered for rental, or any other vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate may not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that is also either a vehicle of the next year's model year or not older than the previous year's model year, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model year, the rate may not exceed nine dollars ($9).

(i) On or after January 1, 2003, the manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, ''Consumer Price Index'' means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(k) (1) A rental company ~~shall~~ *may* not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company ~~shall~~ *may* not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company ~~shall~~ *may* not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company ~~shall~~ *may* not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, or a special district.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common use transportation system is proportionate to the costs of the common use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided the airport requires off-airport customers to use the common use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or services and may not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports whose fees are governed by Section 1936.5 of the Civil Code, Section 50474.1 of the Government Code, or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or any other law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, shall not be subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes,

a customer facility charge, if any, and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company ~~shall~~ *may* not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges other than customer facility charges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge~~,~~ include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company ~~shall~~ *may* not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an

airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If any person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided they are provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company shall not be responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company ~~shall~~ *may* not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a

violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(p) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or if the renter is not a resident of this state in the jurisdiction in which the renter resides.

(q) Any waiver of any of the provisions of this section is void and unenforceable as contrary to public policy.

~~(r) This section shall become operative on January 1, 2002.~~

SEC. 17. Section 1946.1 of the Civil Code is amended to read:

1946.1. (a) Notwithstanding Section 1946, a hiring of residential real property for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his or her intention to terminate the tenancy, as provided in this section.

(b) An owner of a residential dwelling giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination. A tenant giving notice pursuant to this section shall give notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination.

(c) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if the tenant has resided in the dwelling for less than one year.

(d) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if all of the following ~~are true~~ *apply*:

(1) The dwelling or unit is alienable separate from the title to any other dwelling unit.

(2) The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established an escrow with a licensed escrow agent, as defined in Sections 17004 and 17200 of the Financial Code, or a licensed real estate broker, as defined in Section 10131 of the Business and Professions Code.

(3) The purchaser is a natural person or persons.

(4) The notice is given no more than 120 days after the escrow has been established.

(5) Notice was not previously given to the tenant pursuant to this section.

(6) The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy.

(e) The notices required by this section shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail.

(f) This section may not be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

(g) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 18. Section 1954 of the Civil Code is amended to read:

1954. *(a)* A landlord may enter the dwelling unit only in the following cases:

~~(a)~~

(1) In case of emergency.

~~(b)~~

(2) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, ~~workmen~~ *workers,* or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.

~~(c)~~

(3) When the tenant has abandoned or surrendered the premises.

~~(d)~~

(4) Pursuant to court order.

(b) Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours, unless the tenant consents at the time of entry.

(c) The landlord ~~shall~~ *may* not abuse the right of access or use it to harass the tenant. Except in cases of emergency, when the tenant has abandoned or surrendered the premises, or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his or her intent to enter and enter only during normal business hours. Twenty-four ~~hours~~ *hours'* advanced notice shall be

presumed to be reasonable notice in absence of evidence to the contrary.

SEC. 19. Section 2924j of the Civil Code is amended to read:

2924j. (a) Unless an interpleader action has been filed, within 30 days of the execution of the trustee's deed resulting from a sale in which there are proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice pursuant to subdivisions (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person may be required to present proof that the person holds the beneficial interest in the obligation and the security interest therefor. In the case of a promissory note secured by a deed of trust, proof that the person holds the beneficial interest may include the original promissory note and assignment of beneficial interests related thereto. The noticed person shall also submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to

the priority of the written claims submitted to the trustee, proceeds shall be paid within 30 days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action pursuant to subdivision (e). Nothing in this section shall preclude any person from pursuing other remedies or claims as to surplus proceeds.

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale, a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

The clerk shall deposit the amount with the county treasurer subject to order of the court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Article 2 (commencing with Section 26820) of Division 2 of Title 3 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to

the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that the trustee intends to deposit the funds with the clerk of the court and that a claim for the funds must be filed with the court within 30 days from the date of the notice, providing the address of the court in which the funds were deposited, and a ~~phone~~ *telephone* number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the ~~trustees'~~ *trustee's* declaration at the addresses specified therein. Where the amount of the deposit is twenty-five thousand dollars ($25,000) or less, a proceeding pursuant to this section is a limited civil case. The court shall distribute the deposited funds to any and all claimants entitled thereto.

(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order to resolve a dispute about the proceeds of a trustee's sale. Once an interpleader action has been filed, thereafter the provisions of this section ~~shall~~ *do* not apply.

(f) ''Due diligence,'' for the purposes of this section means that the trustee researched the written claims submitted or other evidence of conflicts and determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve.

(g) To the extent required by the Unclaimed Property Law, a trustee in possession of surplus proceeds not required to be deposited with the court pursuant to subdivision (b) shall comply with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

(h) Prior to July 1, 2000, the Judicial Council shall adopt a form to accomplish the filing authorized by this section.

SEC. 20. Section 2941 of the Civil Code is amended to read:

2941. (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided in

Section 2939, and shall record or cause to be recorded in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the written request of the mortgagor or the mortgagor's heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

(b) (1) Within 30 calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee that may be charged pursuant to subdivision (e), recorder's fees, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known. The reconveyance instrument shall specify one of the following options for delivery of the instrument, the addresses of which the recorder has no duty to validate:

(i) The trustor or successor in interest, and that person's last known address, as the person to whom the recorder will deliver the recorded instrument pursuant to Section 27321 of the Government Code.

(ii) That the recorder shall deliver the recorded instrument to the trustee's address. If the trustee's address is specified for delivery, the trustee shall mail the recorded instrument to the trustor or the successor in interest to the last known address for that party.

(C) Following execution and recordation of the full reconveyance, upon receipt of a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee shall then deliver, or caused to be delivered, the original note and deed of trust to the person making that request.

(D) If the note or deed of trust, or any copy of the note or deed of trust, is electronic, upon satisfaction of an obligation secured by

a deed of trust, any electronic original, or electronic copy which has not been previously marked solely for use as a copy, of the note and deed of trust, shall be altered to indicate that the obligation is paid in full.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth:

(i) The name of the beneficiary.

(ii) The name of the trustor.

(iii) The recording reference to the deed of trust.

(iv) A recital that the obligation secured by the deed of trust has been paid in full.

(v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the

obligation shall be liable to any party for damages, including ~~attorneys'~~ *attorney's* fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(7) A beneficiary may, at its discretion, in accordance with the requirements and procedures of Section 2934a, substitute the title company conducting the escrow through which the obligation is satisfied for the trustee of record, in which case the title company assumes the obligation of a trustee under this subdivision, and may collect the fee authorized by subdivision (e).

(8) In lieu of delivering the original note and deed of trust to the trustee within 30 days of loan satisfaction, as required by paragraph (1) of subdivision (b), a beneficiary who executes and delivers to the trustee a request for a full reconveyance within 30 days of loan satisfaction may, within 120 days of loan satisfaction, deliver the original note and deed of trust to either the trustee or trustor. If the note and deed of trust are delivered as provided in this paragraph, upon satisfaction of the note and deed of trust, the note and deed of trust shall be altered to indicate that the obligation is paid in full. Nothing in this paragraph alters the requirements and obligations set forth in paragraphs (2) and (3).

(c) For the purposes of this section, the phrases ''cause to be recorded'' and ''cause it to be recorded'' include, but are not limited to, sending by certified mail with the United States Postal Service or by an independent courier ~~serviceusing~~ *service using* its tracking service that provides documentation of receipt and delivery, including the signature of the recipient, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office of the county in which the deed of trust or mortgage is recorded. Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge. Compliance with this subdivision shall entitle the trustee to the benefit of the presumption found in Section 641 of the Evidence Code.

(d) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that

the violator forfeit to that person the sum of five hundred dollars ($500).

(e) (1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the trustor or mortgagor, or the owner of the land, as the case may be, for all services involved in the preparation, execution, and recordation of the full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect the full reconveyance, and, in addition, may collect official fees. This fee may be made payable no earlier than the opening of a bona fide escrow or no more than 60 days prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

(2) If the fee charged pursuant to this subdivision does not exceed forty-five dollars ($45), the fee is conclusively presumed to be reasonable.

(3) The fee described in paragraph (1) may not be charged unless demand for the fee was included in the payoff demand statement described in Section 2943.

(f) For purposes of this section, ‘‘original’’ may include an optically imaged reproduction when the following requirements are met:

(1) The trustee receiving the request for reconveyance and executing the reconveyance as provided in subdivision (b) is an affiliate or subsidiary of the beneficiary or an affiliate or subsidiary of the assignee of the beneficiary, respectively.

(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

(g) No fee or charge may be imposed on the trustor in connection with, or relating to, any act described in this section except as expressly authorized by this section.

(h) The amendments to this section enacted at the 1999–2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.

(i) (1) In any action filed before January 1, 2002, that is dismissed as a result of the amendments to this section enacted at the 2001–02 Regular Session, the plaintiff shall not be required to pay the defendant's costs.

(2) Any claimant, including a claimant in a class action lawsuit, whose claim is dismissed or barred as a result of the amendments to this section enacted at the 2001–02 Regular Session, may, within 6 months of the dismissal or barring of the action or claim, file or refile a claim for actual damages occurring before January 1, 2002, that were proximately caused by a time lapse between loan satisfaction and the completion of the beneficiary's obligations as required under paragraph (1) of subdivision (b). In any action brought under this section, the defendant may be found liable for actual damages, but may not be found liable for any civil penalty authorized by Section 2941.

(j) Notwithstanding any other penalties, if a beneficiary collects a fee for reconveyance and thereafter has knowledge, or should have knowledge, that no reconveyance has been recorded, the beneficiary shall cause to be recorded the reconveyance, or in the event a release of obligation is earlier and timely recorded, the beneficiary shall refund to the trustor the fee charged to perform the reconveyance. Evidence of knowledge includes, but is not limited to, notice of a release of obligation pursuant to paragraph (3) of subdivision (b).

SEC. 21. Section 17 of the Code of Civil Procedure is amended to read:

17. *(a)* Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word ''person'' includes a corporation as well as a natural person; the word ''county'' includes ''city and county''; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term ''testify,'' and every written one in the term ''depose''; signature or subscription includes mark, when the

person cannot write, his or her name ~~or her~~ being written near it by a person who writes his or her own name as a witness; provided, that when a signature is by mark it must, in order that the same may be acknowledged or may serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witness thereto.

(b) The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

~~1.~~

(1) The word ‘‘property’’ includes both real and personal property~~;~~.

~~2.~~

(2) The words ‘‘real property’’ are coextensive with lands, tenements, and hereditaments~~;~~.

~~3.~~

(3) The words ‘‘personal property’’ include money, goods, chattels, things in action, and evidences of debt~~;~~.

~~4.~~

(4) The word ‘‘month’’ means a calendar month, unless otherwise expressed~~;~~.

~~5.~~

(5) The word ‘‘will’’ includes codicil~~;~~.

~~6.~~

(6) The word ‘‘writ’’ signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer~~;~~, and the word ‘‘process’’ *signifies* a writ or summons issued in the course of judicial proceedings~~;~~.

~~7.~~

(7) The word ‘‘state,’’ when applied to the different parts of the United States, includes the District of Columbia and the territories~~;~~, and the words ‘‘United States’’ may include the district and territories~~;~~.

~~8.~~

(8) The word ~~‘‘section’’~~ *“section,”* whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned~~;~~.

~~9.~~

(9) The word ~~‘‘affinity’’~~ *“affinity,”* when applied to the marriage relation, signifies the connection existing in

consequence of marriage, between each of the married persons and the blood relatives of the other~~;~~.

~~10.~~

(10) The word ‘‘sheriff’’ shall include ‘‘marshal.’’

SEC. 22. Section 170.6 of the Code of Civil Procedure is amended to read:

170.6. *(a)* (1) No judge, court commissioner, or referee of any superior court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in the action or proceeding.

(2) Any party to or any attorney appearing in any ~~such~~ action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge, court commissioner, or referee before whom the action or proceeding is pending or to whom it is assigned is prejudiced against any ~~such~~ party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee. Where the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least ~~five~~ *5* days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first

appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall any judge, court commissioner, or referee entertain the motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there is no ~~such~~ *opening* statement *by counsel for plaintiff*, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding, or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

A motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (3) ~~of this section~~, the party who filed the appeal that resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or ~~such~~ *an* oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council shall assign

some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Except as provided in this section, no party or attorney shall be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:

(Here set forth court and cause)

State of California,)
County of _____) ss. PEREMPTORY CHALLENGE

____, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That ____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this
_____ day of _____, 20__.
(Clerk or notary public or other
officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

~~(7)~~

(b) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

~~(8)~~

(c) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable.

SEC. 23. Section 179 of the Code of Civil Procedure is amended to read:

179. Each of the justices of the Supreme Court and of any court of appeal and the judges of the superior courts, shall have power in any part of the state to take and certify:

~~1.~~

(a) The proof and acknowledgment of a conveyance of real property, or of any other written instrument.

~~2.~~

(b) The acknowledgment of satisfaction of a judgment of any court.

~~3.~~

(c) An affidavit or deposition to be used in this state.

SEC. 24. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. However, if the notice is served by mail, the required 75-day period of notice shall be increased by 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, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 75-day period of notice shall be increased by two court days. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b) *(1)* The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denial of the motion.

(2) Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.

(3) The opposition papers shall include a separate statement ~~which~~ *that* responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts ~~which~~ *that* the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

(4) Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or

continued date of hearing, unless the court for good cause orders otherwise.

(5) Evidentiary objections not made at the hearing shall be deemed waived.

(6) Except for subdivision (c) of Section 1005 relating to the method of service of opposition and reply papers, Sections 1005 and 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

(7) Any incorporation by reference of matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment ~~shall~~ *may* not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(e) If a party is otherwise entitled to a summary judgment pursuant to this section, summary judgment ~~shall~~ *may* not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or where a material fact is an individual's state of mind, or

lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f) (1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both

that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

(i) If, after granting a continuance to allow specified additional discovery, the court determines that the party seeking summary judgment has unreasonably failed to allow the discovery to be conducted, the court shall grant a continuance to permit the discovery to go forward or deny the motion for summary judgment or summary adjudication. This section does not affect or limit the ability of any party to compel discovery under the Civil Discovery Act (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part ~~4~~ *4)*.

(j) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting the affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. Sanctions may not be imposed pursuant to this subdivision, except on notice contained in a party's papers, or on the court's own noticed motion, and after an opportunity to be heard.

(k) Except ~~if~~ *when* a separate judgment may properly be awarded in the action, no final judgment may be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(*l*) In actions which arise out of an injury to the person or to property, if a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(m) (1) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section, except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written

notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by 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 notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(2) Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs. The supplemental briefing may include an argument that additional evidence relating to that ground exists, but that the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefing to allow the parties to present additional evidence or to conduct discovery on the issue. If the court fails to allow supplemental briefing, a rehearing shall be ordered upon timely petition of any party.

(n) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion which has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, nor a witness, nor the court shall comment upon the grant or denial of a motion for summary adjudication to a jury.

(o) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(p) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(q) This section does not extend the period for trial provided by Section 1170.5.

(r) Subdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(s) For the purposes of this section, a change in law does not include a later enacted statute without retroactive application.

SEC. 25. Section 1208.5 of the Code of Civil Procedure is amended to read:

1208.5. Any person having a lien upon any animal or animals under the provisions of Section 597a or 597f of the Penal Code may satisfy ~~such~~ *the* lien as follows: If ~~such~~ *the* lien is not discharged and satisfied, by the person responsible, within three days after the obligation becomes due, then the person holding ~~such~~ *the* lien may resort to the proper court to satisfy the claim; or may, three days after the charges against the property become due, sell the property, or an undivided fraction thereof as may become necessary, to defray the amount due and costs of sale, by giving three days' notice of the sale by advertising in some newspaper published in the county, or city and county, in which the lien has attached to the property; or, if there is no ~~paper~~ *newspaper* published in the county, then by posting notices of the sale in three of the most public places in the town or county for three days previous to the sale. The notices shall contain an accurate description of the property to be sold, together with the terms of sale, which must be for cash, payable on the consummation of the sale. The proceeds of the sale shall be applied to the discharge of the lien and the costs of sale; the remainder, if any, shall be paid over to the owner, if known, and if not known shall be paid into the treasury of the humane society of the county, or city and county, wherein the sale takes place; if no humane society exists in the county, then the remainder shall be paid into the county treasury.

SEC. 26. Section 1420 of the Code of Civil Procedure is amended to read:

1420. *(a)* At any time after two years after the death of any decedent who leaves property to which the state is entitled by reason of it having escheated to the state, the Attorney General shall commence a proceeding on behalf of the state in the Superior Court for the County of Sacramento to have it adjudged that the state is so entitled. ~~Such~~ *The* action shall be commenced by filing a petition, which shall be treated as the information elsewhere referred to in this title.

~~There shall be set forth in such~~

(b) The petition *shall set forth* a description of the property, the name of the person last ~~possessed~~ *in possession* thereof, the name of the person, if any, claiming ~~such~~ *the* property, or portion thereof, and the facts and circumstances by virtue of which it is claimed the property has escheated.

(c) Upon the filing of ~~such~~ *the* petition, the court ~~must~~ *shall* make an order requiring all persons interested in the estate to appear and show cause, if any ~~they have~~, within 60 days from the date of the order, why ~~such~~ *the* estate should not vest in the state. ~~Such~~ *The* order must be published at least once a week for four consecutive weeks in a newspaper published in ~~said~~ *the* County of Sacramento, the last publication to be at least 10 days prior to the date set for the hearing. Upon the completion of the publication of ~~such~~ *the* order, the court shall have full and complete jurisdiction over the estate, the property, and the person of everyone having or claiming any interest in the ~~said~~ property, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon.

(d) If proceedings for the administration of ~~such~~ *the* estate have been instituted, a copy of ~~such~~ *the* order must be filed with the papers in ~~such~~ *the* estate. If proceedings for the administration of any estate of ~~any such~~ *the* decedent have been instituted and none of the persons entitled to succeed thereto have appeared and made claim to ~~such~~ *the* property, or any portion thereof, before the decree of final distribution therein is made, or before the commencement of ~~such~~ *a* proceeding by the Attorney General, or if the court shall find that ~~such~~ *the* persons as have appeared are not entitled to the property of ~~such~~ *the* estate, or any portion thereof, the court shall, upon final settlement of the proceedings for the administration of ~~such~~ *the* estate, after the payment of all debts and expenses of administration, distribute all moneys and other property remaining to the State of California.

In any proceeding brought by the Attorney General under this chapter, any two or more parties and any two or more causes of action may be joined in the same proceedings and in the same petition without being separately stated~~;~~, and it shall be sufficient to allege in the petition that the decedent left no heirs to take the estate and the failure of heirs to appear and set up their claims in any ~~such~~ proceeding, or in any proceedings for the administration

of ~~such~~ *the* estate, shall be sufficient proof upon which to base the judgment in any ~~such~~ proceeding or ~~such~~ decree of distribution.

~~Where~~

(e) If proceedings for the administration of any estate have not been commenced within six months from the death of any decedent the Attorney General may direct the public administrator to commence the same forthwith.

SEC. 27. Section 1607 of the Code of Civil Procedure is amended to read:

1607. When a report is received from the Comptroller General or other proper officer of the United States, the Controller shall prepare and forward a copy thereof to the clerk of the superior court of each county within this state and the ~~said~~ clerk shall post ~~such~~ *a* copy at the courthouse for a period of 60 days. Any person asserting an interest in property mentioned in the report may elect to claim against the United States under the laws of the United States, in which event and within 90 days following the date of initial posting by the clerk ~~such~~ *the* person shall notify the Controller of the asserted interest and intention to so claim. The Controller shall omit ~~such~~ *the* property from any claim by the state until such time as the asserted interest may be finally determined against the claimant. ~~Such~~ *The* interest ~~shall~~ *may* not thereafter be asserted against the state.

SEC. 28. Section 2117 of the Corporations Code is amended to read:

2117. (a) (1) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, annually during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing:

(A) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(B) The street address of its principal executive office.

(C) The street address of its principal business office in this state, if any.

(D) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(2) In addition to all of the information required by paragraph (1) every publicly traded company shall also include the following information in the statement:

(A) The name of the independent auditor used by the corporation and a description of any other services, if any, performed for the corporation during the previous 24 months by the independent auditor, by its parent corporation, or by an agent, subsidiary, corporate partner, or corporate affiliate of the independent auditor or its parent corporation.

(B) The date of the last report prepared for the corporation by the independent auditor. The corporation shall attach a copy of the report to the statement.

(C) The annual compensation paid to each member of the board of directors and each executive officer, including the number of any shares or options for shares that were not available to other employees of the corporation.

(D) A description of any loans made to a member of the board of directors by the corporation at a preferential loan rate during the previous 24 months, including the amount and terms of the loans.

(E) A statement indicating whether any bankruptcy was filed by the corporation, its executive officers, or members of the board of directors within the previous 10 years.

(F) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the previous 10 years.

(G) A statement indicating whether the corporation violated any federal security laws or any banking or security provision of California law during the previous 10 years for which the corporation was found liable in an action before a federal or state court or regulatory agency or a self-regulatory agency in which a judgment over ten thousand dollars ($10,000) was entered.

If the executive officers of the corporation use other titles, the statement shall include the officers performing comparable duties under other titles. If the corporation has no executive officers, or has no executive officers who are natural persons, the statement shall include the names of natural persons performing comparable duties for the corporation pursuant to a management contract or other arrangement.

(3) For purposes of this section, the following definitions apply:

~~(4)~~

(A) ‘‘Publicly traded company’’ means a company with securities that are either listed or admitted to trading on a national or foreign exchange, or is the subject of two-way quotations, such as both bid and asked prices, that is regularly published by one or more broker-dealers in the National Daily Quotation Service or a similar service.

(B) ‘‘Executive officer’’ means the five most highly compensated officers of the company, excluding any officer ~~that~~ *who* is also a member of the board of directors.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person’s complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement and designation required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, no later than December 31, 2004, shall provide access to all information contained in the statement and designation by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar ($5) disclosure fee upon filing the statement and designation required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (d), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section except that ''articles'' shall mean the filing pursuant to Section 2105.

SEC. 29. Section 25118 of the Corporations Code is amended to read:

25118. (a) An evidence of indebtedness issued by an entity or guaranteed by an entity that is an affiliate (as defined in Section 150) of the borrower that, on the day the evidence of indebtedness issued or guaranty is first issued or entered into, has total assets of at least two million dollars ($2,000,000) according to its then most recent financial statements, and the purchasers or holders thereof, shall be exempt from the usury provisions of the *California* Constitution. The financial statements referred to in the preceding sentence shall meet both of the following requirements:

(1) Be as of a date not more than 90 days prior to the date the evidence of indebtedness or guaranty is first issued or entered into.

(2) Be prepared in accordance with either of the following:

(A) In accordance with generally accepted accounting principles and, if the entity has consolidated subsidiaries, on a consolidated basis.

(B) In accordance with the rules and requirements of the Securities and Exchange Commission, whether or not required by law to be prepared in accordance with those rules and requirements.

(b) Any one or more evidences of indebtedness, and the purchasers or holders thereof, shall be exempt from the usury provisions of the *California* Constitution if either of the following applies:

(1) The evidences of indebtedness aggregate at the time of issuance at least three hundred thousand dollars ($300,000) in original face amount, or, if the evidences of indebtedness are purchased with original issue discount, they are purchased for an aggregate purchase price at the time of issuance of at least three hundred thousand dollars ($300,000).

(2) The evidences of indebtedness are issued pursuant to a bona fide written commitment for the lending to the issuer of at least three hundred thousand dollars ($300,000), or the provision of a line of credit to the issuer in a principal amount of at least three hundred thousand dollars ($300,000). The exemption provided by this paragraph shall not be affected by a subsequent event of

default or other event not in the lender's control that has relieved or may relieve the lender from its commitment.

(c) Any evidence of indebtedness described in ~~subdivisions~~ *subdivision* (a) or (b), and the purchasers or holders thereof, shall be entitled to the benefits of the usury exemption contained in this section regardless of whether, at any time after the evidence of indebtedness or guaranty upon which the exemption is based is first issued or entered into, the evidence of indebtedness or guaranty is determined by a court of competent jurisdiction not to be a ''security.''

(d) This section creates and authorizes a class of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

(e) This section ~~shall~~ *does* not apply to:

(1) Any evidence of indebtedness issued or guaranteed (if the guaranty is part of the consideration for the indebtedness) by an individual, a revocable trust having one or more individuals as trustors, or a partnership in which, at the time of issuance, one or more individuals are general partners.

(2) Any transaction subject to the limitation on permissible rates of interest set forth in paragraph (1) of the first sentence of Section 1 of Article XV of the California Constitution.

(f) The exemptions created by this section shall only be available in a transaction ~~which~~ *that* meets either of the following criteria:

(1) The lender and either the issuer of the indebtedness or the guarantor, as the case may be, or any of their respective officers, directors, or controlling persons, or, if any party is a limited liability company, the managers as appointed or elected by the members, have a preexisting personal or business relationship.

(2) The lender and the issuer, or the lender and the guarantor, by reason of their own business and financial experience or that of their professional advisers, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(g) For purposes of this section, ''preexisting personal or business relationship'' and ''capacity to protect their own interests in connection with the transaction'' as used in subdivision (f) shall have the same meaning as, and be determined according to the same standards as, specified in paragraph (2) of subdivision (f) of

Section 25102 and its implementing regulations provided that, solely with respect to this section, a lender or purchaser who is represented by counsel may designate that person as its professional adviser whether or not that person is compensated by the issuer or guarantor, as long as that person has a bona fide attorney-client relationship with the lender or purchaser.

(h) This section shall not exempt any person from the application of the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code).

SEC. 30. Section 430 of the Education Code is amended to read:

430. (a) This chapter shall be known, and may be cited, as the English Learner and Immigrant Pupil Federal Conformity Act.

(b) The purpose of this chapter is to ensure that instructional services are provided to pupils with limited English proficiency in conformity with federal requirements that are designed to ensure that all pupils have reasonable access to educational opportunities that are necessary in order for the pupils to achieve at high levels in English and in the other core curriculum areas of instruction.

(c) This ~~act~~ *chapter* is intended to be declaratory of Title III of the federal No Child Left Behind Act of 2001 *(20 U.S.C. Sec. 6301 et seq.)* and is intended to assist local ~~education~~ *educational* agencies in understanding the requirements and funding formulas to provide allowable services. It is the intent of the Legislature that, to the extent federal law is amended, this chapter will be amended to conform to those changes.

(d) The requirements of this chapter apply only to local educational agencies that receive federal funds pursuant to Title III of the federal No Child Left Behind Act of 2001.

SEC. 31. Section 446 of the Education Code is amended to read:

446. In compliance with Section 6824 of Title 20 of the United States Code, the Superintendent of Public Instruction may not award a subgrant in an amount that is less than ten thousand dollars ($10,000). A local ~~education~~ *educational* agency may form a consortium with one or more other local ~~education~~ *educational* agencies to apply for Title III funds as a consortium, ~~so long as~~ *if* the grant to the consortium is ten thousand dollars ($10,000) or more. A consortium shall include only those entities specified by Section 6871 of Title 20 of the United State Code. If

a consortium applies for a subgrant, it shall be awarded to the local lead ~~education~~ *educational* agency on behalf of all of the members of the consortium. The members of the consortium shall collectively develop and approve a memorandum of understanding for the implementation of the programs and services they will provide with these funds.

SEC. 32. 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 operate a minimum of three hours a day and shall operate 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 State Department of Education 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 ~~programs~~ *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 ~~shall~~ have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of three hours per day at the approved rate for the regular school year pursuant to Section 8483.7.

SEC. 33. Section 8499.5 of the Education Code is amended to read:

8499.5. (a) The department shall allocate child care funding pursuant to Chapter 2 (commencing with Section 8200) based on the amount of state and federal funding that is available.

(b) By May 30 of each year, upon approval by the county board of supervisors and the county superintendent of schools, each local planning council shall submit to the department the local priorities it has identified that reflect all child care needs in the county. To accomplish this, each local planning council shall do all of the following:

(1) Conduct an assessment of child care needs in the county no less than once every five years. The department shall define and prescribe data elements to be included in the needs assessment and shall specify the format for the data reporting. The needs assessment shall also include all factors deemed appropriate by the local planning council in order to obtain an accurate picture of the comprehensive child care needs in the county. The factors ~~shall~~ include, but *are* not ~~be~~ limited to, all of the following:

(A) The needs of families eligible for subsidized child care.

(B) The needs of families not eligible for subsidized child care.

(C) The waiting lists for programs funded by the department and the State Department of Social Services.

(D) The need for child care for children determined by the child protective services agency to be neglected, abused, or exploited, or at risk of being neglected, abused, or exploited.

(E) The number of children in families receiving public assistance, including food stamps, housing support, and ~~MediCal~~ *Medi-Cal*, and assistance from the Healthy Families Program and the Temporary Assistance to Needy Families (TANF) program.

(F) Family income among families with preschool or schoolage children.

(G) The number of children in migrant agricultural families who move from place to place for work or who are currently dependent for their income on agricultural employment in accordance with subdivision (a) of, and paragraphs (1) and (2) of subdivision (b) of, Section 8231.

(H) The number of children who have been determined by a regional center to require services pursuant to an individualized family service plan, or by a local ~~education~~ *educational* agency to require services pursuant to an individualized education program or an individualized family service plan.

(I) The number of children in the county by primary language *spoken* pursuant to the department's language survey.

(J) Special needs based on geographic considerations, including rural areas.

(K) The number of children needing child care services by age cohort.

(2) Document information gathered during the needs assessment which shall include, but need not be limited to, data on supply, demand, cost, and market rates for each category of child care in the county.

(3) Encourage public input in the development of the priorities. Opportunities for public input shall include at least one public hearing during which members of the public can comment on the proposed priorities.

(4) Prepare a comprehensive countywide child care plan designed to mobilize public and private resources to address identified needs.

(5) Conduct a periodic review of child care programs funded by the department and the Department of Social Services to determine if identified priorities are being met.

(6) Collaborate with subsidized and nonsubsidized child care providers, county welfare departments, human service agencies, regional centers, job training programs, employers, integrated child and family service councils, local and state children and families commissions, parent organizations, early start family resource centers, family empowerment centers on disability, local child care resource and referral programs, and other interested parties to foster partnerships designed to meet local child care needs.

(7) Design a system to consolidate local child care waiting lists, if a centralized eligibility list is not already in existence.

(8) Coordinate part-day programs, including state preschool and Head Start, with other child care and development services to provide full-day child care.

(9) Submit the results of the needs assessment and the local priorities identified by the local planning council to the board of supervisors and the county superintendent *of schools* for approval before submitting them to the department.

(10) Identify at least one, but not more than two, members to serve as part of the department team that reviews and scores proposals for the provision of services funded through contracts with the department. Local planning council representatives ~~shall~~

may not review and score proposals from the geographic area covered by their own local planning council. The department shall notify each local planning council whenever this opportunity is available.

(c) The department shall, in conjunction with the Department of Social Services and all appropriate statewide agencies and associations, develop guidelines for use by local planning councils to assist them in conducting needs assessments that are reliable and accurate. The guidelines shall include acceptable sources of demographic and child care data, and methodologies for assessing child care supply and demand.

(d) The department shall allocate funding within each county in accordance with the priorities identified by the local planning council of that county and submitted to the department pursuant to this section, unless the priorities do not meet the requirements of state or federal law.

SEC. 34. Section 8813 of the Education Code is amended to read:

8813. (a) Each eligible local arts agency may apply for a grant of up to one hundred thousand dollars ($100,000) per year for the development, implementation, and review of an arts education program. Each grant application shall be preceded by a letter of intent to file that application submitted by the local arts agency on or before the January 1 immediately preceding the fiscal year for which grant funding is requested. Each eligible local arts agency shall include in its letter of intent an authorization to make application to this program from the county board of supervisors if the agency is a county agency or designated by the county board of supervisors, or from the city council if the agency is an agency of the city or is designated by the city. If the local arts agency is neither designated by, nor a department of, either city or county government, ~~then~~ it shall include authorization by its board of trustees authorizing the agency to make application under this program.

(b) Each grant application shall include, but not be limited to, all of the following:

(1) A plan for the proposed arts education program that meets all of the following criteria:

(A) The plan has been approved by resolution of the governing board of each participating school district or by the county board of education.

(B) The plan includes an assessment of the needs of public schools included in the partnership located within the jurisdiction of the local arts agency that is consistent with the guidelines for those assessments developed by the State Department of Education in consultation with the California Arts Council. The plan shall evidence appropriate participation by local citizens ~~that~~ *who* are representative of the ethnic and cultural composition of the county.

(C) The plan shall describe a comprehensive arts education program that conforms to the tenets of the state's adopted curriculum framework for visual and performing arts as published by the State Department of Education in Visual and Performing Arts Framework for California Public Schools: Kindergarten through Grade 12, and shall include instruction in the four disciplines of dance, drama and theatre, music, and the visual arts for all pupils. The plan may also include other arts disciplines, including folk arts, film, video, and the writing of plays, scripts, and poetry.

(D) The plan proposes the use of community arts resources, including, but not limited to, professional artists, arts specialists, performing artists and companies, museums, nonprofit art galleries, institutions of higher education, resident artists organizations, and any program of the local arts agency or general community resources that provide arts education services, instruction, workshops, performances, or demonstrations.

(E) The plan provides for a local steering committee comprised of not less than 10, nor more than 13, members selected from professional artists, arts educators, administrators, teachers, arts organizations, school board members, and other citizens, to include the following members reflecting a balance between the education and the arts communities:

(i) One representative of the local arts agency.

(ii) Two professional artists.

(iii) One representative of a local educational agency.

(iv) Two teachers, including one from the local educational agency.

(v) Two arts specialists.

(vi) One community representative at large.

(vii) One representative of an institution of higher education, who shall be either a faculty member in the visual and performing arts or arts education or have had prior experience in these two areas.

(F) The plan describes school needs, program goals, and a process for screening community arts resources. The fiscal procedures and pay rates shall be in accordance with standards established by the California Arts Council. Any of the community arts resources described in subparagraph (D) ~~shall be~~ *is* eligible for a program grant if it demonstrates ~~high quality~~ *high-quality* arts performance, production, or instruction.

(G) The plan shall include an appropriate orientation for artists and teachers in participating schools.

(H) The plan shall include a staff development program which accounts for at least 10 percent of the overall budget for the plan, but not more than 20 percent of the overall budget for all public school teachers participating in the program pursuant to Article 1 (commencing with Section ~~44670)~~ *44670.1)* and Article 2 (commencing with Section 44680) of Chapter 3.1 of Part ~~28~~ *25* and under the California Arts Project, as established pursuant to Chapter 5 (commencing with Section 99200) of Part 65. For the purposes of this paragraph, a teacher is participating in the program if he or she instructs a class that will have more than 10 hours of direct contact with a community arts representative.

(I) The plan shall include a description of ~~how~~ *the manner in which* funding for the staff development programs described in subparagraph (H) shall be used in providing services to teachers. The local ~~education~~ *educational* agency shall use the services of the California Arts Project established pursuant to Chapter 5 (commencing with Section 99200) of Part 65 and shall consult with at least one of the following entities in developing the staff development plans: a county office of education, an arts agency, an arts provider, a professional arts association, or an institution of higher education.

(J) The plan shall ~~also~~ assess the arts education of homeless children, children with special needs, children at risk, school dropouts, and the children of migrant workers who may not be attending class regularly. It is the intent of the Legislature that special supplementary funds, not to exceed 10 percent of the total

state dollars, shall be appropriated for ~~this purpose~~ *purposes of this subparagraph.* Arts education delivered pursuant to this paragraph ~~shall be~~ *is* exempt from the *local* matching ~~requirements~~ *funds requirement* described in Section 8814.

(2) A proposed budget for expenditure of the grant, which shall be submitted on a form developed by the California Arts Council for that purpose.

(3) A section demonstrating ~~how~~ *the manner in which* the proposal furthers the implementation of the model curriculum standards set forth in Section 51226, the Visual and Performing Arts Framework for California Public Schools: Kindergarten through Grade Twelve published by the State Department of Education, or the implementation or operation of specialized secondary programs pursuant to Chapter 6 (commencing with Section 58800) of Part 31.

(4) A section designating the source of all local matching funds, as described in Section 8814.

SEC. 35. Section 17073.25 of the Education Code is amended to read:

17073.25. (a) Notwithstanding any provision of law to the contrary, the State Department of Education ~~shall be~~ *is* eligible for modernization grants pursuant to this article for facilities of the California School for the Deaf (Chapter 1 (commencing with Section 59000) of Part 32) and the California School for the Blind (Chapter 2 (commencing with Section 59100) of Part 32).

(b) The department ~~shall be~~ *is* eligible for per-pupil funding under this article to the same extent and in the same manner as a school district, except that the hardship provisions ~~shall~~ *do* not apply. However, notwithstanding the 60 percent maximum funding for modernization projects, as set forth in Section 17074.16, the project shall be funded at 100 percent of the project costs, subject to per-pupil eligibility.

(c) The board shall establish a process specifically tailored to consideration of the unique aspects of applications presented by ~~of~~ the department pursuant to this section.

(d) This section ~~shall apply~~ *applies* only to projects for expenditure of the proceeds of state bonds approved by the voters after January 1, 2002.

SEC. 36. Section 20091 of the Education Code is amended to read:

20091. To *the* extent that funding is available for such purposes, the endowment shall establish a program to assist and enhance the services of California's museums and of other groups and institutions that undertake cultural projects that are deeply rooted in and reflective of previously underserved communities. This program shall give priority to:

(a) Enhancing opportunities for superior museum and cultural program services.

(b) Encouraging museums and cultural programs to provide services to school pupils, including any of the following:

(1) Curriculum development.

(2) Schoolsite presentations or workshops.

(3) Teacher training.

(4) Reduced price or free admission of pupils to museums.

(c) Collaborative projects and technical assistance to coordinate the work of eligible museums and cultural programs and to enhance the ability of museums and cultural programs to serve the public. Priority shall be given to any project that does any of the following:

(1) Assists an eligible museum or cultural program in serving an historically underserved population.

(2) Aids a museum or cultural program in diversifying or expanding its audience.

(3) Aids a museum or cultural program in raising its professional standards in order to better serve the public.

(d) Projects that increase accessibility to museums' and cultural programs' collections and services.

SEC. 37. Section 22138.5 of the Education Code is amended to read:

22138.5. (a) ''Full time'' means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, ''full time'' ~~shall~~ *may* not be less than the minimum ~~standards~~ *standard* specified in this section. Each collective bargaining agreement or employment agreement that applies to a member subject to the minimum standard specified in paragraph (5) of subdivision (c) shall specify the number of hours of creditable service that equal

''full time'' pursuant to this section, and shall make specific reference to this section.

(b) The minimum standard for full time in kindergarten through grade 12 ~~shall be~~ *is as follows*:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2) and (3).

(2) (A) One hundred ninety days per year or 1,520 hours per year for all principals and program managers, including advisers, coordinators, consultants, and developers or planners of curricula, instructional materials, or programs, and for administrators, except as provided in subparagraph (B).

(B) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

(c) The minimum standard for full time in community colleges ~~shall be~~ *is as follows*:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2), (3), (4), (5), and (6). Full time ~~shall include~~ *includes* time for duties the employer requires to be performed as part of the full-time assignment for a particular class of employees.

(2) One hundred ninety days per year or 1,520 hours per year for all program managers and for administrators, except as provided in paragraph (3).

(3) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per school year for all instructors employed on a part-time basis, except instructors specified in paragraph (6). If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, ~~then~~ the minimum standard ~~established herein~~ shall be increased

appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per school year for all instructors employed in adult education programs. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, ~~then~~ the minimum standard ~~established herein~~ shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) The board ~~shall have~~ *has* final authority to determine full time for purposes of crediting service under this part if full time is not otherwise specified ~~herein~~ *in this section*.

SEC. 38. Section 25103 of the Education Code is amended to read:

25103. (a) The board may remove a vendor from the registry if the vendor submits materially inaccurate information to the board, does not remit assessed fees within 60 days, or fails to submit notice of material changes to ~~their~~ *its* registered investment products, pursuant to Section 25102. Vendors found to have submitted materially inaccurate information to the board shall be allowed 60 days to correct the information. The board may refer vendors that submit information required under Section 25102 that is materially inaccurate and may constitute conduct prohibited by the National Association of Securities Dealers and the California Department of Insurance to those entities.

(b) The board shall remove a vendor from the registry if the vendor is not licensed or has ~~their~~ *had its* license revoked by the National Association of Securities Dealers or the California Department of Insurance for engaging in conduct prohibited by those entities.

(c) The board shall establish an appeals process pursuant to Section 22219 for vendors that are denied registration or removed from the registry.

SEC. 39. Section 35401 of the Education Code is amended to read:

35401. (a) If the inspector general determines that there is reasonable cause to believe that an employee or outside agency has engaged in any illegal activity, he or she shall report the nature and details of the activity on a timely basis to the local district attorney or the Attorney General.

(b) The inspector general ~~shall~~ *does* not have any enforcement power.

(c) Every investigation, including, but not limited to, all investigative files and work-product, shall be kept confidential, except that the inspector general may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or release any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the district.

(d) This section ~~shall~~ *does* not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

(e) Except as authorized in this section, or ~~when~~ *if* called upon to testify in any court or proceeding at law, any disclosure of information by the inspector general or that office that was acquired pursuant to a subpoena of the private books, documents, or papers of the person subpoenaed, is punishable as a misdemeanor. ~~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. 40. Section 35534 of the Education Code is amended to read:

35534. Except as provided in Sections 35535 and 35536 and subject to compliance with Section ~~5400~~ *54900* of the Government Code, any action to reorganize a school district shall be effective for all purposes on July 1 of the calendar year following the calendar year in which ~~such~~ *the* action is completed.

SEC. 41. Section 35738 of the Education Code is amended to read:

35738. Plans and recommendations may include a method of dividing the bonded indebtedness other than the method specified in paragraphs (1) and (2) of subdivision (b) of Section 35576 for the purpose of providing greater equity in the division. Consideration may be given to ~~assess~~ *the assessed* valuation,

number of pupils, property values, and other matters which the petitioners or county committee deems pertinent.

SEC. 42. Section 37220.8 of the Education Code is amended to read:

37220.8. (a) On and after July 1, 2002, the Governor's Office on Service and Volunteerism may make grants pursuant to subdivision (b) of Section 37220.6 based on proposals selected through a competitive process from community-based organizations with strong capacity to design and implement programs that provide high quality service and learning opportunities to pupils in kindergarten and in grades 1 to 12, inclusive. The proposals shall provide all of the following:

(1) Evidence of tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code for all nongovernmental proposals.

(2) Evidence of strong financial management systems as determined by the Governor's Office on Service and Volunteerism.

(3) Experience designing and implementing youth service and learning programs.

(b) Eligible organizations need not have experience administering government funds~~,~~*;* however, those organizations that have received government funds ~~must~~ *shall* have a history of effectively administering those funds.

(c) Funding for these community-based organizations is limited to one million dollars ($1,000,000) per year, with single grants not *to* exceed one hundred thousand dollars ($100,000).

(d) Community-based organizations that do not apply directly to the Governor's Office on Service and Volunteerism for funding pursuant to subdivision (b) of Section 37220.6 remain eligible to receive funds through partnerships with other eligible programs including the programs listed in that subdivision.

(e) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 43. Section 37252.1 of the Education Code is amended to read:

37252.1. (a) (1) (A) Notwithstanding subdivision (g) of Section 37252, the State Board of Education may grant a request

from the Fresno Unified School District that Section 37252 be waived to allow that district to receive and use funds made available pursuant to Section 37252 to offer to pupils enrolled at the Cooper Middle School whose performance on the English language arts and mathematics parts of the California Standards Tests is at the below basic or far below basic levels, as those terms are defined by the State Board of Education, an instructional day that is 60 minutes longer than at other middle schools in the district instead of offering at the Cooper Middle School the supplemental instructional programs required pursuant to Section 37252. If the State Board of Education grants the waiver request, the longer instructional day shall be used to provide more instruction in language arts and mathematics.

(B) The additional 60 minutes of instruction shall supplement and not supplant regularly scheduled courses in reading and mathematics.

(C) The Fresno Unified School District shall separately account for, and maintain separate records of, pupil attendance at the additional 60 minutes of instruction.

(2) The Fresno Unified School District may also offer pupils enrolled at the Cooper Middle School whose performance on the English language arts and mathematics parts of the California Standards Tests is at a level better than the below basic or far below basic levels, as those terms are defined by the State Board of Education, an instructional day that is 60 minutes longer than at other middle schools in the district. The district may not use funds made available pursuant to Section 37252 to offer these pupils a longer instructional day.

(3) Before implementing a longer instructional day pursuant to this section, the Fresno Unified School District shall notify the parents and guardians of pupils enrolled in the Cooper Middle School that they may elect ~~to~~ not *to* include their child ~~out of~~ *in* the instructional program offered at the Cooper Middle School and have their child placed in a regular program at another middle school maintained by the district.

(b) The Superintendent of Public Instruction shall conduct an evaluation of this alternative use of supplemental instruction funds and submit an evaluative report to the Legislature by December 31, 2004.

(c) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 44. Section 41329.3 of the Education Code is amended to read:

41329.3. (a) The County Office Fiscal Crisis and Management Assistance Team shall conduct comprehensive assessments and shall complete, by July 1, 2003, the following improvement plans for the Berkeley Unified School District:

(1) An instructional improvement plan that includes special education and programs for English language learners and is consistent with the financial improvement plan required by paragraph (2). The plan shall specify pupil outcomes that reflect significant improvement in pupil achievement, particularly in the areas of reading, writing, and mathematics. Among the areas addressed by the plan shall be the alignment between the written, taught, and tested curriculum consistent with the state's adopted instructional standards, and the use of assessment data to make appropriate pupil placements and allocate district resources. Included in the plan shall be a clear link between professional development for all instructional staff and pupil achievement objectives, including the need for ongoing analysis and use of assessment results to tailor instruction to meet the needs of all pupils.

(2) A financial improvement plan that is consistent with the instructional improvement plan required by paragraph (1) and that includes the current and future projected solvency and fiscal integrity of the school district. The financial improvement plan shall also include, but not be limited to, specific strategies to fund the full implementation of the improvement plans specified in this section and for improving the following:

(A) Management information systems.

(B) Accounting and internal control procedures.

(C) Attendance accounting procedures.

(3) A facilities improvement plan that shall be consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the following:

(A) Protection and safety for pupils, employees, and district property.

(B) Ongoing maintenance of district property.

(C) Management control and procedures for managing all construction and modernization projects.

(4) A personnel management improvement plan that is consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the following:

(A) The recruitment, retention, screening, assessment, and hiring procedures for all district staff.

(B) The training of members of the governing board of the school district in the subjects about which members of the governing board must have knowledge in order to discharge their duties as board members effectively.

(C) The assessment of the administrative practices of the school district and staff development to ensure that staff have the knowledge and skills required to manage effectively the educational programs, finances, safety, and facilities maintenance of the school district.

(D) The calculation and maintenance of appropriate and efficient full-time equivalent staffing ~~rations~~ *ratios* for all school district staff.

(E) The governance structure of the school district in relation to board policy development, operational effectiveness, and responsiveness to the community.

(F) In addition, the personnel management improvement plan shall provide data and analysis on the number of district certificated personnel who are serving on credential waivers or emergency permits. The plan shall provide for monitoring and support for personnel in their daily instructional duties and in completing subject matter and professional preparation requirements through a traditional, university-based program, alternative certification program, or training to pass the CBEST exam.

(5) A community relations improvement plan that is consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the communication among the governing board, personnel of the school district, pupils, and parents.

(b) Commencing in December 2003, and each six months thereafter until June 2005, the County Office Fiscal Crisis and Management Assistance Team shall file a written status report with the appropriate fiscal and policy committees of the Legislature, including any special committees created for the purpose of reviewing the reports, and with the legislators representing the Berkeley Unified School District, the governing board of the school district, the Alameda County Office of Education, the Superintendent of Public Instruction, the Director of Finance, and the Secretary for Education. The reports shall include the progress that the Berkeley Unified School District is making in meeting the recommendations of the improvement plans developed pursuant to subdivision (a).

(c) The County Office Fiscal Crisis and Management Assistance Team shall provide an accounting of expenditures made by it pursuant to the requirements of this act to the Controller and the Alameda County Office of Education. The Controller shall certify unexpended balances for purposes of subdivision ~~(d) of Section 2~~ *(c) of Section 3 of Chapter 1069 of the Statutes of 2002*.

(d) This section shall remain in effect only until June 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before June 1, 2006, deletes or extends that date.

SEC. 45. Section 41344 of the Education Code is amended to read:

41344. (a) If, as the result of an audit or review, a local ~~education~~ *educational* agency is required to repay an apportionment significant audit exception, the Superintendent of Public Instruction and the Director of Finance, or their designees shall jointly establish a plan for repayment of state school funds that the local ~~education~~ *educational* agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments. A local ~~education~~ *educational* agency ~~must~~ *shall* request a repayment plan within 90 days of receiving the final audit report or review, within 30 days of receiving a final determination regarding an appeal pursuant to subdivision (d), or, in the absence of an appeal pursuant to subdivision (d), within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1. At the time the local ~~education~~ *educational* agency is notified, the Controller shall also be notified

of the repayment plan. The repayment plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) *of this section* or subdivision (d) of Section 41344.1 applies, in which case the disallowed amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal or summary appeal. In calculating the disallowed amount, the Controller shall determine the total amount of overpayment received by the local ~~education~~ *educational* agency on the basis of average daily attendance, or other data, reported by the local ~~education~~ *educational* agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent of Public Instruction and the Director of the Department of Finance concur that repayment of the full liability in the current fiscal year would constitute a severe financial hardship for the local *educational* agency, they may approve a repayment plan of equal annual payments over a period of up to eight years. The repayment plan shall include interest on each year's outstanding balance at the rate earned on the state's short-term pooled investment fund during that year. The Superintendent of Public Instruction and the Director of the Department of Finance shall jointly establish this repayment plan. The Controller shall withhold amounts pursuant to the repayment plan.

(3) If the Superintendent of Public Instruction and the Director of the Department of Finance do not jointly establish a repayment plan, the State Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1) at the next principal apportionment.

(b) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except as provided in this section or Section 41344.1.

(d) Within 60 days of the date on which a local ~~education~~ *educational* agency receives a final audit report resulting from an audit or review or within 30 days of receiving a determination of a summary review pursuant to subdivision (d) *of* Section 41344.1, a local *educational* agency may appeal a finding contained in the final report, pursuant to Section 41344.1. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local *educational* agency may present evidence or arguments if the local ~~education~~ *educational* agency believes that the final report contains any finding that was based on errors of fact or interpretation of law. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local *educational* agency is correct in its assertion, in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, ''audit or review'' means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accountant firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local ~~education~~ *educational* agency with an opportunity to provide a written response.

SEC. 46. Section 42127 of the Education Code is amended to read:

42127. (a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing on the budget to be adopted for the subsequent fiscal year. The budget to be adopted shall be prepared in accordance with Section 42126. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection.

(2) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board shall file that budget with the county superintendent of schools. That budget~~,~~ and supporting data~~,~~ shall be maintained and made available for public review. If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and

redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to ~~Sections 95 to 100, inclusive,~~ *Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1* of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts ~~so~~ computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate ~~so~~ computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets. The superintendent shall identify, if necessary, any technical corrections that ~~must~~ *are required to* be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments.

(d) On or before August 15, the county superintendent of schools shall approve or disapprove the adopted budget for each school district. If, pursuant to the review conducted pursuant to subdivision (c), the *county* superintendent *of schools* determines that the adopted budget for a school district does not satisfy paragraph (1) or (2) of that subdivision, he or she shall disapprove the budget and, not later than August 15, transmit to the governing

board of the school district, in writing, his or her recommendations regarding revision of the budget and the reasons for those recommendations. The county superintendent of schools may assign a fiscal adviser to assist the district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the superintendent's review and recommendations, subject to the requirement that the committee report its findings to the superintendent no later than August 20.

(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget with the county superintendent of schools. Prior to revising the budget, the governing board shall hold a public hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. The revised budget~~,~~ and supporting data~~,~~ shall be maintained and made available for public review.

(f) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent of Public Instruction identifying all school districts for which budgets may be disapproved.

(g) The county superintendent of schools shall examine the revised budget to determine whether it (1) complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the district to meet its financial obligations during the fiscal year, and (3) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments, and, not later than October 8, shall approve or disapprove the revised budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed~~,~~ and the State Department of Education approves the waiver after determining that a budget review committee is not necessary.

Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.

(h) Not later than October 8, the county superintendent of schools shall submit a report to the Superintendent of Public Instruction identifying all school districts for which budgets have been disapproved or budget review committees waived. The report shall include a copy of the written response transmitted to each of those districts pursuant to subdivision (d).

(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (e) and (g), if the governing board of the school district so elects~~,~~ and notifies the county superintendent in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.

(1) If the adopted budget of a school district is disapproved pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent's recommendations at a regular meeting of the governing board and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

(2) On or before September 22, the county superintendent of schools will provide a list to the Superintendent of Public Instruction identifying all school districts for which a budget may be tentatively disapproved.

(3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed~~,~~ and the State Department of Education

approves the waiver after determining that a budget review committee is not necessary. Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.

(4) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(j) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

SEC. 47. Section 42238.46 of the Education Code is amended to read:

42238.46. (a) For the 2003–04 fiscal year, the Superintendent of Public Instruction~~,~~ shall compute an equalization adjustment for each school district so that no district's 2002–03 adjusted base revenue limit per unit of average daily attendance is less than the 2002–03 fiscal year adjusted base revenue limit above which fall not more that 8.25 percent of the total statewide units of average daily attendance for the appropriate size and type of district listed in subdivision (b).

For purposes of this section, the district adjusted base revenue limit and the statewide average adjusted base revenue limit ~~shall~~ *may* not include any amounts attributable to Section 45023.4, 46200, or 46201.

(b) Subdivision (a) ~~shall apply~~ *applies* 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 of Public Instruction shall compute a revenue limit equalization adjustment for each school district's adjusted 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.

(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) (1) For purposes of this section only, prior to computing the equalization adjustment pursuant to this section, the Superintendent of Public Instruction shall calculate an adjusted base revenue limit for each district by revising the 2002–03 base revenue limit of the district to eliminate that portion of the one-time adjustment to its base revenue limit related to excused absences made pursuant to Section 42238.8.

(2) For the purposes of this section, the 2002–03 statewide average adjusted base revenue limits determined for the purposes of subdivision (a) and the fraction computed pursuant to paragraph (2) of subdivision (c) by the Superintendent of Public Instruction for the 2002–03 second principal apportionment shall be final, and shall not be recalculated at 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), county superintendents of schools, in conjunction with the Superintendent of Public Instruction, shall use a school district's revenue limit average daily attendance for the 2002–03 fiscal year as determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280).

(3) For the purposes of calculating the size of a school district pursuant to subdivision (b), the Superintendent of Public Instruction shall include units of average daily attendance of any charter school for which the school district ~~if~~ *is* the chartering agency.

(4) For the purposes of computing the target amounts pursuant to subdivision (a), the Superintendent of Public Instruction shall count all charter school average daily attendance towards the average daily attendance of the school district that is the chartering agency.

SEC. 48. Section 42238.53 of the Education Code is amended to read:

42238.53. (a) Sections 42238.51 and 42238.52 ~~shall~~ *do* not apply to resident pupils in charter schools operating under the districtwide charter of a district that has converted all of its schools to charter status pursuant to Section 47606 and has elected not to be funded pursuant to Article 2 *(commencing with Section 47633)* of Chapter 6 of Part 26 ~~(commencing with Section 47633)~~.

(b) For the purposes of this section, ''resident pupils'' means pupils who reside in, and are otherwise eligible to attend, a school in the specified district.

SEC. 49. Section 44775.4 of the Education Code is amended to read:

44775.4. The duties of the taskforce shall include, but are not limited to, all of the following:

(a) Advise the Governor and Legislature on strategies to improve Holocaust ~~and~~, genocide, human rights, and tolerance education in the state.

(b) Identify, to the extent possible, all programs in the state that train teachers in Holocaust or genocide studies, or both.

(c) Identify any state Web sites that include information on how teachers can access information on the Holocaust or genocide coursework and resources.

(d) Identify strategies for improving access to Holocaust, genocide, and tolerance education materials and information.

(e) Promote the implementation of Holocaust ~~and~~, genocide, human rights, and tolerance education.

(f) Coordinate activities that will appropriately memorialize the Holocaust and genocide education throughout the state.

(g) Secure private ongoing funding for the taskforce.

(h) Carry out any other tasks that are deemed by the State Board of Education to be necessary to support the ability of the state to meet ~~it~~ *its* goals in providing Holocaust, genocide, human rights, and tolerance education.

(i) Submit an annual report to the Legislature on the progress and status of the taskforce.

SEC. 50. Section 44775.6 of the Education Code is amended to read:

44775.6. The taskforce may apply for and accept grants and receive gifts, donations, and other financial support from ~~the~~ public or private sources, subject to Sections 11005 and 11005.1 of the Government Code, for the purpose of carrying out its duties pursuant to this chapter.

SEC. 51. Section 44775.7 of the Education Code is amended to read:

44775.7. (a) The Center for Excellence on the Study of the Holocaust, Genocide, Human Rights, and Tolerance shall be established as a pilot program at California State University, Chico, pursuant to this chapter. The purpose of the pilot program is to accomplish all of the following:

(1) Create a center to coordinate and act as a clearinghouse of information on programs that provide teachers with the knowledge, training, and curricular materials to effectively teach pupils in the public schools about the Holocaust, genocide, human rights, and tolerance as established in the History-Social Science Framework and Content Standards for California Public Schools.

(2) Expand upon the work of existing Holocaust and genocide institutions, programs, and organizations, including the Museum of Tolerance, to provide teacher training, curricular materials, and other instructional resources ~~and~~ that complement and integrate, rather than duplicate, those efforts.

(b) The goals of the center shall be to accomplish all of the following:

(1) Expand upon the framework established by the Model Curriculum for Human Rights and Genocide offered by the State Department of Education.

(2) Develop and facilitate teacher access to instructional materials on the Holocaust, genocide, human rights, and tolerance.

(3) Expand delivery of training, materials, and resources on the Holocaust, genocide, human rights, and tolerance through the provision of online as well as face-to-face resources and classes.

(4) Create an integrated statewide clearinghouse of information on teacher training, instructional materials, and

resources available through existing Holocaust and genocide institutions, programs, organizations, and the center.

(5) Support the integration of survivor testimony into instruction on the Holocaust, genocide, human rights, and tolerance.

(c) The director of the center shall prepare a master plan for the implementation of the pilot program that outlines ~~how~~ *the manner in which* the goals of the program will be accomplished and measured.

(d) The center shall work cooperatively with designated California State University campuses, including, but not limited to, Fresno, San Diego, San Francisco, Sacramento, Stanislaus, Sonoma, Northridge, and Long Beach, to offer training, curricular materials, and resources for teachers to effectively instruct on the Holocaust, genocide, human rights, and tolerance.

SEC. 52. Section 44775.8 of the Education Code is amended to read:

44775.8. The center shall engage in the following activities:

(a) Support and facilitate teachers' use of certificate programs in Holocaust and genocide studies developed through the California State University.

(b) Act as a clearinghouse for teacher training materials.

(c) Provide specialized training for teachers and school districts.

(d) Assess and monitor the effectiveness of teacher training programs provided by the center.

(e) Promote Holocaust and genocide awareness.

(f) Compile a roster of volunteers who are willing to share their survivor testimony in classrooms, seminars, and workshops on the subject of the Holocaust or genocide and make the roster available on the center's Web site.

(g) Solicit financial support from both the public and private sectors.

(h) Promote activities to memorialize the Holocaust and genocide events.

(i) Prepare and submit a report to the Secretary ~~of~~ *for* Education, the Governor, and the Legislature no later than January 31, 2004, outlining the activities of the center and reporting on the progress made in achieving the goals outlined in subdivision (b) of Section 44775.7. In addition, the report shall include

information on the amount of nonstate funds secured for the purposes of the center and the number of teachers who have participated in training provided by the center.

SEC. 53. Section 44830.3 of the Education Code is amended to read:

44830.3. (a) The governing board of any school district that maintains kindergarten or grades 1 to 12, inclusive, or that maintains classes in bilingual education or special education programs for pupils with mild and moderate disabilities, may in consultation with an accredited institution of higher education offering an approved program of pedagogical teacher preparation employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. The governing board shall require that each district intern be assisted and guided by a certificated employee of the school district who has been designated by the governing board as a mentor teacher pursuant to Article 4 (commencing with Section 44490) of Chapter 3 or by certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers. Mentor teachers or other certificated employees shall possess valid certification at the same level, or of the same type, of credential as the district interns they serve.

(b) The governing board of each school district employing district interns shall develop and implement a professional development plan for district interns in consultation with an accredited institution of higher education offering an approved program of pedagogical preparation. The professional development plan shall include all of the following:

(1) Provisions for an annual evaluation of the district intern.

(2) As the governing board determines necessary, a description of courses to be completed by the district intern, if any, and a plan for the completion of preservice or other clinical training, if any, including student teaching.

(3) Mandatory preservice training for district interns tailored to the grade level or class to be taught, through either of the following options:

(A) One hundred twenty clock hours of preservice training and orientation in the aspects of child development, classroom organization and management, pedagogy, and methods of teaching the subject field or fields in which the district intern will be assigned, which training and orientation period shall be under the direct supervision of an experienced permanent teacher. In addition, persons holding district intern certificates issued by the commission pursuant to Section 44325 shall receive orientation in methods of teaching pupils with mild and moderate disabilities. At the conclusion of the preservice training period, the permanent teacher shall provide the district with information regarding the area that should be emphasized in the future training of the district intern.

(B) The successful completion, prior to service by the intern in any classroom, of six semester units of coursework from a regionally accredited college or university, designed in cooperation with the school district, to provide instruction and orientation in the aspects of child development and the methods of teaching the subject field or fields in which the district intern will be assigned.

(4) Instruction in child development and the methods of teaching during the first semester of service for district interns teaching in kindergarten or grades 1 to 6, inclusive, including bilingual classes and, for ~~person~~ *persons* holding district intern certificates issued by the commission pursuant to Section 44325, special education programs for pupils with mild and moderate disabilities at those levels.

(5) Instruction in the culture and methods of teaching bilingual ~~children~~ *pupils* during the first year of service for district interns teaching ~~children~~ *pupils* in bilingual classes and, for persons holding district intern certificates issued by the commission pursuant to Section 44325, instruction in the etiology and methods of teaching ~~children~~ *pupils* with mild and moderate disabilities.

(6) Any other criteria that may be required by the governing board.

(7) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities also shall include 120 clock hours of mandatory training and supervised fieldwork that shall include,

but not be limited to, instructional practices, and the procedures and pedagogy of both general education programs and special education programs that teach pupils with disabilities.

(8) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching bilingual classes shall also include 120 clock hours of mandatory training and orientation, which shall include, but not be limited to, instruction in subject matter relating to bilingual-crosscultural language and academic development.

(9) The professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities shall be based on the standards adopted by the commission as provided in subdivision (a) of Section 44327.

(c) Each district intern and each district teacher assigned to supervise the district intern during the preservice period~~,~~ shall be compensated for the preservice period pursuant to subparagraph (A) or (B) of paragraph (3). The compensation shall be that which is normally provided by each district for staff development or in-service activity.

(d) Upon completion of two years of service, or three years of service for interns participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities, the governing board may recommend to the Commission on Teacher Credentialing that the district intern be credentialed in the manner prescribed by Section 44328.

SEC. 54. Section 47605.3 of the Education Code is amended to read:

47605.3. Notwithstanding subdivision (d) of Section 47605, a charter school with a schoolsite physically located in the attendance area of a public elementary school in which 50 percent or more of the pupil enrollment is eligible for free or reduced price meals may give a preference in admissions to pupils who are currently enrolled in that public elementary school~~,~~ and to pupils who reside in the elementary school attendance area where the charter schoolsite is located. This section is not intended to ~~effect~~ *affect* the requirement contained in subdivision (d) of Section

47605 that a public school converting partially or entirely to a charter school adopt and maintain a policy that gives an admission preference to pupils who reside within the former attendance area of that public school.

SEC. 55. Section 47614.5 of the Education Code is amended to read:

47614.5. (a) The Charter School Facility Grant Program is hereby established and shall be administered by the State Department of Education. This grant program is intended to provide assistance with facilities rent and lease costs for pupils in charter schools.

(b) Subject to the annual Budget Act, eligible schools shall receive an amount of up to, but no more than, seven hundred fifty dollars ($750) per unit of average daily attendance, as certified at the second principal apportionment, to reimburse an amount of up to, but no more than, 75 percent of the annual facilities rent and lease costs for the charter school. In any fiscal year, if the funds appropriated for the purposes of this section by the annual Budget Act are insufficient to fund the approved amounts fully, the Superintendent of Public Instruction shall apportion the available funds on a pro rata basis.

(c) The State Department of Education shall do all of the following:

(1) Inform charter schools of this program.

(2) Upon application by a charter school, determine eligibility, based on the geographic location of the charter schoolsite, pupil eligibility for free or reduced price meals, and a preference in admissions, as appropriate. Eligibility for funding may not be limited to the grade level or levels served by the school whose attendance area is used to determine eligibility. Charter schoolsites are eligible for funding pursuant to this section if the charter schoolsite meets either of the following conditions:

(A) The charter schoolsite is physically located in the attendance area of a public elementary school in which 70 percent or more of the pupil enrollment is eligible for free or reduced priced meals and the schoolsite gives a preference in admissions to pupils who are currently enrolled in that public elementary school~~,~~ and to pupils who reside in the elementary school attendance area where the charter schoolsite is located.

(B) Seventy percent or more of the pupil enrollment at the charter schoolsite is eligible for free or reduced price meals.

(3) Inform charter schools of their grant eligibility.

(4) Reimburse charter schools for eligible expenditures in a timely manner.

(5) No later than June 30, 2005, report to the Legislature on the number of charter schools that have participated in this grant program under the expanded eligibility prescribed in paragraph (2). In addition, the report shall provide recommendations and suggestions on improving the program.

(d) Funding pursuant to this section ~~shall~~ *may* not be apportioned for the following:

(1) Units of average daily attendance generated through nonclassroom-based instruction as defined by paragraph (2) of subdivision (d) of Section 47612.5 or that does not comply with conditions or limitations set forth in regulations adopted by the State Board of Education pursuant to this section.

(2) Charter schools occupying existing school district or county office of education facilities.

(3) Charter schools receiving reasonably equivalent facilities from their chartering authority pursuant to Section 47614.

(e) Funds made available pursuant to this section shall be used for costs associated with facilities rents and leases, consistent with the definitions used in the California School Accounting Manual. These funds may also be used for costs, including, but not limited to, costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, and improving sites.

(f) If an existing charter school located in an elementary attendance area in which less than 50 percent of pupil enrollment is eligible for free or reduced price meals relocates to an attendance area identified in paragraph (2) of subdivision (c), admissions preference shall be given to pupils who reside in the elementary school attendance area into which the charter school is relocating.

(g) For each fiscal year, the Superintendent of Public Instruction shall annually report to the State Board of Education regarding the use of any funds that have been made available to each charter school from the grant program established pursuant to this section.

(h) It is the intent of the Legislature that ten million dollars ($10,000,000) be appropriated for the Charter School Facility Grant Program for the grants authorized under this section for the 2001–02, 2002–03, and 2003–04 fiscal years.

SEC. 56. Section 47632 of the Education Code is amended to read:

47632. For purposes of this chapter, the following terms shall be defined as follows:

(a) ''General-purpose entitlement'' means an amount computed by *the* formula set forth in Section 47633 beginning in the 1999–2000 fiscal year, which is based on the statewide average amounts of ~~general purpose~~ *general-purpose* funding from those state and local sources identified in Section 47633 received by school districts of similar type and serving similar pupil populations.

(b) ''Categorical block grant'' means an amount computed by the formula set forth in Section 47634 beginning in the 1999–2000 fiscal year, which is based on the statewide average amounts of categorical aid from those sources identified in Section 47634 received by school districts of similar type and serving similar pupil populations.

(c) ''General-purpose funding'' means those funds that consist of state aid, local property taxes, and other revenues applied toward a school district's revenue limit, pursuant to Section 42238.

(d) ''Categorical aid'' means aid that consists of state or federally funded programs, or both, which are apportioned for specific purposes set forth in statute or regulation.

(e) ''Educationally disadvantaged pupils'' means those pupils who are eligible for subsidized meals pursuant to Section 49552 or are identified as English learners pursuant to subdivision (a) of Section 306, or both.

(f) ''Operational funding'' means all funding except funding for capital outlay.

(g) ''School district of a similar type'' means a school district that is serving similar grade levels.

(h) ''Similar pupil population'' means similar numbers of pupils by grade level, with a similar proportion of educationally disadvantaged pupils.

(i) ''Sponsoring local educational agency'' means the following:

(1) In the cases where a charter school is granted by a school district, the sponsoring local educational agency is the school district.

(2) In cases where a charter is granted by a county office of education after having been previously denied by a school district, the sponsoring local educational agency means the school district that initially denied the charter petition.

(3) In cases where a charter is granted by the State Board of Education after having been previously denied by a local educational agency, the sponsoring local educational agency means the local educational agency designated by the State Board of Education pursuant to paragraph (1) of subdivision (k) of Section 47605 or if a local educational agency is not designated, the local educational agency that initially denied the charter petition.

(4) For pupils attending county-sponsored charter schools who are eligible to attend ~~such~~ *those* schools solely as a result of parental request pursuant to subdivision (b) of Section 1981, the sponsoring local ~~education agencies~~ *educational agency* means the pupils' school ~~districts~~ *district* of residence.

EC. 28. Section 48927 of the Education Code is amended to read:

48927. (a) This chapter shall also apply to pupils attending the California School for the Blind and the two California Schools for the Deaf, which shall be referred to as the ''state special schools.''

(b) Because the state special schools have a governance structure different from that of school districts, for the purposes of this section the following definitions shall apply:

(1) ''Superintendent'' means the appropriate principal of the state special school in which the pupil is enrolled, or the principal's designee, for purposes of Sections 48900, 48900.2, 48900.3, 48900.4, 48900.5, 48900.7, *and* 48911, and subdivisions (a) and (j) of Section 48918.

(2) ''Governing board of each school district,'' ''governing board of any school district,'' or "each governing board of a school district'' means the Superintendent of Public Instruction or his or her designee for purposes of subdivision (a) of Section 48900.1, subdivision (b) of Section 48901, subdivision (b) of Section

48901.5, Section 48907, Section 48910, the first paragraph of Section 48918, and the first paragraph of Section 48918.5.

(3) ''Governing board'' means the Superintendent of the State Special School in which the pupil is enrolled for purposes of Section 48912, subdivision (d) of Section 48915, Section 48915.5, Section 48916, Section 48917, subdivisions (a), (c), (d), (f), (h), (i), (j), and (k) of Section 48918, and Sections 48921, 48922, 48923, and 48924.

(4) ''Governing board'' means the governing board of the district of residence of the expelled pupil for purposes of subdivision (f) of Section 48915 and Section 48916.1. In the case of an adult pupil expelled from a state special school, ''governing board'' ~~shall mean~~ *means* the governing board of the school district that referred the pupil to the state special school for purposes of the ~~statute~~ *code section* cited in this paragraph.

(5) ''Superintendent of schools or the governing board'' means the appropriate principal of the state special school in which the pupil is enrolled, or the principal's designee, for the purposes of Section 48900.6.

(6) ''School district'' or ''district'' ~~shall mean~~ *means* the state special school in which the pupil is enrolled for purposes of Section 48900.8, subdivision (b) of Section 48903, Section 48905, Section 48909, Section 48914, paragraph (1) of subdivision (e) of Section 48916.1, subdivision (c) of Section 48918.5, Section 48919, Section 48920, and Section 48921.

(7) ''County board of education'' or ''county board'' ~~shall mean~~ *means* the Superintendent of Public Instruction or his or her designee for purposes of Sections 48920, 48921, 48922, 48923, and 48924.

(8) ''Local educational agency'' includes a state special school for purposes of Section 48902 and Section 48915.5.

(9) ''A change in placement'' for purposes of paragraph (2) of subdivision (a) of Section 48915.5 means a referral by the ~~State Special School~~ *state special school* to the pupil's school district of residence for placement in an appropriate interim alternative educational setting.

(10) ''Individualized education program team'' means the individualized education program team of the pupil's school district of residence with appropriate representation from the state

special school in which the pupil is enrolled for purposes of subdivision (a) of Section 48915.5.2.

(11) ''Individualized education program team'' means the individualized education program team of the state special school in which the pupil is enrolled with appropriate representation from the pupil's school district of residence for purposes of subdivisions (b), (c), and (d) of Section 48915.5.3.

(c) Subdivision (b) of this section shall be deemed to provide the same due process procedural protections to pupils in the state special schools as afforded to pupils in the public school districts of the state.

SEC. 57. Section 51122 of the Education Code is amended to read:

51122. (a) The Superintendent of Public Instruction shall allocate funds to school districts and charter schools that have certified to the superintendent that they satisfy the conditions of subdivision (c) of Section 51121. A qualifying school with a pupil enrollment of fewer than 500 pupils shall receive a grant of up to fifteen thousand dollars ($15,000). A qualifying school with *a* pupil enrollment of 500 to 799 pupils, inclusive, shall receive a grant of twenty thousand dollars ($20,000). A qualifying school with *a* pupil enrollment of 800 to 1,499 pupils, inclusive, shall receive a grant of thirty thousand dollars ($30,000). A qualifying school with *a* pupil enrollment of 1,500 or more pupils shall receive a grant of thirty-five thousand dollars ($35,000).

(b) The funds received pursuant to this article may be used to compensate teachers and teaching paraprofessionals, to provide training to teachers and teaching paraprofessionals, and to defray other costs associated with the implementation of the Nell Soto Parent/Teacher Involvement Program. A qualifying school shall be funded in the order of receipt of an approval certification until all funds available for the program have been apportioned.

(c) The total amount of the grants allocated pursuant to this section ~~shall~~ *may* not exceed the total amount appropriated for the purposes of this section.

(d) The Superintendent of Public Instruction shall allocate funding appropriated for this program to the California School for the Deaf, the California School for the Blind, and schools ranked in the bottom five deciles on the Academic Performance Index and shall give funding priority to the California School for the Deaf,

the California School for the Blind, and schools ranked in the lowest two deciles.

(1) For the first year of participation in the program, a school is eligible to receive a full grant award as listed in subdivision (a).

(2) For the second year of participation in the program, a school is eligible to receive a grant award not greater than three-fourths of the appropriate amount listed in subdivision (a) and shall provide, from local funds, one-fourth of the appropriate amount listed in subdivision (a).

(3) For the third year of participation in the program, a school is eligible to receive a grant award not greater than one-half of the appropriate amount listed in subdivision (a) and shall match state funding with the same amount of local funds.

(4) A school is eligible for no more than three grant awards. A school that received a grant during the 2000–01 school year shall be considered to have completed a first year of participation in the program and is eligible to apply as a second year school.

(e) Priority for home visits shall be given to low-performing pupils.

(f) Schools may be eligible for funding pursuant to this article for each year from funds appropriated therefor in the annual Budget Act or in another enactment.

(g) The Superintendent of Public Instruction may use up to seventy-five thousand dollars ($75,000), to the extent funds are appropriated in the annual Budget Act or other enactment for purposes of the Nell Soto Parent/Teacher Involvement Program, to administer the program.

SEC. 58. Section 51226.1 of the Education Code is amended to read:

51226.1. (a) Upon adoption of the model curriculum standards developed pursuant to Section 51226, the Superintendent of Public Instruction shall develop a curriculum framework consistent with criteria set forth in subdivision (a) of Section 60005 that offers a blueprint for implementation of career and technical education. The framework shall be adopted no later than June 1, 2006.

(b) In developing the framework, the superintendent shall work in consultation and coordination with an advisory group, including, but not limited to, representatives from all of the following:

(1) Business and industry.
(2) Labor.
(3) The California Community Colleges.
(4) The University of California.
(5) The California State University.
(6) Classroom teachers.
(7) School administrators.
(8) Pupils.
(9) Parents and guardians.
(10) Representatives of the Legislature.
(11) The State Department of Education.
(12) The Labor and Workforce Development Agency.

(c) In convening the membership of the advisory group set forth in subdivision (b), the Superintendent of Public Instruction is encouraged to seek representation broadly reflective of the state population.

(d) Costs incurred by the Superintendent of Public Instruction in complying with this section shall be covered, to the extent permitted by federal law, by the state administrative and leadership funds available pursuant to the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. Sec. ~~2301)~~ *2301 et seq.)*.

(e) In developing the framework, the Superintendent of Public Instruction shall consider developing frameworks for various career pathways that will prepare pupils for both career entry and matriculation into postsecondary education.

(f) The adoption of the framework developed and adopted pursuant to this section by a local educational agency shall be voluntary.

SEC. 59. Section 51226.3 of the Education Code is amended to read:

51226.3. (a) The State Department of Education shall incorporate, into publications that provide examples of curriculum resources for teacher use, those materials developed by publishers of nonfiction, trade books, and primary sources, or other public or private organizations, that are age-appropriate and consistent with the subject frameworks on history and social science that deal with civil rights, human rights violations, genocide, slavery, and the Holocaust.

(b) The Legislature encourages the incorporation of survivor, rescuer, liberator, and witness testimony into the teaching of human rights, genocide, and the Holocaust.

(c) The Legislature encourages all state and local professional development activities to provide teachers with content background and resources to assist in teaching about civil rights, human rights violations, genocide, slavery, and the Holocaust.

~~(c)~~

(d) The Legislature encourages all state and local professional development activities to provide teachers with content background and resources to assist in teaching about the Great Irish Famine of 1845–50.

~~(d)~~

(e) The Great Irish Famine of 1845–50 shall be considered in the next cycle in which the history/social science curriculum framework and its accompanying instructional materials are adopted.

~~(e)~~

(f) The Model Curriculum for Human Rights and Genocide adopted by the State Board of Education, pursuant to Section 51226, shall be made available to schools in grades 7 to 12, inclusive, as soon as funding is available for this purpose. In addition, the State Department of Education shall make the curriculum available on its Web site.

SEC. 60. Section 51700 of the Education Code is amended to read:

51700. (a) There is hereby established the Reading First Plan to provide reading instruction to pupils in kindergarten and grades 1 to 3, inclusive, and to special education pupils in kindergarten and grades 1 to 12, inclusive.

(b) The plan shall be administered by the State Department of Education and shall be funded from moneys allocated pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(c) The Reading First Plan submitted to the Secretary of Education pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) shall do all of the following:

(1) Authorize a local educational agency that meets all the requirements of Section 6362(c)(6) of Title 20 of the United States

Code to be eligible for Reading First funding if pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive, are provided with standards-aligned textbooks or basic instructional materials aligned with the reading/language arts content standards pursuant to Section 60605 by the beginning of the first school term that commences no later than 24 months after those materials are adopted by the State Board of Education.

(2) Authorize a local educational agency to use scientifically based reading research supplemental instructional materials for pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive, that are aligned with the reading/language arts content standards adopted pursuant to Section 60605. The local educational agency shall provide an explanation in its application of how its use of these supplemental instructional materials ~~support~~ *supports* the reading/language arts instructional materials adopted by the State Board of Education for pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive.

(3) Authorize an eligible local educational agency to receive a grant in the amount of up to six thousand five hundred dollars ($6,500) per teacher in kindergarten or in any of grades 1 to 3, inclusive, unless otherwise required pursuant to Section 6362(c)(2)(A) of Title 20 of the United States Code. In addition, to the extent that a local educational agency needs additional funding consistent with the maximum amount allowable under the federal No Child Left Behind Act (20 U.S.C. 6301 et. seq.), authorize the local educational agency to submit a plan justifying that need to the State Department of Education and the Department of Finance for their joint approval. A grant awarded pursuant to this paragraph shall be used to enhance reading instruction, including, but not limited to, the following purposes:

(A) Purchasing and implementing scientifically based reading research instructional and supplemental materials in reading language arts, pursuant to requirements specified in the Reading First Plan and paragraph (2).

(B) Participating in professional development in reading and language arts, pursuant to requirements specified in the Reading

First Plan. A Reading First funded agency may not claim funding for teachers of kindergarten or any of grades 1 to 3, inclusive, or teachers of special education pupils for the Mathematics and Reading Professional Development Program established pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

(C) Hiring reading coaches or reading content experts, or both.

(D) Purchasing reading and language arts assessments.

(E) Other purposes, as specified in Section 6362(c)(7) of Title 20 of the United States Code.

~~(e)~~

(d) A local educational agency shall submit an expenditure plan as part of its Reading First application ~~include~~ *that includes* details about ~~how~~ *the manner in which* it is going to use its funding.

SEC. 61. Section 52053 of the Education Code is amended to read:

52053. (a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program in 1999 shall be 430. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

(1) No more than 301 elementary schools.

(2) No more than 78 middle schools.

(3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide

proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of ~~the act adding this section~~ *Chapter 3 of the Statutes of 1999, First Extraordinary Session*, in the amount of fifty thousand dollars ($50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of ~~the act adding this section~~ *Chapter 3 of the Statutes of 1999, First Extraordinary Session*, shall be awarded an implementation grant in an amount of at least fifty thousand dollars ($50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of ~~the act adding this section~~ *Chapter 3 of the Statutes of 1999, First Extraordinary Session*, shall comply with Public Law 105-78.

(h) By September 15, 2000, and each year thereafter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools that failed to meet their Academic Performance Index (API) growth targets and that have an API score below the 50th percentile in the previous school year relative to all other public elementary, middle, or high schools. The Superintendent of Public Instruction shall invite these schools to participate in the Immediate Intervention/Underperforming Schools ~~Programs~~ *Program*. A

school invited to participate may take any action to improve pupil performance not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates.

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (*l*) below.

(j) If fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall randomly select the balance of schools from schools eligible to participate that did not apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle, and high schools, as well as a broad range of academic achievement.

(k) If more schools apply for participation than can be funded, the schools shall be selected ~~on~~ *in* the order in which they apply. Insofar as possible, the schools selected should reflect a representative proportion of elementary, middle, and high schools, as well as a broad range of academic achievement.

(*l*) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to ~~this act~~ *Section 2 of Chapter 3 of the Statutes of 1999, First Extraordinary Session,* of fifty thousand dollars ($50,000).

(m) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than October 15 of each year.

SEC. 62. Section 52056 of the Education Code is amended to read:

52056. (a) The High Achieving/Improving Schools Program is hereby established. Commencing in June 2000, and every June thereafter, the Superintendent of Public Instruction, with approval of the State Board of Education, shall rank all public schools based on the Academic Performance Index established pursuant to Section 52052. The schools shall be ranked by the value of the API in decile categories by *the* grade level of instruction provided and shall include three categories: elementary, middle, and high school. The schools shall also be ranked by the value of the API when compared to schools with similar characteristics.

Commencing in June 2001, the Superintendent of Public Instruction shall also report the target annual growth rates of schools~~,~~ and the actual growth rates attained by the schools. For purposes of this section, similar characteristics include, but are not limited to, the following characteristics, insofar as data is available from the State Department of Education's data: pupil mobility, pupil ethnicity, pupil socioeconomic status, percentage of teachers who are fully credentialed, percentage of teachers who hold emergency credentials, percentage of pupils who are English language learners, average class size per grade level, and whether the schools operate multitrack year-round educational programs. The Superintendent of Public Instruction shall annually publish these rankings on the Internet.

(b) All schools shall report their ranking, including a description of the components of the API, in their annual school accountability report card pursuant to Sections 33126 and 35256.

(c) Following the annual publication of the API and school rankings by the Superintendent of Public Instruction, the governing board of each school district shall discuss the results of the annual ranking at the next regularly scheduled meeting.

SEC. 63. Section 52071 of the Education Code is amended to read:

52071. (a) Phase I grant proposals shall include the following components:

(1) Proposal summary that describes the five-year reform and redesign plan to be developed.

(2) Problem analysis and goals, that shall include, but are not limited to, the following:

(A) How the pupils in the district have performed on the high school exit ~~exam~~ *examination*.

(B) How this proposal will link reform efforts being implemented in the elementary and middle schools of that district to ensure progress toward pupil success on the high school exit ~~exam~~ *examination*.

(C) How this proposal will link reform efforts being implemented in the district to ensure progress toward all of the following:

(i) High schools meeting Academic Performance Index growth targets.

(ii) Improved high school pupil assessment scores pursuant to *Section* 60640.

(iii) Improved high school graduation rates.

(iv) Decreased high school ~~student~~ *pupil* suspension and expulsion rates.

(3) Proposed membership in the district-community partnership.

(4) Description of the proposed work-funding needs~~,~~ and the ability of the district-community partnership to leverage existing funds and to seek new funds to implement the reform and redesign plan that is developed in Phase I.

(5) Administration and governance of the district-community partnership.

(6) Budget summary delineating proposed expenditures of the planning grant funds received.

(b) The criteria to be used by the Superintendent of Public Instruction and the Secretary for Education in consultation with the advisory committee to evaluate all grant proposals and to select eight participating school districts shall include, but not be limited to, the following:

(1) Quality of ideas, vision, and goals for effective high schools for all pupils.

(2) Clarity of problem definition and analysis of structural and capacity barriers.

(3) Strength of leadership within the district administration and the proposed community partnership for building effective high schools for all pupils.

(4) Demonstrated willingness to engage constituencies at the schools including principals, teachers, pupils, and parents, and to engage constituencies in the communities in planning high school reform.

(5) Capacity of the district-community partnership members individually and collectively to overcome system barriers and building public will.

(6) Prior district progress in elementary and middle school change including pupil performance.

(7) Capacity of the school district to manage the district-community partnership and the planning process.

(8) Ability of the district-community partnership to work effectively with each other.

(9) Alignment of the proposal with California state educational standards and preparation for the high school exit examination.

(c) Priority for selection shall be given to those district proposals that contain all of the following:

(1) Districts with one or more high schools ranked in the first or second decile on the Academic Performance Index.

(2) Proposals that have one or more high schools participating in the Immediate Intervention/Underperforming School Program established by Article 3 (commencing with Section 52053) of Chapter 6.1 or the High Priority Schools Grant Program contained in Article 3.5 (commencing with Section 52055.600) of Chapter 6.1, and have identified in their proposal strategies to integrate these reform efforts into the reform and redesign plan required pursuant to this chapter.

(d) In consultation with the advisory committee, the Superintendent of Public Instruction and the Secretary for Education shall select, based on the criteria pursuant to subdivision (b), from those school districts that submit proposals, eight school districts to each receive a planning grant to develop in Phase I of this chapter. The eight school districts selected to participate, when considered as a group, shall be representative of the various geographic regions and the demographics of the state.

SEC. 64. Section 52073 of the Education Code is amended to read:

52073. (a) Proposals for Phase I grants shall be submitted to the Superintendent of Public Instruction on or before April 30, 2003. The Superintendent of Public Instruction shall announce Phase I planning grant awards by June 30, 2003, and the grants shall be awarded by August 1, 2003. The high school reform and redesign plans developed in Phase I of this program shall be submitted to the Superintendent of Public Instruction by June 30, 2004.

(b) Reform and redesign plans submitted by June 30, 2004, shall be evaluated by the Superintendent of Public Instruction and the Secretary for Education, in consultation with the advisory committee, using the criteria pursuant to subdivision (b) of Section 52071, as well as~~,~~ all of the following criteria:

(1) Clear delineation of a five-year reform and redesign plan that, at minimum, contains all of the following:

(A) The specific actions necessary for the implementation of the reform and redesign plan.

(B) Specified benchmarks that demonstrate successful implementation of the reform and redesign plan over the five-year period.

(C) A five-year implementation timeline or schedule.

(D) A clear demonstration of linking existing reform efforts being implemented in the school district to ensure progress toward all of the following:

(i) Pupils being successful in the high school exit ~~exam~~ *examination* pursuant to Section 60850.

(ii) High schools meeting API growth targets pursuant to Section 52052.

(iii) High school pupils improving assessment scores pursuant to Section 60640.

(iv) Improved high school graduation rates.

(v) Decreasing high school pupil suspension and expulsion rates.

(2) A five-year expenditure and revenue budget for the implementation of the reform and redesign plan that includes, but is not limited to, the following:

(A) A one dollar ($1) match for every one dollar ($1) of grant funding received from the state.

(B) Projected annual cost for implementing of the five-year plan.

(C) Use of existing state and federal funds including, but not limited to, funds received under the Immediate Intervention/Underperforming Schools Program established by Article 3 (commencing with Section 52053) of Chapter 6.1, the High Priority Schools Grant Program contained in Article 3.5 (commencing with Section 52055.600) of Chapter 6.1, and Title I and the Comprehensive School Reform Program of the federal No Child Left Behind Act of 2001 ~~(P.L. 107-110)~~ *(20 U.S.C. Sec. 6301 et seq.)*.

(3) A listing of indicators that measure annual progress linked to those elements of the plan described in subdivision (e) of Section 52070. These indicators shall include, but are not limited, to the following:

(A) Participating high schools meeting annual API growth targets.

(B) ~~Students~~ *Pupils* being successful in the high school exit ~~exam~~ *examination*.

(C) Improved high school pupil test scores as indicated on the annual assessments pursuant to Section 60640.

(D) Improved high school graduation rates.

(E) Decrease in high school ~~student~~ *pupil* suspension and expulsion rates.

(c) The Superintendent of Public Instruction and Secretary for Education, in consultation with the advisory committee, may develop additional criteria for evaluating Phase I reform and redesign plans prior to Phase II implementation.

(d) School districts shall be notified no later than August 1, 2004, as to the acceptance of their reform and redesign plan for Phase II implementation.

SEC. 65. Section 53082 of the Education Code is amended to read:

53082. (a) (1) For purposes of this chapter, ''local partnership'' means a defined system designed to deliver the school-to-career programs funded pursuant to this chapter. A local partnership may include, but is not limited to, a collaborative effort between educators, employers, local government entities, and the public.

(2) For purposes of this chapter, ''local partnership geographic area'' means the geographic area that an established local partnership is designed to serve.

(b) To be eligible for a grant pursuant to this chapter, a local entity shall, in the grant application, submit a detailed plan demonstrating the following:

(1) All pupils shall be eligible and have access to the activities developed in the geographic region. ''All pupils'' means every pupil, including, but not limited to, pupils who are college bound, at high risk, disabled pupils, special education pupils, male and female pupils pursuing nontraditional careers, gifted pupils, pupils with limited English proficiency, and ~~those who are~~ economically disadvantaged *pupils*.

(2) The ability to leverage funds and contributions from public and private entities, including, but not limited to, the Improving America's Schools Act of 1994 (20 U.S.C. Sec. 6301), Carl Perkins Vocational and Technical Education Act of 1998 (20

U.S.C. Sec. ~~2301~~ *2301)*, and the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801).

(3) The ability to build on and integrate other beneficial workforce development and educational programs currently operating in the state, including, but not limited to, tech prep programs as provided through the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998 ~~(105 P.L. 332)~~ *(P.L. 105-332)*, Partnership Academies established pursuant to Article 5 (commencing with Section 54690) of Chapter 9 of Part 29, Regional Occupational Centers and programs established pursuant to Article 1 (commencing with Section 52300) of Chapter 9, Project WorkAbility conducted pursuant to Article 3 (commencing with Section 56470) of Chapter 4.7 of Part 30, youth apprenticeship programs, and adult education programs.

(4) The ability to provide school-based learning, work-based learning, and ~~service~~ *service-based* learning at an appropriate level for that local partnership geographic area.

(5) A significant level of participation and contributions from business and organized labor, including, but not limited to, internal school-to-career coordinator salaries, pupil wages in paid work-based learning, supplies, and equipment necessary for relevant school-to-career activities.

(6) The ability to be as inclusive as possible and engage all interested, appropriate, and relevant parties in the activities of the local partnership. The local partnership shall demonstrate participation from representatives of local ~~education~~ *educational* agencies, representatives of local postsecondary educational institutions, representatives of local vocational education schools, local educators, parent organizations, employers, employer organizations, and organized labor. The Interagency Partnership for School-to-Career Programs may, as it deems necessary, require additional participation from other parties, including, but not limited to, community-based organizations, national trade associations, industrial extension centers, rehabilitation agencies and organizations, proprietary institutions of higher education, local government agencies, parent organizations, teacher organizations, private industry councils, and federally recognized Native American tribes and Native American organizations.

(7) An instructional program advising pupils of an employee's and employer's rights and obligations in the workplace.

(8) Accountability measurements shall demonstrate increased academic performance, postsecondary enrollment, decreased dropout rates, transition to appropriate employment, apprenticeship, or any other job training school when applicable, and measurements of pupil, parent, and employer satisfaction.

SEC. 66. Section 54201 of the Education Code is amended to read:

54201. (a) The State Department of Education shall calculate the per pupil amount that was received by each school district pursuant to the court-ordered desegregation claims filed pursuant to Sections 42243.6 and 42247, and the per pupil amount that was received based on voluntary integration claims filed pursuant to Sections 42247 and 42249 for the 2000–01 fiscal year. This amount shall be determined by dividing the total funds by the actual average daily attendance as reported on the second principal apportionment for 2000–01.

(b) The amount determined pursuant to subdivision (a) for each school district, adjusted by the percentage increase calculated pursuant to Section 42238.1, multiplied by the districts' total average daily attendance for each fiscal year shall be the total per pupil funding received for the Targeted Instructional Improvement Grant *Program*. This amount shall be adjusted annually thereafter by the percentage increase calculated pursuant to Section 42238.1. For the 2001–02 fiscal year, and each fiscal year thereafter, the total amount a school district shall receive in any fiscal year is at a minimum the same total amount it received in the 2000–01 fiscal year adjusted annually pursuant to Section 42238.1.

SEC. 67. Section 56021.1 of the Education Code is amended to read:

56021.1. ~~"Consent",~~ *"Consent,"* as provided in subsection (b) of Section 300.500 of Title 34 of the Code of Federal Regulations, means all of the following:

(a) The parent or guardian has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication.

(b) The parent or guardian understands and agrees in writing to the carrying out of the activity for which his or her consent is sought~~,~~*;* and the consent describes that activity and lists the records, if any, that will be released and to whom.

(c) The parent or guardian understands that the granting of consent is voluntary on the part of the parent or guardian and may be revoked at any time. If a parent or guardian revokes consent, that revocation is not retroactive~~, meaning that it does not~~ *to* negate an action that has occurred after the consent was given and before the consent was revoked.

SEC. 68. Section 56046 of the Education Code is amended to read:

56046. (a) An employee of a school district, county office of education, or a special education local planning area may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce, any person, including, but not limited to, a teacher, a provider of designated instruction and services, a paraprofessional, an instructional aide, a behavioral aide, a health aide, other educators or staff of the local educational agency, a private individual or entity under contract with the local educational agency, or a subordinate of the employee, for the purpose of interfering with the action of that person at any time, to assist a parent or guardian of a pupil with exceptional needs to obtain services or accommodations for that pupil.

(b) If a person described in subdivision (a), believes an employee or agent of a local educational agency is in violation of subdivision (a) because of using or attempting to use official authority or influence, that person may file a complaint under the Uniform Complaint Procedures as set forth in Title 5 of the California Code of Regulations. ~~When~~ *If* a person files a complaint pursuant to this subdivision, the state shall intervene directly and the conditions for intervention in Section 4650 of Title 5 of the California Code of Regulations are not applicable.

(c) ~~Nothing in this~~ *This* section ~~shall be construed to~~ *does not* limit or alter any right a person described in subdivision (a) may have to file a complaint pursuant to either a governing board-adopted grievance process or a collectively bargained grievance process.

(d) ~~Nothing in this~~ *This* section ~~shall be construed to~~ *does not* do any of the following:

(1) Limit or alter the right or duty of a public school official to direct or discipline an employee or contractor.

(2) Prevent a local educational agency from enforcing a law or regulation regarding conflicts of interest, incompatible activities, or the confidentiality of pupil records.

(e) (1) For the purposes of this section, ‘‘services or accommodations’’ includes information that would assist a parent or guardian *to* obtain a free appropriate *public* education for his or her child as guaranteed by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or other services or accommodations guaranteed under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), as well as~~, under~~ state laws regarding individuals with exceptional needs.

(2) For the purpose of this section, ‘‘use of official authority or influence’’ includes promising to confer or conferring any benefit, affecting or threatening to affect any reprisal, or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action. ‘‘Use of official authority or influence’’ does not include good faith advocacy by an employee of a public school agency, to any person including another agency employee or contractor, regarding the services, if any, to be provided to a pupil under the laws referred to in paragraph (1).

(f) ~~Nothing in this~~ *This* section ~~shall be deemed to~~ *does not* diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) A school employee’s or contractor’s assistance offered to a parent or guardian of a pupil with exceptional needs to obtain services or accommodations for that pupil may not interfere with the school employee’s or contractor’s regular duties for the local educational agency.

SEC. 69. Section 56341.5 of the Education Code is amended to read:

56341.5. (a) Each district, special education local plan area, or county office convening a meeting of the individualized education program team shall take steps to ensure that no less than one of the parents or guardians of the individual with exceptional

needs are present at each individualized education program meeting or are afforded the opportunity to participate.

(b) Parents or guardians shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend.

(c) The individualized education program meeting shall be scheduled at a mutually agreed upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time, and location of the meeting and who shall be in attendance. Parents or guardians may also be informed in the notice of the right to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs.

(d) For an individual with exceptional needs beginning at age 14, or younger, if appropriate, the meeting notice shall also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the individual required by subdivision (a) of Section 56345.1~~,~~ and indicate that the individual with exceptional needs is also invited to attend. In accordance with paragraph (3) of subsection (b) of Section 300.345 of the Code of Federal Regulations, for an individual with exceptional needs beginning at 16 years of age or younger, if appropriate, the meeting notice shall also indicate that a purpose of the meeting is the consideration of needed transition services for the individual required by subdivision (b) of Section 56345.1 and indicate that the individual with exceptional needs is invited to attend. If the pupil does not attend the individualized education program meeting, the district, special education local plan area, or county office shall take steps to ensure that the pupil's preferences and interests are considered in accordance with paragraph (2) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(e) The meeting notice shall also identify any other local *agency* in accordance with paragraph (3) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(f) If no parent or guardian can attend the meeting, the district, special education local plan area, or county office shall use other methods to ensure parent or guardian participation, including individual or conference telephone calls.

(g) A meeting may be conducted without a parent or guardian in attendance if the district, special education local plan area, or

county office is unable to convince the parent or guardian that he or she should attend. In this event, the district, special education local plan area, or county office shall maintain a record of its attempts to arrange a mutually agreed-upon time and place, as follows:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents or guardians and any responses received.

(3) Detailed records of visits made to the home or place of employment of the parent or guardian and the results of those visits.

(h) The district, special education local plan area, or county office shall take whatever action is necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardian with deafness or whose native language is *a language* other than English.

(i) The district, special education local plan area, or county office shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian.

SEC. 70. Section 56383 of the Education Code is amended to read:

56383. Pursuant to subsection (b) of Section 300.349 of Title 34 of the Code of Federal Regulations, after an individual with exceptional needs is placed in a nonpublic, nonsectarian school under Section 56366, any meetings to review and revise the pupil's individualized education program may be conducted by the nonpublic, nonsectarian school at the discretion of the district, special education local plan area, or county office of ~~Education~~ *education*. However, even if a nonpublic, nonsectarian school implements a child's individualized education program, responsibility for compliance with this part and with the Individuals with Disabilities Education Act (20 U.S.C. *Sec.* 1400 et seq.) and implementing regulations~~,~~ remains with the district, special education local plan area, or county office of ~~Education~~ *education* pursuant to subsection (c) of Section 300.349 of Title 34 of the Code of Federal Regulations.

SEC. 71. Section 59008 of the Education Code is amended to read:

59008. (a) The Department of Personnel Administration shall consider making salaries for teachers, specialists, and administrators of the California School for the Deaf competitive with the salaries of similarly qualified school teachers, specialists, and administrators who are employed by the encompassing school districts.

(b) For purposes of this section, ''teachers,'' ''teacher specialists,'' and ''administrators'' ~~means~~ *mean* those individuals who hold the appropriate teaching, service, or teaching and administrative credential, as appropriate, as issued by the Commission on Teacher Credentialing, as determined by the employing state agency.

SEC. 72. Section 59104 of the Education Code is amended to read:

59104. (a) The Department of Personnel Administration shall consider making salaries for teachers, specialists, and administrators of the California School for the Blind competitive with the salaries of similarly qualified school teachers, specialists, and administrators who are employed by the encompassing school districts.

(b) For purposes of this section, ''teachers,'' ''teacher specialists,'' and ''administrators'' ~~means~~ *mean* those individuals who hold the appropriate teaching, service, or teaching and administrative credential, as appropriate, as issued by the Commission on Teacher Credentialing, as determined by the employing state agency.

SEC. 73. Section 59205 of the Education Code is amended to read:

59205. (a) The Department of Personnel Administration shall consider making salaries for teachers, specialists, and administrators of the Diagnostic Center, Southern California, the Diagnostic Center, Central California, and the Diagnostic Center, Northern California, competitive with the salaries of similarly qualified school teachers, specialists, and administrators who are employed by the encompassing school districts.

(b) For purposes of this section, ''teachers,'' ''teacher specialists,'' and ''administrators'' ~~means~~ *mean* those individuals who hold the appropriate teaching, service, or teaching and administrative credential, as appropriate, as issued by the

Commission on Teacher Credentialing, as determined by the employing state agency.

SEC. 74. Section 60246 of the Education Code is amended to read:

60246. (a) The Controller shall, during each fiscal year, commencing with the 1983–84 fiscal year, transfer from the General Fund ~~of the state~~ to the State Instructional Materials Fund, an amount of twenty-one dollars and eighteen cents ($21.18) per pupil ~~in the~~ average daily attendance in the public elementary schools during the preceding fiscal year, as certified by the Superintendent of Public Instruction, except that this amount shall be adjusted annually, through and including fiscal year 1987–88, in conformance with the Consumer Price Index, all items, of the Bureau of Labor Statistics of the United States Department of Labor, measured for the calendar year next preceding the fiscal year to which it applies. Commencing with the 1990–91 fiscal year, the amount shall be adjusted annually by an amount equal to the percentage change determined pursuant to subdivision (b) of Section 42238.1.

(b) The amount transferred pursuant to subdivision (a) includes the designated percentage of the cash entitlements to be used to pay for unadopted state materials, tests, and in-service training.

(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 75. Section 60900 of the Education Code is amended to read:

60900. (a) The State Department of Education shall contract for the development of proposals which will provide for the retention and analysis of longitudinal pupil achievement data on the tests administered pursuant to Chapter 5 (commencing with Section 60600), Chapter 7 (commencing with Section 60810), and Chapter 9 (commencing with Section 60850). The longitudinal data shall be known as the California longitudinal pupil achievement data system.

(b) The proposals developed pursuant to subdivision (a) shall evaluate and determine whether it would be most effective, from both a fiscal and a technological perspective, for the state to own

the California longitudinal pupil achievement data system. The proposals shall additionally evaluate and determine the most effective means of housing the California longitudinal pupil achievement data system.

(c) The California longitudinal pupil achievement data system shall be developed and implemented in accordance with all state rules and regulations governing information technology projects.

(d) The system or systems developed pursuant to this section shall be used to accomplish all of the following goals:

(1) To provide school districts and the State Department of Education access to data necessary to comply with federal reporting requirements delineated in the No Child Left Behind Act of 2001 ~~(P.L. 107-110)~~ *(20 U.S.C. Sec. 6301 et seq.)*.

(2) To provide a better means of evaluating educational progress and investments over time.

(3) To provide local ~~education~~ *educational* agencies information that can be used to improve pupil achievement.

(4) To provide an efficient, flexible, and secure means of maintaining longitudinal statewide pupil level data.

(e) In order to comply with federal law as delineated in the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), the local ~~education~~ *educational* agency shall retain individual pupil records for each test taker, including all of the following:

(1) All demographic data collected from the STAR test, high school exit examination, and English language development test.

(2) Pupil achievement data from assessments administered pursuant to the STAR, high school exit examination, and English language development testing programs. To the extent feasible, data should include subscore data within each content area.

(3) A unique pupil identification number to be identical to the pupil identifier developed pursuant to the California School Information Services, which shall be retained by each local ~~education~~ *educational* agency and used to ensure the accuracy of information on the header sheets of the STAR tests, high school exit examination, and the English language development test.

(4) All data necessary to compile reports required by the federal No Child Left Behind Act of 2001 *(20 U.S.C. Sec. 6301 et seq.)*, including, but not limited to, dropout and graduation rates.

(5) Other data elements deemed necessary by the Superintendent of Public Instruction, with approval of the State

Board of Education, to comply with the federal reporting requirements delineated in the No Child Left Behind Act of 2001 ~~(P.L. 107-110)~~ *(20 U.S.C. Sec. 6301 et seq.)*, after review and comment by the advisory board convened pursuant to subdivision (h).

(f) The California longitudinal pupil achievement data system or systems shall have all of the following characteristics:

(1) The ability to sort by demographic element collected from the STAR tests, high school exit examination, and English language development test.

(2) The capability to be expanded to include pupil achievement data from multiple years.

(3) The capability to monitor pupil achievement on the STAR tests, high school exit examination, and English language development test from year to year and school to school.

(4) The capacity to provide data to the state and local ~~education~~ *educational* agencies upon their request.

(g) Data elements and codes included in the system shall comply with Sections 49061 to 49079, inclusive, and Sections 49602 and 56347, with Sections 430 to 438, inclusive, of Title 5 of the California Code of Regulations, with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), and with the Family Education Rights and Privacy Act statute (20 U.S.C. Secs. 1232g and ~~1232h~~ *1232h)* and related federal regulations.

(h) The State Department of Education shall convene an advisory board consisting of representatives from the State Board of Education, the Secretary for Education, the Department of Finance, the State Privacy Ombudsman, the Legislative Analyst's office, representatives of parent groups, school districts, and local ~~education~~ *educational* agencies, and education researchers to establish privacy and access protocols, provide general guidance, and make recommendations relative to data elements. The department is encouraged to seek representation broadly reflective of the general public of California.

(i) Subject to funding being provided in the annual Budget Act, the State Department of Education shall contract with a consultant for independent project oversight. The Director of Finance shall review the request for proposals for the contract. The consultant hired to conduct the independent project oversight shall twice

annually submit a written report to the Superintendent of Public Instruction, the State Board of Education, the advisory board, the Director of Finance, the Legislative Analyst, and the appropriate policy and fiscal committees of the Legislature. The report shall include an evaluation of the extent to which the California longitudinal pupil achievement data system is meeting the goals described in subdivision (b) and recommendations to improve the data system in ensuring the privacy of individual pupil information and providing the data needed by the state and school districts.

(j) This section shall be implemented using federal funds received pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), which are appropriated for purposes of this section in Item 6110-113-0890 of Section 2.00 of the Budget Act of 2002 *(Chapter 379 of the Statutes of 2002)*. The release of these funds is contingent on approval of an expenditure plan by the Department of Finance.

(k) For purposes of this chapter, a local ~~education~~ *educational* agency shall include a county office of education, a school district, or charter school.

SEC. 76. Section 66025.3 of the Education Code is amended to read:

66025.3. (a) No campus of the University of California, the California State University, or the California Community Colleges shall charge any mandatory systemwide tuition or fees, including enrollment fees, registration fees, differential fees, or incidental fees, to any of the following:

(1) Any dependent eligible to receive assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(2) (A) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, does not exceed the national poverty level as defined in subdivision (c).

(B) Notwithstanding Section 893 of the Military and Veterans Code, the Department of Veterans Affairs may determine the eligibility for fee waivers for a child described in subparagraph (A).

(3) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. For the purposes of this paragraph, ''active service of the state'' refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(4) (A) Any undergraduate student who is a recipient of a Medal of Honor, commonly known as a Congressional Medal of Honor, or any undergraduate student who is a child of a recipient of a Medal of Honor and ~~that child~~ *who* is no more than 27 years old, if both of the following requirements are met:

(i) His or her annual income, including the value of any support received from a parent, does not exceed the national poverty level as defined in subdivision (c).

(ii) The recipient of the Medal of Honor who is or was the parent of the undergraduate student is, or at the time of his or her death was, a California resident as determined pursuant to Chapter 1 (commencing with Section 68000) of Part 41.

(B) The Department of Veterans Affairs shall determine the eligibility of any applicant for a fee waiver under this paragraph.

(b) A person who is eligible for a waiver of tuition or fees under this section may receive a waiver for each academic year during which he or she applies for that waiver, but an eligible person may not receive a waiver of tuition or fees for a prior academic year.

(c) As used in this section, the ''national poverty level'' is the poverty threshold for one person, as most recently calculated by the Bureau of the Census of the United States Department of Commerce.

(d) The waiver of tuition or fees under this section shall apply only to a person who is determined to be a resident of California pursuant to Chapter 1 (commencing with Section 68000) of Part 41.

(e) This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

(f) No provision of this section shall apply to the University of California except to the extent that the Regents of the University

of California, by appropriate resolution, make that provision applicable.

SEC. 77. Section 67385.3 of the Education Code is amended to read:

67385.3. (a) (1) The California Campus Sexual Assault Task Force is hereby established to assess the status of California's college and university campuses with respect to the incidence of sexual assault. The task force shall have the mission and responsibility to accomplish both of the following:

(A) Develop a uniform system for the gathering of information pertaining to sexual assault required by paragraph (1) of subdivision (c) from California institutions of higher education.

(B) Create a set of model guidelines for addressing sexual assault issues in institutions of higher education in the State of California.

(2) The task force shall consider the data collected pursuant to its responsibilities, and create a ''Campus Blueprint to Address Sexual Assault,'' and present that report in writing to the Legislature on or before April 1, 2004.

(b) The task force shall have 15 members.

(1) The following 14 members of the task force shall be appointed by the Governor:

(A) A representative of the University of California.

(B) A representative of the California State University.

(C) Two representatives of the California Community Colleges.

(D) A representative of the Sexual Assault Branch of the Office of Criminal Justice Planning.

(E) Two representatives of private institutions of higher education.

(F) Two at-large representatives of the public.

(G) Two representatives of rape crisis centers in the state.

(H) Two representatives of campus-based sexual assault programs in the state.

(I) A representative of the State Department of Health Services.

(2) One member of the task force shall be a representative of the Attorney General's office, appointed by the Attorney General.

(c) (1) The task force shall be staffed by the entity selected and contracted with pursuant to subdivision (e), and shall gather

information pertinent to the report referenced in subdivision (a) from the various campuses of the University of California, the California State University, and the California Community Colleges, and from a sample of private institutions of higher education in the state. This information shall include, but not be limited to, information related to all of the following:

(A) Campus law enforcement policies that address sexual assault.

(B) Campus law enforcement preparation regarding sexual assault issues.

(C) Campus health ~~prevention~~ policies that address sexual assault.

(D) Faculty and employee education on sexual assault issues.

(E) Sexual assault prevention education programs for students.

(F) Victim-sensitive campus judicial policies addressing sexual assault.

(G) Compliance with, and policies regarding, the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. *Sec.* 1092(f)).

(2) The information gathered pursuant to this subdivision shall not include information the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege.

(3) The task force shall conduct public hearings, which shall provide opportunities for receiving input, regarding the proposed guidelines, from concerned stakeholders.

(d) The Office of Criminal Justice Planning shall administer the task force, and shall support the task force in producing the report referenced in subdivision (a).

(e) The Office of Criminal Justice Planning shall administer a competitive bidding process for the selection of an entity to perform research, for the report referenced in subdivision (a). The Office of Criminal Justice Planning is hereby authorized to enter into an agreement with the entity that is selected under this subdivision for the provision of these services.

(f) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 78. Section 70010 of the Education Code is amended to read:

70010. (a) The California Memorial Scholarship Program is hereby established. The program shall be administered by the Scholarshare Investment Board established pursuant to Section 69984. The program shall be funded by the California Memorial Scholarship Fund established pursuant to Section 5066 of the Vehicle Code.

(b) The purpose of the program is to provide scholarships for surviving dependents of California residents killed as a result of injuries sustained during the terrorist attacks of September 11, 2001. These scholarships shall be used to defray the costs incurred by participants in the program at institutions of higher education. The Legislature finds and declares *that* the scholarships provided by this act are funded by voluntary donations provided by California vehicle owners.

SEC. 79. Section 94140 of the Education Code is amended to read:

94140. The authority shall have power to do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt and have an official common seal and alter it at pleasure.

(c) Sue and be sued in its own name, and plead and be impleaded.

(d) Borrow money, issue bonds and notes and other obligations of the authority, and provide for the rights of the holders thereof as provided in this chapter.

(e) Acquire, lease as lessee, hold, and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter.

(f) Acquire, in the name of the authority by purchase or otherwise, on the terms and conditions and in the manner as it deems proper, any land or interest therein and other property that it determines is reasonably necessary for any project, including any lands held by any county, municipality, or other governmental subdivision of the state; and to hold and use the same and to sell, convey, lease, or otherwise dispose of property so acquired, no longer necessary for the authority's purposes.

(g) Receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which the grants, loans, and contributions may be made.

(h) Prepare, or cause to be prepared, plans, specifications, designs, and estimates of costs for the construction and equipment of projects for participating colleges and participating nonprofit entities under this chapter, and from time to time to modify those plans, specifications, designs, or estimates.

(i) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges and participating nonprofit entities.

(j) Employ consulting engineers, architects, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment and to fix their compensation.

(k) Determine the location and character of any project to be undertaken pursuant to this chapter, and construct, reconstruct, repair, lease, as lessee or lessor, the same; enter into contracts for any or all of those purposes; and designate a participating private college or participating nonprofit entity as its agent to determine the location and character of a project undertaken by the participating private college or participating nonprofit entity under this chapter and, as the agent of the authority, construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all of those purposes including contracts for the management and operation of the project.

(*l*) Establish rules and regulations for the use of a project or any portion thereof and to designate a participating private college or participating nonprofit entity as its agent to establish rules and regulations for the use of a project undertaken by the participating private college or participating nonprofit entity.

(m) Generally establish, revise from time~~,~~ to time, and charge and collect, rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project or any

portion thereof and contract with holders of its bonds and with any other person, party, association, corporation, or other body, public or private, in respect thereof.

(n) Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly given in this chapter.

(o) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(p) Charge, and equitably apportion among participating private colleges and participating nonprofit entities, its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.

(q) Finance, directly or through an intermediary, or purchase or take assignments of, or make commitments to finance, directly or through an intermediary, or purchase or to take assignments of, student loans, to contract in advance for those student loans, and to contract in advance for that financing, purchase, or assignment, and to pay any amounts payable in respect thereto. A student loan shall be eligible for financing or purchase by the authority or for assignment hereunder regardless of the repayment status of the loan. Any pledge made to secure authority financing for student loan project purposes shall be valid and binding from the time the pledge is made. The revenues and receipts of property or interest in the property pledged and thereafter received by the authority, a participating college or public institution of higher education, a servicer, a trustee, or a custodian shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, participating college or public institution of higher education, servicer, trustee, or custodian irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(r) Hold or invest in student loans, create pools of student loans, and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans.

(s) Contract or otherwise provide for the distribution, processing, origination, purchase, sale, servicing, securing, and collection of student loans, the payment of fees, charges, and administrative expenses in connection therewith, and the funding of reserves required or provided for in any resolution authorizing, or trust agreement securing, authority financing for student loan purposes.

(t) Assist in providing support to participating colleges or participating nonprofit entities to enhance the market acceptance of potential bond issues by the authority, including securing probable or actual credit ratings from nationally recognized bond rating agencies, providing or obtaining liquidity or credit enhancement, providing or securing bond reserve funds, performing any other action deemed necessary by the authority, and incurring necessary expenses, payable from available authority funds, for any of these purposes.

SEC. 80. Section 94154 of the Education Code is amended to read:

94154. The State of California pledges and agrees with the holders of the bonds, notes, and other obligations issued pursuant to authority contained in this chapter, and with those parties who may enter into contracts with the authority pursuant to ~~the provisions of~~ this chapter, that the state will not limit, alter, or restrict the rights hereby vested in the authority and the participating private colleges and participating nonprofit entities to maintain, construct, reconstruct, and operate any project as defined in this chapter or to establish and collect the rents, fees, receipts, or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this chapter, and with the parties who may enter into contracts with the authority pursuant *to* this chapter, or in any way impair the rights or remedies of the holders of those bonds or those parties until the bonds, together with interest thereon, are fully paid and discharged and the contracts are fully performed on the part of the authority. The authority as a public body corporate and politic may include the pledge herein made in its bonds and contracts.

SEC. 81. Section 94771 of the Education Code is amended to read:

94771. (a) The duty of administering and enforcing this chapter is vested in the Director of Consumer Affairs, who may assign and delegate those duties to a bureau chief, subject to the other provisions of this section.

(b) Every power granted to, or duty imposed upon, the bureau under this chapter may be exercised or performed in the name of the bureau, subject to any conditions and limitations the director may prescribe. The bureau chief may redelegate any of those powers or duties to his or her designee. The bureau chief shall be appointed by the Governor and confirmed by the Senate, and is exempt from the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) The director, in accordance with the State Civil Service Act, may appoint and fix the compensation of ~~such~~ clerical, inspection, investigation, evaluation, and auditing personnel, as may be necessary to carry out this chapter.

(d) The proceedings under this chapter shall be conducted by the bureau in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. To the extent of any conflict between any of the provisions of this chapter and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that Chapter 5 shall prevail.

(e) The director shall appoint an advisory committee that shall consist of representatives of institutions, student advocates, and employers who hire students, among other parties. The advisory committee shall be balanced to ensure that institutions and student advocates have approximate equal representation. Institutional representatives on the committee shall be in general proportion to the types of institutions approved or registered pursuant to this chapter and to the number of students served by each type of institution. The advisory committee shall advise the bureau concerning the bureau's administration, licensing, and enforcement functions under this chapter.

SEC. 82. Section 99235 of the Education Code is amended to read:

99235. (a) The Superintendent of Public Instruction shall notify local ~~education~~ *educational* agencies that they are eligible to receive funding to provide instructional aides and paraprofessionals who directly assist with classroom instruction in

mathematics and reading with professional development training in mathematics and reading, in an amount equal to one thousand dollars ($1,000) per qualifying instructional aide. Funding will be provided to local ~~education~~ *educational* agencies on a first-come, ~~first-serve~~ *first-served* basis. A local education agency that chooses to participate in the program is eligible to receive funding for no greater than 29 percent of its instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading in the 2004–05 fiscal year and up to 14.5 percent in the 2005–06 fiscal year. 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 the two fiscal years.

(b) Of the incentive provided pursuant to subdivision (a), a local educational agency may use not more than five hundred dollars ($500) of the per instructional aide and paraprofessionals who directly assist with classroom instruction in mathematics and reading amount to provide an individual instructional ~~aid~~ *aide* stipend.

SEC. 83. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of ballot for all candidates for public office, except that, for partisan primary elections, one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot, in accordance with subdivision (b).

(b) At partisan primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the ballot of that political party. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices and measures to be voted for at the primary election. Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the

political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has declined to state a party affiliation to vote the ballot of that political party at the next ensuing partisan primary election. The political party shall notify the party ~~chairman~~ *chair* immediately upon adoption of that party rule. The party ~~chairman~~ *chair* shall provide written notice of the adoption of that rule to the Secretary of State not later than the 135th day prior to the partisan primary election at which the vote is authorized.

(d) The county elections official shall maintain a record of which political party's ballot was requested pursuant to subdivision (b), or whether a nonpartisan ballot was requested, by each person who declined to state a party affiliation. The record shall be made available to any person or committee who is authorized to receive copies of the printed indexes of registration for primary and general elections pursuant to Section 2184.

(e) This section shall become operative on March 6, 2002.

SEC. 84. Section 13107 of the Elections Code is amended to read:

13107. (a) With the exception of candidates for Justice of the State Supreme Court or court of appeal, immediately under the name of each candidate, and not separated from the name by any line, may appear at the option of the candidate only one of the following designations:

(1) Words designating the elective city, county, district, state, or federal office which the candidate holds at the time of filing the nomination documents to which he or she was elected by vote of the people, or to which he or she was appointed, in the case of a superior court judge.

(2) The word ''incumbent'' if the candidate is a candidate for the same office which he or she holds at the time of filing the nomination papers, and was elected to that office by a vote of the people, or, in the case of a superior court judge, was appointed to that office.

(3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the

candidate during the calendar year immediately preceding the filing of nomination documents. For purposes of this section, all California geographical names shall be considered to be one word. Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.

(4) The phrase ''appointed incumbent'' if the candidate holds an office other than a judicial office by virtue of appointment, and the candidate is a candidate for election to the same office, or, if the candidate is a candidate for election to the same office or to some other office, the word ''appointed'' and the title of the office. In either instance, the candidate may not use the unmodified word ''incumbent'' or any words designating the office unmodified by the word ''appointed.'' However, the phrase ''appointed incumbent'' shall not be required of a candidate who seeks reelection to an office which he or she holds and to which he or she was appointed, as a nominated candidate, in lieu of an election, pursuant to Sections 5326 and 5328 of the Education Code or Section 7228, 7423, 7673, 10229, or 10515 of this code.

(b) Neither the Secretary of State nor any other ~~election~~ *elections* official shall accept a designation of which any of the following would be true:

(1) It would mislead the voter.

(2) It would suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent.

(3) It abbreviates the word ''retired'' or places it following any word or words which it modifies.

(4) It uses a word or prefix, such as ''former'' or ''ex-,'' which means a prior status. The only exception is the use of the word ''retired.''

(5) It uses the name of any political party, whether or not it has qualified for the ballot.

(6) It uses a word or words referring to a racial, religious, or ethnic group.

(7) It refers to any activity prohibited by law.

(c) If, upon checking the nomination documents, the ~~election~~ *elections* official finds the designation to be in violation of any of

the restrictions set forth in this section, the ~~election~~ *elections* official shall notify the candidate by registered or certified mail return receipt requested, addressed to the mailing address appearing on the candidate's nomination documents.

(1) The candidate shall, within three days from the date of receipt of the notice, appear before the ~~election officer~~ *elections official* or, in the case of the Secretary of State, notify the Secretary of State by telephone, and provide an alternate designation.

(2) In the event the candidate fails to provide an alternate designation, no designation shall appear after the candidate's name.

(d) No designation given by a candidate shall be changed by the candidate after the final date for filing nomination documents, except as specifically requested by the elections official as specified in subdivision (c) or as provided in subdivision (e).

(e) The designation shall remain the same for all purposes of both primary and general elections, unless the candidate, at least 98 days prior to the general election, requests in writing a different designation which the candidate is entitled to use at the time of the request.

(f) In all cases, words so used shall be printed in 8-point roman uppercase and lowercase type except that, if the designation selected is so long that it would conflict with the space requirements of Sections 13207 and 13211, the elections official shall use a type size for the designation for each candidate for that office sufficiently smaller to meet these requirements.

(g) Whenever a foreign language translation of a candidate's designation is required under the Voting Rights Act of 1965 (42 ~~U.S.C.A.~~ *U.S.C.* Sec. 1971), as amended, to appear on the ballot in addition to the English language version, it shall be as short as possible, as consistent as is practicable with this section, and shall employ abbreviations and initials wherever possible in order to avoid undue length.

SEC. 85. Section 19227 of the Elections Code is amended to read:

19227. (a) The Secretary of State shall adopt rules and regulations governing any voting technology and systems used by the state or any political subdivision that provide blind and visually impaired individuals with access that is equivalent to that provided to individuals who are not blind or visually impaired, including the

ability for the voter to cast and verify all selections made by both visual and nonvisual means.

(b) At each polling place, at least one voting unit approved pursuant to subdivision (a) by the Secretary of State shall provide access to individuals who are blind or visually impaired.

(c) A local agency is not required to comply with subdivision (b) unless sufficient funds are available to implement that provision. Funds received from the proceeds of the Voting Modernization Bond Act of 2002 (Article 3 (commencing with Section ~~19230)~~ *19230))*, from federal funds made available to purchase new voting systems, or from any other source except the General Fund, shall be used for that purpose.

SEC. 86. Section 3048 of the Family Code is amended to read:

3048. (a) Notwithstanding any other provision of law, in any proceeding to determine child custody or visitation with a child, every custody or visitation order shall contain all of the following:

(1) The basis for the court's exercise of jurisdiction.

(2) The manner in which notice and opportunity to be heard were given.

(3) A clear description of the custody and visitation rights of each party.

(4) A provision stating that a violation of the order may subject the party in violation to civil or criminal penalties, or both.

(5) Identification of the country of habitual residence of the child or children.

(b) (1) In cases in which the court becomes aware of facts which may indicate that there is a risk of abduction of a child, the court shall, either on its own motion or at the request of a party, determine whether measures are needed to prevent the abduction of the child by one parent. To make that determination, the court shall consider the risk of abduction of the child, obstacles to location, recovery, and return if the child is abducted, and potential harm to the child if he or she is abducted. To determine whether there is a risk of abduction, the court shall consider the following factors:

(A) Whether a party has previously taken, enticed away, kept, withheld, or concealed a child in violation of the right of custody or of visitation of a person, regardless of whether the party acted in compliance with Section 278.7 of the Penal Code or not.

(B) Whether a party has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of the right of custody or of visitation of a person.

(C) Whether a party lacks strong ties to this state.

(D) Whether a party has strong familial, emotional, or cultural ties to another state or country, including foreign citizenship. This factor shall be considered only if evidence exists in support of another factor specified in this section.

(E) Whether a party has no financial reason to stay in this state, including whether the party is unemployed, is able to work anywhere, or is financially independent.

(F) Whether a party has engaged in planning activities that would facilitate the removal of a child from the state, including quitting a job, selling his or her primary residence, terminating a lease, closing a bank account, liquidating other assets, hiding or destroying documents, applying for a passport, or applying to obtain a birth certificate or school or medical records.

(G) Whether a party has a history of domestic violence, lack of parental cooperation, or child abuse.

(H) Whether a party has a criminal record.

(2) If the court makes a finding that there is a need for preventative measures after considering the factors listed in paragraph (1), the court shall consider taking one or more of the following measures to prevent the abduction of the child:

(A) Ordering supervised visitation.

(B) Requiring a parent to post a bond in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to offset the cost of recovery of the child in the event there is an abduction.

(C) Restricting the right of the custodial or noncustodial parent to remove the child from the county, the state, or the country.

(D) Restricting the right of the custodial parent to relocate with the child, unless the custodial parent provides advance notice to, and obtains the written agreement of, the noncustodial parent, or obtains the approval of the court, before relocating with the child.

(E) Requiring the surrender of passports and other travel documents.

(F) Prohibiting a parent from applying for a new or replacement passport for the child.

(G) Requiring a parent to notify a relevant foreign consulate or embassy of passport restrictions and to provide the court with proof of that notification.

(H) Requiring a party to register a California order in another state as a prerequisite to allowing a child to travel to that state for visits, or to obtain an order from another country containing terms identical to the custody and visitation order issued in the United States (recognizing that these orders may be modified or enforced pursuant to the laws of the other country), as a prerequisite to allowing a child to travel to that ~~county~~ *country* for visits.

(I) Obtaining assurances that a party will return from foreign visits by requiring the traveling parent to provide the court or the other parent or guardian with any of the following:

(i) The travel itinerary of the child.

(ii) Copies of round trip airline tickets.

(iii) A list of addresses and telephone numbers where the child can be reached at all times.

(iv) An open airline ticket for the left-behind parent in case the child is not returned.

(J) Including provisions in the custody order to facilitate use of the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400)) and the Hague Convention on the Civil Aspects of International Child Abduction (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as identifying California as the home state of the child or otherwise defining the basis for the California court's exercise of jurisdiction under Part 3 (commencing with Section 3400), identifying the United States as the country of habitual residence of the child pursuant to the Hague Convention, defining custody rights pursuant to the Hague Convention, obtaining the express agreement of the parents that the United States is the country of habitual residence of the child, or that California or the United States is the most appropriate forum for addressing custody and visitation orders.

(K) Authorizing the assistance of law enforcement.

(3) If the court imposes any or all of the conditions listed in paragraph (2), those conditions shall be specifically noted on the minute order of the court proceedings.

(4) If the court determines there is a risk of abduction that is sufficient to warrant the application of one or more of the

prevention measures authorized by this section, the court shall inform the parties of the telephone number and address of the Child Abduction Unit in the office of the district attorney in the county where the custody or visitation order is being entered.

(c) The Judicial Council shall make the changes to its child custody order forms that are necessary for the implementation of subdivision (b). This subdivision shall become operative on July 1, 2003.

SEC. 87. Section 3118 of the Family Code is amended to read:

3118. (a) In any contested proceeding involving child custody or visitation rights, where the court has appointed a child custody evaluator or has referred a case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse, the court shall require an evaluation, investigation, or assessment pursuant to this section. When the court has determined that there is a serious allegation of child sexual abuse, any child custody evaluation, investigation, or assessment conducted subsequent to that determination shall be considered by the court only if the evaluation, investigation, or assessment is conducted in accordance with the minimum requirements set forth in this section in determining custody or visitation rights, except as specified in paragraph (1). For purposes of this section, a serious allegation of child sexual abuse means an allegation of child sexual abuse, as defined in Section 11165.1 of the Penal Code, that is based in whole or in part on statements made by the child to law enforcement, a child welfare services agency investigator, any person required by statute to report suspected child abuse, or any other court-appointed personnel, or that is supported by substantial independent corroboration as provided for in subdivision (b) of Section 3011. When an allegation of child abuse arises in any other circumstances in any proceeding involving child custody or visitation rights, the court may require an evaluator or investigator to conduct an evaluation, investigation, or assessment pursuant to this section. The order appointing a child custody evaluator or investigator pursuant to this section shall provide that the evaluator or investigator have access to all juvenile court records pertaining to the child who is the subject of the evaluation, investigation, or assessment. The order shall also provide that any juvenile court records or information gained from

those records remain confidential and shall only be released as specified in Section 3111.

(1) This section does not apply to any emergency court-ordered partial investigation that is conducted for the purpose of assisting the court in determining what immediate temporary orders may be necessary to protect and meet the immediate needs of a child. This section does apply when the emergency is resolved and the court is considering permanent child custody or visitation orders.

(2) This section does not prohibit a court from considering evidence relevant to determining the safety and protection needs of the child.

(3) Any evaluation, investigation, or assessment conducted pursuant to this section ~~is to~~ *shall* be conducted by an evaluator or investigator who meets the qualifications set forth in Section 3110.5.

(b) The evaluator or investigator shall, at a minimum, do all of the following:

(1) Consult with the agency providing child welfare services and law enforcement regarding the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.

(2) Review and summarize the child welfare services agency file. No document contained in the child welfare services agency file ~~shall~~ *may* be photocopied, but a summary of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, may be recorded by the evaluator or investigator, except for the identity of the reporting party. The evaluator's or investigator's notes summarizing the child welfare services agency information shall be stored in a file separate from the evaluator's or investigator's file and may only be released to either party under order of the court.

(3) Obtain from a law enforcement investigator all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.

(4) Review the results of a multidisciplinary child interview team (hereafter MDIT) interview if available, or if not, or if the

evaluator or investigator believes the MDIT interview is inadequate for purposes of the evaluation, investigation, or assessment, interview the child or request an MDIT interview, and shall wherever possible avoid repeated interviews of the child.

(5) Request a forensic medical examination of the child from the appropriate agency, or include in the report required by paragraph (6) a written statement explaining why the examination is not needed.

(6) File a confidential written report with the clerk of the court in which the custody hearing will be conducted and which shall be served on the parties or their attorneys at least 10 days prior to the hearing. This report ~~shall~~ *may* not be made available other than as provided in this subdivision. This report shall include, but is not limited to, the following:

(A) Documentation of material interviews, including any MDIT interview of the child or the evaluator or investigator, written documentation of interviews with both parents by the evaluator or investigator, and interviews with other witnesses who provided relevant information.

(B) A summary of any law enforcement investigator's investigation, including information obtained from the criminal background check of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.

(C) Relevant background material, including, but not limited to, a summary of a written report from any therapist treating the child for suspected child sexual abuse, excluding any communication subject to Section 1014 of the Evidence Code, reports from other professionals, and the results of any forensic medical examination and any other medical examination or treatment that could help establish or disprove whether the child has been the victim of sexual abuse.

(D) The written recommendations of the evaluator or investigator regarding the therapeutic needs of the child and how to ensure the safety of the child.

(E) A summary of the following information: whether the child and his or her parents are or have been the subject of a child abuse investigation and the disposition of that investigation; the name, location, and telephone number of the children's services worker; the status of the investigation and the recommendations made or

anticipated to be made regarding the child's safety; and any dependency court orders or findings that might have a bearing on the custody dispute.

(F) Any information regarding the presence of domestic violence or substance abuse in the family that has been obtained from a child protective agency in accordance with paragraphs (1) and (2), a law enforcement agency, medical personnel or records, prior or currently treating therapists, excluding any communication subject to Section 1014 of the Evidence Code, or from interviews conducted or reviewed for this evaluation, investigation, or assessment.

(G) Which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence.

(H) Any other information the evaluator or investigator believes would be helpful to the court in determining what is in the best interests of the child.

(c) If the evaluator or investigator obtains information as part of a family court mediation, that information shall be maintained in the family court file, which ~~shall~~ *is* not ~~be~~ subject to subpoena by either party. If, however, the members of the family are the subject of an ongoing child welfare services investigation, or the evaluator or investigator has made a child welfare services referral, the evaluator or investigator shall so inform the family law judicial officer in writing and this information shall become part of the family law file. This subdivision ~~shall~~ *may* not be construed to authorize or require a mediator to disclose any information not otherwise authorized or required by law to be disclosed.

(d) In accordance with subdivision (d) of Section 11167 of the Penal Code, the evaluator or investigator may not disclose any information regarding the identity of any person making a report of suspected child abuse. Nothing in this section is intended to limit any disclosure of information by any agency that is otherwise required by law or court order.

(e) The evaluation, investigation, or assessment standards set forth in this section represent minimum requirements of evaluation and the court shall order further evaluation beyond these minimum requirements when necessary to determine the safety needs of the child.

(f) If the court orders an evaluation, investigation, or assessment pursuant to this section, the court shall consider whether the best ~~interest~~ *interests* of the child ~~requires~~ *require* that a temporary order be issued that limits visitation with the parent against whom the allegations have been made to situations in which a third person specified by the court is present or whether visitation will be suspended or denied in accordance with Section 3011.

(g) An evaluation, investigation, or assessment pursuant to this section shall be suspended if a petition is filed to declare the child a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and all information gathered by the evaluator or investigator shall be made available to the juvenile court.

(h) This section ~~shall~~ *may* not be construed to authorize a court to issue any orders in a proceeding pursuant to this division regarding custody or visitation with respect to a minor child who is the subject of a dependency hearing in juvenile court or to otherwise supersede Section 302 of the Welfare and Institutions Code.

SEC. 88. Section 8802 of the Family Code is amended to read:

8802. (a) (1) Any of the following persons who desire to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the placing birth parent or birth parents resided when the adoption placement agreement was signed, or the county in which the placing birth parent or birth parents resided when the petition was filed*:*

(A) An adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words ''step,'' ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(B) A person named in the will of a deceased parent as an intended adoptive parent where the child has no other parent.

(C) A person with whom a child has been placed for adoption.

(D) A legal guardian who has been the child's legal guardian for more than one year. However, if the parent nominated the guardian for a purpose other than adoption for a specified time period, or if the guardianship was established pursuant to Section

360 of the Welfare and Institutions Code, the guardianship shall have been in existence for not less than three years.

(2) If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

SEC. 89. Section 9210 of the Family Code is amended to read:

9210. (a) Except as otherwise provided in subdivisions (b) and (c), a court of this state has jurisdiction over a proceeding for the adoption of a minor commenced under this part if any of the following applies:

(1) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent, or another person acting as parent, for at least six consecutive months, excluding periods of temporary absence, or, in the case of a minor under six months of age, lived in this state with any of those individuals from soon after birth and there is available in this state substantial evidence concerning the minor's present or future care.

(2) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care.

(3) The agency that placed the minor for adoption is located in this state and both of the following apply:

(A) The minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state.

(B) There is available in this state substantial evidence concerning the minor's present or future care.

(4) The minor and the prospective adoptive parent are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected.

(5) It appears that no other state would have jurisdiction under requirements substantially in accordance with paragraphs (1) to (4), inclusive, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and there is available in this state substantial evidence concerning the minor's present or future care.

(b) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if at the time the petition for adoption is filed a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with this part, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for another reason.

(c) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor, unless both of the following apply:

(1) The requirements for modifying an order of a court of another state under this part are met, the court of another state does not have jurisdiction over a proceeding for adoption substantially in conformity with paragraphs (1) to (4), inclusive, of subdivision

(a), or the court of another state has declined to assume jurisdiction over *a* proceeding for adoption.

(2) The court of this state has jurisdiction under this section over the proceeding for adoption.

SEC. 90. Section 9212 of the Family Code is amended to read:

9212. (a) Sections 9210 and 9211 ~~shall~~ apply to interstate adoptions if the prospective adoptive parents reside outside of the state.

(b) This section shall become operative only if ~~AB~~ *Assembly Bill* 746 of the 2001–02 Regular Session is enacted. If ~~AB~~ *Assembly Bill* 746 is not enacted, the application of Sections ~~9120~~ *9210* and 9211 is not intended to expand jurisdiction to apply to interstate adoptions if the prospective adoptive parents reside outside of the state.

SEC. 91. Section 17506 of the Family Code is amended to read:

17506. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry that shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

(2) Date and place of birth.

(3) Physical description.

(4) Social security number.

(5) Employment history and earnings.

(6) Military status and Veterans Administration or military service serial number.

(7) Last known address, telephone number, and date thereof.

(8) Driver's license number, driving record, and vehicle registration information.

(9) Criminal, licensing, and applicant records and information.

(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and to the extent permitted by federal law, the address, telephone number, and social security ~~information~~ *number* obtained from a public utility, cable television corporation, a provider of electronic digital pager communication, or a provider of cellular telephone services that may be of assistance in locating the parent, putative

parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 17604.

(B) For purposes of this subdivision, ''income tax return information'' means all of the following regarding the taxpayer:

(i) Assets.

(ii) Credits.

(iii) Deductions.

(iv) Exemptions.

(v) Identity.

(vi) Liabilities.

(vii) Nature, source, and amount of income.

(viii) Net worth.

(ix) Payments.

(x) Receipts.

(xi) Address.

(xii) Social security number.

(b) Pursuant to a letter of agreement entered into between the Department of Child Support Services and the Department of Justice, the Department of Child Support Services shall assume responsibility for the California Parent Locator Service and Central Registry. The letter of agreement shall, at a minimum, set forth all of the following:

(1) Contingent upon funding in the Budget Act, the Department of Child Support Services shall assume responsibility for leadership and staff of the California Parent Locator Service and Central Registry commencing July 1, 2003.

(2) All employees and other personnel who staff or provide support for the California Parent Locator Service and Central Registry shall, at the time of the transition, at their option, become the employees of the Department of Child Support Services at their existing or equivalent classification, salaries, and benefits.

(3) Until the department's automation system for the California Parent Locator Service and Central Registry functions is fully operational, the department shall use the automation system operated by the Department of Justice.

(4) Any other provisions necessary to ensure continuity of function and meet or exceed existing levels of service.

(c) To effectuate the purposes of this section, the California Child Support Automation System, the California Parent Locator Service and Central Registry, and the Franchise Tax Board shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data that will enable the Department of Child Support Services and other public agencies to carry out their powers and duties to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any local child support agency in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of this code, relating to abducted, concealed, or detained children. The California Child Support Automation System shall be entitled to the same cooperation and information as the California Parent Locator Service~~,~~ and Central Registry to the extent allowed by law. The California Child Support Automation System shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(d) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the California Child Support Automation System may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the public utility, to the extent that this information is stored within the computer database of the public utility.

(2) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the California

Child Support Automation System shall request and shall receive from cable television corporations, as defined in Section 215.5 of the Public Utilities Code, the providers of electronic digital pager communication, as defined in Section 629.51 of the Penal Code, and the providers of cellular telephone services, as defined in Section 17538.9 of the Business and Professions Code, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the cable television corporation, customers of the providers of electronic digital pager communication, and customers of the providers of cellular telephone services.

(3) In order to protect the privacy of utility, cable television, electronic digital pager communication, and cellular telephone customers, a request to a public utility, cable television corporation, provider of electronic digital pager communication, or provider of cellular telephone services for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility, cable television corporation, provider of electronic digital pager communication, or provider of cellular telephone services in writing, on a transmittal document prepared by the California Parent Locator Service and Central Registry or the California Child Support Automation System and approved by all of the public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services. The transmittal shall be deemed to be an administrative subpoena for customer service information.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the California Child Support Automation System.

(C) Contain at least three of the following data elements regarding the person sought:

(i) First and last name, and middle initial, if known.

(ii) Social security number.

(iii) Driver's license number.

(iv) Birth date.

(v) Last known address.

(vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the California Child Support Automation System shall ensure that each public utility, cable television corporation, provider of electronic digital pager communication services, and provider of cellular telephone services has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Child Support Automation System and the California Parent Locator Service and Central Registry shall ensure that customer service information supplied by a public utility, cable television corporation, providers of electronic digital pager communication, or provider of cellular telephone services is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(4) The public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider may charge a fee to the California Parent Locator Service and Central Registry or the California Child Support Automation System for each search performed pursuant to this subdivision to cover the actual costs to the public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider for providing this information.

(5) No public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider or official or employee thereof, shall be subject to criminal or civil liability for the release of customer service information as authorized by this subdivision.

(e) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Child Support Services, the California Child Support Automation System, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a local child support agency of any county in this state, and the federal Parent Locator Service. The California Child Support Automation System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(f) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the California Child Support Automation System be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 17505, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(g) (1) The Department of Justice, in consultation with the Department of Child Support Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry. Upon implementation of the California Child Support Automation System, the Department of Child Support Services shall assume all responsibility for promulgating rules and regulations for use of the California Parent Locator Service and Central Registry.

(2) The Department of Child Support Services, the Public Utilities Commission, the cable television corporations, providers of electronic digital pager communication, and the providers of cellular telephone services shall develop procedures for obtaining the information described in subdivision (c) from public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services and for compensating the public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services for providing that information.

(h) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars ($18) for any service it provides pursuant to this section that is not performed or funded pursuant to ~~Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code~~ *Section 651 and following of Title 42 of the United States Code*.

(i) This section shall be construed in a manner consistent with the other provisions of this article.

SEC. 92. Section 1226 of the Financial Code is amended to read:

1226. The limitations of Section 1221 shall not apply to the following and the following shall not be included among the

obligations of a person for the purpose of applying ~~such~~ *these* limitations:

(a) Loans secured by obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States, having a market value at least 10 percent in excess of the loans secured thereby.

(b) Loans in an amount and of a type or class previously approved in writing by the commissioner ~~which~~ *that* are secured by not less than a like amount of obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States.

(c) Loans to the extent that they are covered by guarantees or by commitments to take over or to purchase without recourse made by (1) any Federal Reserve bank, (2) the United States, (3) any department, bureau, board, commission, agency, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States, or (4) any small business development corporation, urban development corporation, or rural development corporation incorporated pursuant to the California Job Creation Law (Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code).

(d) Drafts or bills of exchange drawn in good faith against actual existing values with negotiable bills of lading attached, whether or not accepted by the drawee.

(e) Bankers' acceptances of other banks which are eligible for rediscount with a Federal Reserve bank.

(f) Obligations resulting from daily clearances through any clearinghouse association.

(g) Obligations ~~which~~ *that* are fully guaranteed or fully insured or covered by a commitment to fully guarantee or fully insure by the Federal Housing Administrator.

(h) Obligations described in Section 1336.

(i) Obligations, including portions thereof, to the extent secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law, and subject to all of the following conditions:

(1) Where the deposit is eligible for withdrawal before the secured obligation matures, the lending bank shall establish

internal procedures to prevent release of the security without the lending bank's prior consent.

(2) A deposit that is denominated and payable in a currency other than that of the obligation that it secures may be eligible for this exception if the currency is freely convertible to United ~~States'~~ *States* dollars.

(A) This exception applies only to that portion of the obligation that is covered by the United States dollar value of the deposit.

(B) The lending bank shall establish procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

SEC. 93. The heading of Article 1 (commencing with Section 3100) of Chapter 17 of Division 1 of the Financial Code is amended to read:

Article 1. Liquidation by ~~Superintendent~~ *the Commissioner*

SEC. 94. Section 1019 of the Fish and Game Code is amended to read:

1019. (a) Subject to an appropriation of funds by the Legislature for that purpose, for parcels wholly within its jurisdiction acquired on or after January 1, 2002, the department shall prepare draft management plans for public review within 18 months of the recordation date.

(b) (1) On or before February 1 of each year, the department shall submit a list of lands acquired during the previous two fiscal years and the status of the management plans for each acquisition to the fiscal committees of each house of the Legislature.

(2) Each fiscal committee in the Legislature shall consider the lists described in paragraph (1) in its budget decisions for the department.

SEC. 95. Section 2081.7 of the Fish and Game Code is amended to read:

2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and 5515, and contingent upon the fulfillment of the conditions listed in subdivisions (b), (c), and (d), the department may authorize, under Chapter 1.5 (commencing with Section 2050) or Chapter 10 (commencing with Section 2800), the take of species resulting from impacts attributable to the implementation of the Quantification Settlement Agreement, as defined in subdivision

(a) of Section 1 of ~~the act that added this section during the 2001–02 Regular Session~~ *Chapter 617 of the Statutes of 2002*, on all of the following:

(1) The salinity, elevation, shoreline habitat, or water quality of the Salton Sea.

(2) The quantity and quality of water flowing in the All-American Canal, the Coachella Canal, the Imperial Valley and Coachella Valley drains, the New and Alamo Rivers, the Coachella Valley Stormwater Channel, and the habitat sustained by those flows.

(3) Agricultural lands in the Imperial Valley.

(4) The quantity and quality of water flowing in the Colorado River, the habitat sustained by those flows, and the collection of that water for delivery to authorized users.

(b) The Quantification Settlement Agreement is executed by the appropriate parties on or before December 31, 2002.

(c) After consultation with the Department of Water Resources and an opportunity for public review and comment, the department determines, based on the best available science, that the implementation of the Quantification Settlement Agreement during the first 15 years that the agreement is in effect (1) will not result in a material increase in projected salinity levels at the Salton Sea, and (2) the agreement will not foreclose alternatives for reclamation of the Salton Sea as summarized in Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372).

(d) All of the following conditions are met:

(1) The requirements of subdivision (b) and (c) of Section 2081 are satisfied as to the species for which take is authorized.

(2) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of an adaptive management process for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take. The adjusted measures are subject to Section 2052.1.

(3) The take authorization provides for the development and implementation in cooperation with state and federal agencies of an adaptive management process that substantially contributes to the long-term conservation of the species for which take is authorized. Preparation of the adaptive management program and

implementation of the program is the responsibility of the department. The department's obligation to prepare and implement the adaptive management program is conditioned upon the availability of funds pursuant to the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if it is approved by the voters at the statewide general election to be held November 5, 2002 (Proposition 50), or other funds that may be appropriated by the Legislature or approved by the voters for that purpose. The failure to appropriate funds does not relieve the applicant of the obligations of paragraphs (1) and (2). However, the applicant shall not be required to fund any program pursuant to this paragraph.

(4) The requirements of paragraph (1) may be satisfied if the take is authorized under Chapter 10 (commencing with Section 2800).

(e) (1) The Secretary of the Resources Agency shall use all available authority to enter into a memorandum of understanding (MOU) between the Secretary of the Interior, the Salton Sea Authority, and the Governor, as provided in Section 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372) for the purpose of developing, selecting, and implementing alternatives for projects that realize the objectives of Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372). The memorandum of understanding shall be consistent with the authority granted to the Secretary of the Interior under the Salton Sea Reclamation Act of 1998 (P.L. 105-372). The memorandum of understanding, at a minimum, shall establish all of the following:

(A) Criteria for evaluation and selection of alternatives that will allow for consideration of a range of alternatives including, but not limited to, an alternative designed to sustain avian biodiversity at the Salton Sea, but not maintain elevation for the whole sea, an alternative to maintain salinity at or below current conditions and elevation near 230 feet below mean sea level under a variety of inflow conditions, and a most cost-effective technical alternative.

(B) Criteria for determining the magnitude and practicability of costs of construction, operation, and maintenance of each alternative evaluated.

(C) A process, with established deadlines, for release of a report regarding the potential alternatives, the selection of a preferred alternative, including a proposed funding plan to implement the preferred alternative, to be analyzed pursuant to the National Environmental Policy Act and California Environmental Quality Act, the release of the draft environmental impact statement/environmental impact report (EIS/EIR) analyzing the alternatives, the release of the final EIR/EIS, and the issuance of a final alternatives report to Congress and the Legislature on or before January 1, 2007.

(2) The Secretary of the Resources Agency shall establish an advisory committee representing the parties interested in the future of the Salton Sea. The Resources Agency shall consult with the advisory committee throughout all stages of the alternative selection process.

(f) Subsequent to the issuance of the take authorization referred to in subdivision (a), the applicant shall be relieved of any condition included in the take authorization to satisfy division (c), upon fulfillment of either of the following conditions:

(1) If the department finds that increases in salinity at the Salton Sea will no longer adversely affect piscivorous birds at the Salton Sea, the department may enter into an agreement with the Imperial Irrigation District that phases out the district's water or irrigation runoff to the Salton Sea.

(2) The department makes a finding that a Salton Sea reclamation plan has been funded and implemented that eliminates the need for the Imperial Irrigation District to undertake measures that mitigate impacts to piscivorous birds at the Salton Sea.

(g) This section shall not be construed to exempt from any other provision of law the Quantification Settlement Agreement and the Agreement for Transfer of Conserved Water by and between the Imperial Irrigation District and the San Diego County Water Authority, dated April 29, 1998.

SEC. 96. Section 2086 of the Fish and Game Code is amended to read:

2086. (a) The department, in cooperation with the Department of Food and Agriculture, agricultural commissioners, extension agents, farmers, ranchers, and other agricultural experts, shall adopt regulations that authorize locally designed voluntary programs for routine and ongoing agricultural activities on farms

or ranches ~~which~~ *that* encourage habitat for candidate, threatened, and endangered species, and wildlife generally. Agricultural commissioners, extension agents, farmers, ranchers, or other agricultural experts, in cooperation with conservation groups, may propose such programs to the department. The department shall propose regulations for those programs not later than July 1, 1998.

(b) Programs authorized under subdivision (a) shall do all of the following:

(1) Include management practices that will, to the maximum extent practicable, avoid and minimize take of candidate, endangered, and threatened species, while encouraging the enhancement of habitat.

(2) Be supported by the best available scientific information for both agricultural and conservation practices.

(3) Be consistent with the policies and goals of this chapter.

(4) Be designed to provide sufficient flexibility to maximize participation and to gain the maximum wildlife benefits without compromising the economics of agricultural operations.

(5) Include terms and conditions to allow farmers or ranchers to cease participation in a program without penalty. The terms and conditions shall include reasonable measures to minimize take during withdrawal from the program.

(c) Any taking of candidate, threatened, or endangered species incidental to routine and ongoing agricultural activities that occurs while the management practices specified by paragraph (1) of subdivision (b) are followed, is not prohibited by this chapter.

(d) (1) The department shall automatically renew the authorization for these voluntary programs every five years, unless the Legislature amends or repeals this section in which case the program shall be revised to conform to this section.

(2) ~~Notwithstanding Section 7550.5 of the Government Code, beginning~~ *Commencing* in 2000, and every five years thereafter, the department shall report to the appropriate policy committees of the Legislature regarding the effect of the programs. The department shall consult with the Department of Food and Agriculture in evaluating the programs and preparing the report. The report shall address factors such as the temporary and permanent acreage benefiting from the programs, include an estimate of the amount of land upon which routine and ongoing agricultural activities are conducted, provide examples of farmer

and rancher cooperation, and include recommendations to improve the voluntary participation by farmers and ranchers.

(e) If the authorization for these programs is not renewed or is modified under subdivision (d), persons participating in the program shall be allowed to cease participating in the program in accordance with the terms and conditions specified in paragraph ~~(6)~~ *(5)* of subdivision (b), without penalty.

SEC. 97. Section 2118 of the Fish and Game Code is amended to read:

2118. It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this chapter and the regulations pertaining thereto, any wild animal of the following species:

(a) Class Aves: (birds)
- Family Cuculidae (cuckoos)
  - All Species.
- Family Alaudidae (larks)
  - Skylark, Alauda arvensis
- Family Corvidae (crows, jays, magpies)
  - All species.
- Family Turdidae (thrushes)
  - European blackbird, Turdus merula
  - Missel (or mistle), thrush, Turdus viscivorus
- Family Sturnidae (starlings and mynas or mynahs)
  - All species of the family, except hill myna (or hill mynah),
  - Gracula religiosa (sometimes referred to as Eulabes religiosa)
- Family Ploceidae (weavers)
  - The following species:
    - Spanish sparrow, Passer hispaniolensis
    - Italian sparrow, Passer italiae
    - European tree sparrow, Passer montanus
    - Cape sparrow, Passer capensis
    - Madagascar weaver, Foudia madagascariensis
    - Baya weaver, Ploceus baya
    - Hawaiian rice bird, Munia nisoria
    - Red-billed quelea, Quelea quelea
    - Red-headed quelea, Quelea erythrops

Family Fringillidae (sparrows, finches, buntings)

Yellowhammer, Emberiza citrinella

(b) Class Mammalia (mammals)

Order Primates

All species except those in family ~~Homonidae~~ *Hominidae*

Order Edentata (sloths, anteaters, armadillos, etc.)

All species.

Order Marsupialia (marsupials or pouched mammals)

All species.

Order Insectivora (shrews, moles, hedgehogs, etc.)

All species.

Order Dermoptera (gliding lemurs)

All species.

Order Chiroptera (bats)

All species.

Order Monotremata (spiny anteaters, platypuses)

All species.

Order Pholidota (pangolins, scaly anteaters)

All species.

Order Lagomorpha (pikas, rabbits, hares)

All species, except domesticated races of rabbits.

Order Rodentia (rodents)

All species, except domesticated golden hamsters, also known as Syrian hamster, Mesocricetus auratus; domesticated races of rats or mice (white or albino; trained, dancing or spinning, laboratory-reared); and domestic strains of guinea pig (Cavia porcellus).

Order Carnivora (carnivores)

All species, except domestic dogs (Canis familiaris) and domestic cats (Felis catus).

Order Tubulidentata (aardvarks)

All species.

Order Proboscidea (elephants)

All species.

Order Hyracoidea (hyraxes)

All species.

Order Sirenia (dugongs, manatees)

All species.

Order Perissodactyla (horses, zebras, tapirs, rhinoceroses, etc.)

All species except those of the family Equidae.

Order Artiodactyla (swine, peccaries, camels, deer, elk, except elk (genus Cervus) which are subject to Section 2118.2, moose, antelopes, cattle, goats, sheep, etc.)

All species except: domestic swine of the family Suidae; American bison, and domestic cattle, sheep and goats of the family Bovidae; races of big-horned sheep (Ovis canadensis) now or formerly indigenous to this state.

Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora are restricted for the welfare of the animals, except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.

(c) Class amphibia (frogs, toads, salamanders)

Family Bufonidae (toads)

Giant toad or marine toad, Bufo marinus

(d) Class Monorhina (lampreys)

All species.

(e) Class Osteichthyes (bony fishes)

Family Serranidae (bass)

White perch, Morone or Roccus americana

Family Clupeidae (herring)

Gizzard shad, Dorosoma cepedianum

Family Sciaenidae (croakers)

Freshwater sheepshead, Aplodinotus grunniens

Family Characidae (characins)

Banded tetra, Astyanax fasciatus

All species of piranhas

Family Lepisosteidae (gars)

All species.

Family Amiidae (bowfins)

All species.

(f) Class Reptilia (snakes, lizards, turtles, alligators)

Family Crocodilidae

All species.

(g) Class Crustacea (crustaceans)

Genus Cambarus (crayfishes)

All species.

Genus Astacus (crayfishes)

All species.

Genus Astacopsis (crayfishes)

All species.

(h) Class Gastropoda (slugs, snails, clams)

All species of slugs.

All species of land snails.

(i) Other classes, orders, families, genera, and species of wild animals which may be designated by the commission in cooperation with the Department of Food and Agriculture, (1) when the class, order, family, genus, or species is proven to be undesirable and a menace to native wildlife or the agricultural interests of the state, or (2) to provide for the welfare of wild animals.

(j) Except as expressly authorized in this code, any live nonindigenous Atlantic salmon or the roe thereof into the Smith River watershed.

(k) Classes, families, genera, and species in addition to those listed in this section may be added to or deleted from the above lists from time to time by commission regulations in cooperation with the Department of Food and Agriculture.

SEC. 98. Section 3508 of the Fish and Game Code is amended to read:

3508. It is unlawful to break, train, hold field trials with, or practice dogs on any wild game bird or domesticated game bird during the closed season on ~~such~~ *that* bird except as authorized by the commission.

SEC. 99. Section 6954 of the Fish and Game Code is amended to read:

6954. *(a)* The department, in cooperation with the council, and using existing funds and current personnel of the department,

shall support and coordinate the development of a comprehensive plan for dealing with aquatic invasive species in California. The plan shall address the following aspects of prevention and containment of aquatic invasive species:

(1) Prevention, including education of, and outreach to, the general public and policymakers.

(2) Monitoring and detection.

(3) Control and eradication.

(4) Inspection.

(5) Enforcement.

(b) The plan prepared pursuant to subdivision (a) shall follow, to the extent possible, the guidelines of the Aquatic Nuisance Species Task Force set forth in Section 4722 of Title 16 of the United States Code.

(c) The council shall submit its first working version of the plan to the Legislature on or before January 1, 2004.

SEC. 100. Section 9221 of the Food and Agricultural Code is amended to read:

9221. An application for a license for any establishment that produces, or proposes to produce, biologics shall be made on forms to be issued by the secretary. The application shall contain all of the following:

(a) The name and address of the person who owns the place, establishment, or institution in which it is proposed to produce biologics.

(b) The name and address of the person who shall be in charge of biologics production.

(c) The type of biologics that shall be produced.

(d) A full description of the building, including its location, facilities, equipment, and apparatus to be used in biologics production.

(e) A written protocol for a commercial blood bank for animals that addresses all of the following:

(1) Maximum length of time for donation by animal donors, or minimum health parameters for animal donors.

(2) Frequency and volume of blood collected from animal blood donors.

(3) Socialization and exercise programs for animal blood donors.

(4) Method of identification of each animal, including microchip or tattoo.

(5) Ongoing veterinary care, including an annual physical exam and vaccination schedule for animals held in blood donor facilities.

(6) Husbandry standards for feeding, watering, sanitation, housing, handling, and care in transit, with minimums based on the standards set forth pursuant to the federal Animal Welfare Act in Part 3 (commencing with Section 3.1) of Subchapter A of Chapter 1 of Title 9 of the Code of Federal Regulations.

(7) Implementation of a permissive adoption program.

(f) An ''oversight letter'' ~~letter~~ identifying the oversight veterinarian who will be responsible for oversight of the facility. The letter shall be from the oversight veterinarian, and shall be maintained on file by the secretary. Oversight veterinarians shall be licensed to practice veterinary medicine in California. In the event of a change of the oversight veterinarian, it is the oversight veterinarian's responsibility to give notice to the secretary of the termination of the oversight *veterinarian* within 30 days of the termination date of the oversight *veterinarian.* An oversight letter from the incoming oversight veterinarian shall be submitted to the secretary within 30 days of the termination date of the prior oversight veterinarian.

(g) Additional information that the secretary finds is necessary for the proper administration and enforcement of this chapter.

SEC. 101. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation. Any violation determined by the commissioner to be a serious violation as defined in Section 6130 of *Title 3 of* the *California* Code of Regulations is subject to a fine of not more than five thousand dollars ($5,000) for each violation. It is unlawful and grounds for denial of a permit under

Section 14008 for any person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(b) If a person has received a civil penalty for pesticide drift in a school area subject to Section 11503.5 that results in a serious violation as defined in subdivision (a), the commissioner shall charge a fee, not to exceed fifty dollars ($50), for processing and monitoring each subsequent pesticide application that may pose a risk of pesticide drift made in a school area subject to Section 11503.5. The Agricultural Commissioner shall continue to impose the fee for each subsequent application that may pose a risk of drift, until the person has completed 24 months without another serious violation as defined in subdivision (a).

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing

including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision ~~(b)~~ *(c)*. A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision ~~(b)~~ *(c)* may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The commissioner may levy a civil penalty pursuant to subdivisions (a)~~ to~~, (c)~~, inclusive~~, *and (d)* against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(f) After the exhaustion of the appeal and review procedures provided in this section, 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 director or his or her authorized 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. 102. Section 79008 of the Food and Agricultural Code is amended to read:

79008. Opportunity exists for increasing the stability and reliability of the sea urchin fishery. The success of those efforts is uniquely dependent upon effective fishery and resource management, fishery biological research, industry engagement in management decisions, and fishery promotion. A stable and reliable sea urchin fishery provides an important source of jobs for many people in this state~~,~~ *and* economic activity in many small coastal communities, and serves to ensure the preservation of historically and culturally significant coastal dependent industry.

SEC. 103. Section 3309.5 of the Government Code is amended to read:

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the ~~parties~~ *party's* attorney, or both pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(d) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

SEC. 104. Section 3517.61 of the Government Code is amended to read:

3517.61. Notwithstanding Section 3517.6, for state employees in State Bargaining Unit 6, in any case where the provisions of Section 70031 of the Education Code, subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834,

19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to ~~the~~ *be* inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

SEC. 105. Section 3562 of the Government Code is amended to read:

3562. As used in this chapter:

(a) ''Arbitration'' means a method of resolving a rights dispute under which the parties to a controversy must accept the award of a third party.

(b) ''Board'' means the Public Employment Relations Board established pursuant to Section 3513.

(c) ''Certified organization'' means an employee organization that has been certified by the board as the exclusive representative of the employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3573).

(d) ''Confidential employee'' means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.

(e) ''Employee'' or ''higher education employee'' means any employee of the Regents of the University of California, the Directors of *the* Hastings College of the Law, or the Trustees of the California State University. However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter. The board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or~~,~~ that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of this chapter.

(f) (1) ''Employee organization'' means any organization of any kind in which higher education employees participate and that exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees. An organization that represents one or more employees whose principal worksite is located outside the State of California is an employee organization only if it has filed with the board and with the employer a statement agreeing, in consideration of obtaining the benefits of status as an employee organization pursuant to this chapter, to submit to the jurisdiction of the board. The board shall promulgate the form of the statement.

(2) ''Employee organization'' shall also include any person that an employee organization authorizes to act on its behalf. An academic senate, or other similar academic bodies, or divisions

thereof, shall not be considered employee organizations for the purposes of this chapter.

(g) ''Employer'' or ''higher education employer'' means the regents in the case of the University of California, the ~~Directors~~ *directors* in the case of *the* Hastings College of the Law, and the trustees in the case of the California State University, including any person acting as an agent of an employer.

(h) ''Employer representative'' means any person or persons authorized to act in behalf of the employer.

(i) ''Exclusive representative'' means any recognized or certified employee organization or person it authorizes to act on its behalf.

(j) ''Impasse'' means that the parties have reached a point in meeting and conferring at which their differences in positions are such that further meetings would be futile.

(k) ''Managerial employee'' means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participates in decisions with respect to courses, curriculum, personnel, and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of those duties.

(*l*) ''Mediation'' means the efforts of a third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse.

(m) ''Meet and confer'' means the performance of the mutual obligation of the higher education employer and the exclusive representative of its employees to meet at reasonable times and to confer in good faith with respect to matters within the scope of representation and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses. If agreement is reached between representatives of the higher education employer and the exclusive representative, they shall jointly prepare a written memorandum of the understanding, which shall be presented to the higher education employer for concurrence.

However, these obligations shall not compel either party to agree to any proposal or require the making of a concession.

(n) ''Person'' means one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(o) ''Professional employee'' means:

(1) Any employee engaged in work: (A) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of a character so that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (D) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

(2) Any employee who: (A) has completed the courses of specialized intellectual instruction and study described in subparagraph (D) of paragraph (1), and (B) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph (1).

(p) ''Recognized organization'' means an employee organization that has been recognized by an employer as the exclusive representative of the employees in an appropriate unit pursuant to Article 5 (commencing with Section 3573).

(q) (1) For purposes of the University of California only, ''scope of representation'' means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include any of the following:

(A) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the regents or the directors, except for the terms and conditions of employment of employees who may be affected thereby.

(B) The amount of any fees that are not a term or condition of employment.

(C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and

supervision of courses, curricula, and research programs, as those terms are intended by the standing orders of the regents or the directors.

(D) Procedures and policies to be used for the appointment, promotion, and tenure of members of the academic senate, the procedures to be used for the evaluation of the members of the academic senate, and the procedures for processing grievances of members of the academic senate. The exclusive representative of members of the academic senate shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the academic senate determines that any matter in this subparagraph should be within the scope of representation, or if any matter in this subparagraph is withdrawn from the responsibility of the academic senate, the matter shall be within the scope of representation.

(2) All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

(r) (1) For purposes of the California State University only, ‘‘scope of representation’’ means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:

(A) Consideration of the merits, necessity, or organization of any service, activity, or program established by statute or regulations adopted by the trustees, except for the terms and conditions of employment of employees who may be affected thereby.

(B) The amount of any student fees that are not a term or condition of employment.

(C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and conduct of courses, curricula, and research programs.

(D) Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees. The exclusive representative shall have the right to consult and be consulted on matters excluded from the scope of

representation pursuant to this subparagraph. If the trustees withdraw any matter in this subparagraph from the responsibility of the academic senate, the matter shall be within the scope of representation.

(E) The amount of rental rates for housing charged to California State University employees.

(2) All matters not within the scope of representation are reserved to the employer, and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

SEC. 106. Section 3593 of the Government Code is amended to read:

3593. (a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The panel, subject to the rules and regulations of the board, may make those findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public.

(b) The costs for the services of the panel ~~chairman~~ *chairperson*, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be borne by the board. Any other mutually incurred costs shall be borne equally by the employer and the exclusive representative. Each party shall bear the costs it incurs for the panel member it selects.

(c) (1) This subdivision applies only to disputes relating to the faculty and librarians of the University of California and the Hastings College of the Law. For the purposes of this subdivision, ''faculty'' means teachers employed to teach courses and authorize the granting of credit for the successful completion of courses, and excludes employees whose employment is contingent on their status as students.

(2) Irrespective of whether the panel makes its findings and recommendations public pursuant to subdivision (a), the Regents

of the University of California and the Directors of the Hastings College of the Law, as appropriate, shall make the findings and recommendations of the panel public after the 10-day period prescribed by subdivision (a) has ended. These findings and recommendations shall be posted in a prominent public place, and copies of the findings and recommendations shall be made available to any person attending the next regularly scheduled public meeting of the regents or the directors, as appropriate. The publicly distributed agenda of the next regularly scheduled meeting of the regents or the directors, as appropriate, shall reference the availability of these findings and recommendations.

(3) It is the intent of the Legislature that the regents or the directors, as appropriate, shall act upon the findings and recommendations of the panel at an open and public meeting within 90 days of their submission to the parties by the panel.

SEC. 107. Section 6527 of the Government Code is amended to read:

6527. (a) Notwithstanding any other provision of law, where two or more health care districts have joined together to pool their self-insurance claims or losses, a nonprofit corporation that provides health care services that may be carried out by a health care district may participate in the pool, provided that its participation in an existing joint powers agreement, as authorized by this section, shall be permitted only after the public agency members, or public agency representatives on the governing body of the joint powers entity make a finding, at a public meeting, that the agreement provides both of the following:

(1) The primary activities conducted under the joint powers agreement will be substantially related to and in furtherance of the governmental purposes of the public agency.

(2) The public agency participants will maintain control over the activities conducted under the joint powers agreement through public agency control over governance, management, or ownership of the joint powers authority.

(b) Any public agency or private entity entering into a joint powers agreement under this section shall establish or maintain a reserve fund to be used to pay losses incurred under the agreement. The reserve fund shall contain sufficient moneys to maintain the fund on an actuarially sound basis.

(c) In any risk pooling arrangement created under this section, the aggregate payments made under each program shall not exceed the amount available in the pool established for that program.

(d) A public meeting shall be held prior to the dissolution or termination of any enterprise operating under this section to consider the disposition, division, or distribution of any property acquired as a result of exercise of the joint exercise of powers.

(e) Nothing in this section shall be construed to do any of the following:

(1) Relieve a public benefit corporation that is a health facility from charitable trust obligations.

(2) Exempt such a public benefit corporation from existing law governing joint ventures, or the sale, transfer, lease, exchange, option, conveyance, or other disposition of assets.

(3) Grant any power to any private, nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment.

(4) Permit any entity, other than a private, nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

(5) Permit an agency or entity created pursuant to a joint powers agreement entered into pursuant to this section to act in a manner inconsistent with the laws that apply to public agencies, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) Notwithstanding any other provision of law, the Self-Insurers' Security Fund established pursuant to Article 2.5 (commencing with Section 3740) of Chapter 4 of Part 1 of Division 4 of the Labor Code shall owe no duties or obligations to any entity that participates as a party to an agreement authorized pursuant to this section, or to its employees, and shall not be required, under any circumstances, to assume the worker's compensation liabilities of this entity if it becomes insolvent or otherwise unable to pay those liabilities.

(g) For purposes of this section, ''self-insurance claims or losses'' includes, but is not limited to, claims or losses incurred

pursuant to Chapter 4 (commencing with Section 3700) of *Part 1 of* Division 4 of the Labor Code.

SEC. 108. Section 7579.5 of the Government Code is amended to read:

7579.5. (a) A local educational agency shall appoint a surrogate parent for a child in accordance with clause (iii) of paragraph (2) of subsection (c) of Section 300.515 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

(1) (A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(b) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

(c) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services,

including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter.

(d) The surrogate parent is required to meet with the child at least one time. He or she may also meet with the child on additional occasions, attend the child's individualized education program meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.

(h) The local educational agency shall terminate the appointment of a surrogate parent if (1) the person is not properly performing the duties of a surrogate parent or (2) the person has an interest that conflicts with interests of the child entrusted to his or her care.

(i) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.

(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents

include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of ~~a~~ the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.

(1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

(k) The surrogate parent may represent the child until (1) the child is no longer in need of special education, (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent, (3) another responsible adult is appointed to make educational decisions for the minor, or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

(*l*) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(m) The *State* Department of Education shall develop a model surrogate parent training module and manual that shall be made available to local educational agencies.

(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(o) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-0890 of *Section 2.00 of* the annual Budget Act.

SEC. 109. Section 8314 of the Government Code is amended to read:

8314. (a) It ~~shall be~~ *is* unlawful for any elected state or local officer, including any state or local appointee, employee, or

consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

(b) For purposes of this section:

(1) ''Personal purpose'' means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business. ''Personal purpose'' does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

(2) ''Campaign activity'' means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. ''Campaign activity'' does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.

(3) ''Public resources'' means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and ~~state compensated~~ *state-compensated* time.

(4) ''Use'' means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the state or any local agency for which a monetary value may be estimated.

(c) (1) Any person who intentionally or negligently violates this section ~~shall be~~ *is* liable for a civil penalty not to exceed one thousand dollars ($1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty.

(2) If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered.

If the action is brought by a city attorney, the moneys recovered shall be paid to the treasurer of that city.

(3) No civil action alleging a violation of this section ~~shall~~ *may* be commenced more than four years after the date the alleged violation occurred.

(d) Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on state activities, operations, or policies, provided that (1) the informational activities are otherwise authorized by the constitution or laws of this state, and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(e) The incidental and minimal use of public resources by an elected state or local officer, including any state or local appointee, employee, or consultant, pursuant to this section shall not be subject to prosecution under Section 424 of the Penal Code.

SEC. 110. Section 8592.4 of the Government Code is amended to read:

8592.4. The committee shall determine which agencies need new or upgraded communication equipment in order to enter into an agreement for interoperability or other shared use of public safety spectrum and shall establish a program for equipment purchase. In establishing this program, the board shall recommend the purchase of~~,~~ equipment that will enable the migration to accepted industry standards for interoperability consistent with the public safety digital communications standards of the American National Standards Institute and the Telecommunications Information Association.

SEC. 111. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents ($0.05) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the

crude oil is received at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in any fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division ~~9~~ *7.9* (commencing with Section 8780) of the Public Resources Code).

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 112. Section 10201 of the Government Code is amended to read:

10201. The Legislative Counsel shall be selected by concurrent resolution at the beginning of each regular session and shall serve until his *or her* successor is selected and qualified.

SEC. 113. Section 10202 of the Government Code is amended to read:

10202. If a vacancy occurs while the Legislature is not in session, a committee consisting of the Speaker of the Assembly, the Speaker pro ~~tempore~~ *Tempore* of the Assembly, the President pro ~~tempore~~ *Tempore* of the Senate and the ~~chairman~~ *chairperson* of the ~~Finance~~ *Appropriations* Committee of the Senate shall select the Legislative Counsel to serve until the Legislature in session makes a selection for the office.

SEC. 114. Section 10203 of the Government Code is amended to read:

10203. The Legislative Counsel shall be chosen without reference to party affiliations and solely on the ground of fitness to perform the duties of his *or her* office.

SEC. 115. Section 10204 of the Government Code is amended to read:

10204. The annual salary of the Legislative Counsel is twenty-five thousand dollars ($25,000), or such greater amount as may be prescribed by the Joint Rules Committee. The Legislative Counsel shall be repaid all actual expenses incurred or paid by him *or her* in the discharge of his *or her* duties.

SEC. 116. Section 10206 of the Government Code is amended to read:

10206. The permanent office of the Legislative Counsel shall be in the State Capitol in Sacramento, where he *or she* shall be provided with suitable and sufficient offices convenient to the chambers of the Senate and Assembly. For the convenience of Members of the Legislature, and when in his *or her* judgment the conduct of his *or her* work requires, he *or she* may maintain temporary offices at other places in the ~~State~~ *state*.

SEC. 117. Section 11121 of the Government Code is amended to read:

11121. As used in this article, ‘‘state body’’ means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) ~~Any~~ *A* board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) ~~Any~~ *An* advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) ~~Any~~ *A* board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and ~~which~~ that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

SEC. 118. Section 12965 of the Government Code is amended to read:

12965. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization, or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing.

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a

complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior and municipal courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in any of these courts. Such an action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the

commission. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity.

(c) (1) If an accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, the respondent may within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, the commission, and the person claiming to be aggrieved. The commission shall prescribe the form and manner of giving written notice.

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the appropriate superior ~~or municipal~~ court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the

defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

(3) A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures.

(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.

(d) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

(3) This subdivision is intended to codify the holding in Downs v. Department of Water and Power of City of Los Angeles (1997) 58 Cal.App.4th 1093.

(e) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Equal Employment Opportunity Commission to the Department of Fair Employment and Housing.

(C) After investigation and determination by the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission agrees to perform a substantial weight review of the determination of the ~~Department~~ *department* or conducts its own investigation of the claim filed by the aggrieved person.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) shall expire when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

SEC. 119. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars ($5,000), but less than one hundred thousand dollars ($100,000), to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small businesses,

including microbusinesses, or from *two or more* disabled veterans business enterprises.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars ($5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 120. Section 14838.7 of the Government Code is amended to read:

14838.7. (a) Notwithstanding the advertising and bidding provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for construction, including the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any kind that has an estimated value of greater than five thousand dollars ($5,000) but less than the cost limit ~~for State Contract Act projects~~, as specified in subdivision (b) of Section 10105 of the Public Contract Code, to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains written bid submittals from two or more certified small businesses, including microbusinesses, or from *two or more* disabled veteran business enterprises.

(b) In implementing subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars ($5,000) for the public work construction project, a state agency shall obtain at least two written bid submittals from responsible contractors whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 121. Section 14981 of the Government Code is amended to read:

14981. On or before ~~than~~ February 1, 2005, the department shall submit a report to the appropriate policy and fiscal committees of the Legislature on activities that have been or will be undertaken pursuant to this chapter. The report shall include, but not be limited to, all of the following:

(a) The number and a description of contracts entered into with manufacturers and suppliers of drugs pursuant to Section 14977.1, including any discounts, rebates, or refunds obtained.

(b) The number and a description of entities that elect to participate in the coordinated purchasing program pursuant to Section 14977.5.

(c) Other options and strategies that have been or will be implemented pursuant to Sections 14978 and 14980.

(d) Estimated costs and savings attributable to activities that have been or will be undertaken pursuant to this chapter.

SEC. 122. Section 19142 of the Government Code is amended to read:

19142. (a) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(b) Upon reinstatement of a person any necessary separations are effected under the provisions of Section 19997.3 governing layoff and demotion except that ~~(A)~~ *(1)* an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13, and ~~(B)~~ *(2)* seniority ~~shall~~ *may* not be counted as provided in Section 19997.3 when this would result in the layoff of the person who has the reinstatement right. Under that circumstance, qualifying service in classes at substantially the same or higher salary level is the only state service that ~~shall~~ *may* be counted for purposes of determining who is to be separated.

SEC. 123. Section 19775.17 of the Government Code is amended to read:

19775.17. (a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1, a state employee who, as a member of the California National Guard or a United States military reserve organization, is ordered to active duty by Presidential determination that it is necessary to augment the active forces for

any operational mission, or when in time of national emergency declared by the President or otherwise authorized by law, shall have the benefits provided for in subdivision (b).

(b) Any state employee to which subdivision (a) applies, while on active duty, shall receive from the state, for the duration of the event as authorized pursuant to Sections 12302 and 12304 of Title 10 of the United States Code, but not ~~to exceed~~ *for more than* 180 calendar days, as part of his or her compensation both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty. The amount an employee, as defined in Section 18526, would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty, shall be determined by the Department of Personnel Administration.

(2) All benefits that he or she would have received had he or she not served on active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not reinstate to state service following active duty, shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 19775.

(d) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to a state employee who was not eligible to participate in a federally sponsored income protection program for National Guard personnel or military reserve personnel, or both, called into active duty, as determined by the Department of Personnel Administration. For a state employee eligible to participate in a federally sponsored income protection program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federally sponsored income protection program, the state employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federally

sponsored income protection program. For individuals who elected the federally sponsored income protection program, the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.

(e) For purposes of this section, ''state employee'' means an employee as defined in Section 18526 or an officer or employee of the legislative, executive, or judicial department of the state.

(f) This section shall not apply to any state employee entitled to additional compensation or benefits pursuant to Section 19775.16 or ~~Section~~ 19775.18 of this code, or Section 395.08 of the Military and Veterans Code.

SEC. 124. Section 19775.18 of the Government Code is amended to read:

19775.18. (a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1, a state employee who, as a member of the California National Guard or a United States military reserve organization, is ordered to active duty on and after September 11, 2001, as a result of the War on Terrorism, shall have the benefits provided for in subdivision (b).

(b) Any state employee to which subdivision (a) applies, while on active duty, shall receive from the state, for the duration of the event known as the War on Terrorism, as authorized pursuant to Sections 12302 and 12304 of Title 10 of the United States Code, but not ~~to exceed~~ *for more than* 365 calendar days, as part of his or her compensation both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty. The amount an employee, as defined in Section 18526, would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty, shall be determined by the Department of Personnel Administration.

(2) All benefits that he or she would have received had he or she not served on active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not reinstate to state service following active duty, shall have that compensation treated as a loan payable

with interest at the rate earned on the Pooled Money Investment Account. This subdivision does not apply to compensation received pursuant to Section 19775.

(d) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to a state employee who was not eligible to participate in a federally sponsored income protection program for National Guard personnel or military reserve personnel, or both, called into active duty, as determined by the Department of Personnel Administration. For a state employee eligible to participate in a federally sponsored income protection program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federally sponsored income protection program, the state employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federally sponsored income protection program. For individuals who elected the federally sponsored income protection program, the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 365 calendar days. The Governor may, by Executive order, extend this period of time by no more than an additional 365 calendar days.

(e) For purposes of this section, ''state employee'' means an employee as defined in Section 18526 or an officer or employee of the legislative, executive, or judicial department of the state.

(f) This section does not apply to any state employee entitled to additional compensation or benefits pursuant to Section 19775.16 or ~~Section~~ 19775.17 of this code, or Section 395.08 of the Military and Veterans Code.

(g) This section does not apply to any active duty served after the close of the War on Terrorism.

SEC. 125. Section 19827 of the Government Code is amended to read:

19827. (a) (1) Notwithstanding any other provision of law to the contrary, in order to recruit and retain the highest qualified employees, the state shall pay sworn members of the California Highway Patrol who are rank-and-file members of State Bargaining Unit 5 the estimated average total compensation for each corresponding rank for the Los Angeles Police Department, Los Angeles County Sheriff's Office, San Diego Police

Department, Oakland Police Department, and ~~the~~ San Francisco Police Department. Total compensation shall include base salary, educational incentive pay, physical performance pay, longevity pay, and retirement contributions made by the employer on behalf of the employee.

(2) The state and the exclusive representative shall jointly survey annually and calculate the estimated average total compensation based on projected average total compensation for the above-named departments as of July 1 of the year in which the survey is conducted. The state and the exclusive representative shall utilize the survey methodology outlined in the ''Description of Survey Process Pursuant to Government Code 19827 Regarding the Recruitment and Retention of California Highway Patrol Officers'' dated July 1, 2001, and maintained as a permanent agreement between the state and the exclusive representative.

(3) Any increase in total compensation resulting from this section shall be implemented through a memorandum of understanding negotiated pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1). Notwithstanding the foregoing, failure of the parties to reach agreement for a memorandum of understanding pursuant to the Ralph C. Dills Act shall not relieve the state of the duty to compensate sworn represented members of the California Highway Patrol in accordance with the formula set forth in this section.

(4) The total compensation for represented sworn members of the California Highway Patrol may deviate from the survey results by mutual agreement between the exclusive representative and the state pursuant to the collective bargaining process.

(5) If the provisions of this subdivision are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(b) When determining compensation for state excluded sworn classifications of the California Highway Patrol, it is the policy of the state to consider total compensation for corresponding ranks

within jurisdictions specified in subdivision (a), as well as other factors, including internal comparisons.

SEC. 126. Section 19867 of the Government Code is amended to read:

19867. (a) The Legislature finds and declares that the interests of the state would be served by the Department of Personnel Administration meeting and conferring with the exclusive representatives of the various bargaining units to discuss the establishment of long-term care benefits for state employees.

(b) If long-term care insurance plans are not available to state employees within one year following the date on which any long-term care plan is first offered for enrollment by the Board of Administration of the Public Employees' Retirement System, state employees may enroll in the long-term care insurance plans offered by the Board of Administration of the Public Employees' Retirement System.

(c) If subdivision (b) is in conflict with a memorandum of understanding entered into pursuant to Section 3517.5, the memorandum of understanding shall prevail and control without further legislative action, except that if the prevailing provisions of a memorandum of understanding require the expenditure of funds, these provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(d) The Department of Personnel Administration may enter into contracts with the Board of Administration of the Public Employees' Retirement System to allow active eligible state employees, and their spouses and parents, to enroll in any long-term care insurance plans offered by the Board of Administration.

SEC. 127. Section 19997.3 of the Government Code is amended to read:

19997.3. (a) Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(1) The extent to which seniority credits may be granted for less than full-time service.

(2) The seniority credit to be granted for service in a class that has been abolished, combined, divided, or otherwise altered under the authority of Section 18802.

(3) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(4) Any other matters as are necessary or advisable to the operation of this chapter.

(b) For professional, scientific, administrative, management, and executive classes, the department shall prescribe standards and methods by rule whereby employee efficiency shall be combined with seniority in determining the order of layoffs and the order of names on reemployment lists. These standards and methods may vary for different classes, and shall take into consideration the needs of state service and practice in private industry and other public employment.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding ~~incurs~~ *incur* either present or future costs, or ~~requires~~ *require* the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 128. Section 20057 of the Government Code is amended to read:

20057. ''Public agency'' also includes the following:

(a) The Commandant, Veterans' Home of California, with respect to employees of the Veterans' Home Exchange and other post fund activities whose compensation is paid from the post fund of the Veterans' Home of California.

(b) Any auxiliary organization operating pursuant to Chapter 7 (commencing with Section 89900) of Part 55 of the Education Code and in conformity with regulations adopted by the Trustees of the California State University and any auxiliary organization operating pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of the Education Code and in conformity with regulations adopted by the Board of Governors of the California Community Colleges.

(c) Any student body or nonprofit organization composed exclusively of students of the California State University or community college or of members of the faculty of the California State University or community college, or both, and established for the purpose of providing essential activities related to, but not normally included as a part of, the regular instructional program of the California State University or community college.

(d) A state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation.

(e) Any nonprofit corporation whose membership is confined to public agencies as defined in Section 20056.

(f) A section of the California Interscholastic Federation.

(g) Any credit union incorporated under Division 5 (commencing with Section 14000) of the Financial Code, or incorporated pursuant to federal law, with 95 percent of its membership limited to employees who are members of or retired members of this system or the State Teachers' Retirement ~~System~~ *Plan*, and their immediate families, and employees of any credit union. For the purposes of this subdivision, ''immediate family'' means those persons related by blood or marriage who reside in the household of a member of the credit union who is a member of or retired member of this system or the State Teachers' Retirement ~~System~~ *Plan*. The credit union shall pay any costs that are in addition to the normal charges required to enter into a contract with the board. All the payments made by the credit union that are in addition to the normal charges required shall be added to the total amount appropriated by the Budget Act for the administrative expense of this system. For purposes of this subdivision, a credit union shall not be deemed to be a public agency unless it has entered into a contract with the board pursuant to Chapter 5 (commencing with Section 20460) prior to January 1, 1988. After January 1, 1988, the board shall not enter into a contract with any credit union as a public agency.

(h) Any county superintendent of schools that was a contracting agency on July 1, 1983, and any school district or community college district that was a contracting agency with respect to local ~~policemen~~ *police officers*, as defined in Section 20430, on July 1, 1983.

(i) Any school district or community college district that has established a police department, pursuant to Section 39670 or 72330 of the Education Code, and has entered into a contract with the board on or after January 1, 1990, for school safety members, as defined in Section 20444.

(j) A nonprofit corporation formed for the primary purpose of assisting the development and expansion of the educational, research, and scientific activities of a district agricultural association formed pursuant to Part 3 (commencing with Section 3801) of Division 3 of the Food and Agricultural Code, and the nonprofit corporation described in the California State Exposition and Fair Law (former Article 3 (commencing with Section 3551) of Chapter 3 of Part 2 of Division 3 of the Food and Agricultural Code, as added by Chapter 15 of the Statutes of 1967).

(k) (1) A public or private nonprofit corporation that operates a regional center for the developmentally disabled in accordance with Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(2) A public or private nonprofit corporation, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that operates a rehabilitation facility for the developmentally disabled and provides services under a contract with either (A) a regional center for the developmentally disabled, pursuant to paragraph (3) of subdivision (a) of Section 4648 of the Welfare and Institutions Code, or (B) the Department of Rehabilitation, pursuant to Chapter 4.5 (commencing with Section 19350) of Part 2 of Division 10 of the Welfare and Institutions Code, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1.

(3) A public or private nonprofit corporation described in this subdivision shall be deemed a ‘‘public agency’’ only for purposes of this part and only with respect to the employees of the regional center or the rehabilitation facility described in this subdivision. Notwithstanding any other provision of this part, the agency may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(*l*) Independent data-processing centers formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of the Education Code, as it read on December 31, 1990.

An agency included pursuant to this subdivision shall only provide benefits that are identical to those provided to a school member.

(m) Any local agency formation commission.

(n) A nonprofit corporation organized for the purpose of and engaged in conducting a citrus fruit fair as defined in Section 4603 of the Food and Agricultural Code.

(o) (1) A public or private nonprofit corporation that operates an independent living center providing services to severely handicapped people and established pursuant to federal ~~P.L.~~ *Public Law* 93-112, that receives the approval of the board, and that provides at least three of the following services:

(A) Assisting severely handicapped people to obtain personal attendants who provide in-home supportive services.

(B) Locating and distributing information about housing in the community usable by severely handicapped people.

(C) Providing information about financial resources available through federal, state, and local government, and private and public agencies to pay all or part of the cost of the in-home supportive services and other services needed by severely handicapped people.

(D) Counseling by people with similar disabilities to aid the adjustment of severely handicapped people to handicaps.

(E) Operation of vans or buses equipped with wheelchair lifts to provide accessible transportation to otherwise unreachable locations in the community where services are available to severely handicapped people.

(2) A public or private nonprofit corporation described in this subdivision shall be deemed a ''public agency'' only for purposes of this part and only with respect to the employees of the independent living center.

(3) Notwithstanding any other provisions of this part, the public or private nonprofit corporation may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(p) A hospital that is managed by a city legislative body in accordance with Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4.

(q) (1) Except as provided in paragraph (2), ''public agency'' also includes any entity formed pursuant to the Federal Job Training Partnership Act of 1982 (29 U.S.C. Sec. 1501 et seq.) or

Division 8 (commencing with Section 15000) of the Unemployment Insurance Code.

(2) ''Public agency,'' for purposes of this part, does not include a private industry council as set forth in the Federal Job Training Partnership Act of 1982 (29 U.S.C. Sec. 1501 et seq.) or Division 8 (commencing with Section 15000) of the Unemployment Insurance Code.

(r) The Tahoe transportation district that is established by Article IX of Section 66801.

(s) The California Firefighter Joint Apprenticeship Program formed pursuant to Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(t) A public health department or district that is managed by the governing body of a county of the 15th class, as defined by Sections 28020 and 28036, as amended by Chapter 1204 of the Statutes of 1971.

(u) A nonprofit corporation or association conducting an agricultural fair pursuant to Section 25905 may enter into a contract with the board for the participation of its employees as members of this system, upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The nonprofit corporation or association shall be deemed a ''public agency'' only for this purpose.

(v) An auxiliary organization established pursuant to Article 2.5 (commencing with Section 69522) of Chapter 2 of Part 42 of the Education Code upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The auxiliary organization is a ''public agency'' only for this purpose.

(w) The Western Association of Schools and Colleges upon obtaining a written advisory opinion from the United States Department of Labor as described in Section 20057.1. The association shall be deemed a ''public agency'' only for this purpose.

SEC. 129. Section 20501 of the Government Code is amended to read:

20501. Contracts with school employers may include school district employees in this system only with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement ~~System~~ *Plan*.

SEC. 130. Section 20610 of the Government Code is amended to read:

20610. Every county superintendent of schools shall enter into a contract with the board for the inclusion in this system of (a) all of the employees of the office of county superintendent whose compensation is paid from the county school service fund other than employees electing pursuant to Section 1313 of the Education Code to continue in membership in a county system; and (b) all of the employees of school districts and community college districts existing on July 1, 1949, or thereafter formed, within his or her jurisdiction, other than school districts that are contracting agencies or that maintain a district, joint district, or other local retirement system, in respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement ~~System~~ *Plan*. The effective date of each contract shall be not later than July 1, 1949. For the purposes of this part those school district employees shall be considered to be employees of the county superintendent of schools having jurisdiction over the school district by which they are employed and service to the district shall be considered as service to the county superintendent of schools.

SEC. 131. Section 20611 of the Government Code is amended to read:

20611. A regional occupational center established pursuant to Chapter 9 (commencing with Section 52300) of Division 4 of the Education Code by two or more school districts by a joint powers agreement shall be deemed a school district for purposes of this part. The board and the county superintendent of schools, upon the request of the governing body of any center in the county, shall amend the contract entered into under this chapter to include the employees of the center who are not eligible to membership in the State Teachers' Retirement ~~System~~ *Plan*. Credit shall not be granted for any service in that employment prior to the effective date of the amendment. However, on the request of the governing body of the center, the amendment may provide that the membership of any person becoming a member in that employment on the effective date of the amendment shall be retroactive to the date of that person's entry into that employment. If the amendment provides for the retroactive membership, both the member and the center shall contribute to the retirement fund

for the period the amounts they would have contributed had the amendment been in effect on the date of the entry into employment.

SEC. 132. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member employed by the California State University, the University, *or* the legislative~~,~~ or ~~the~~ judicial branch whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a school member or a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after June 21, 1971.

(3) Notwithstanding paragraph (2), the normal rate of contribution for a local miscellaneous member subject to Section 21354.3, 21354.4, or 21354.5 shall be 8 percent of the compensation paid that member for service rendered on and after the date the member's contracting agency elects to be subject to that section.

(4) The normal rate of contribution as established under this subdivision for a local miscellaneous or school member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21354, 21354.1, 21354.3, 21354.4, or 21354.5 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs. Notwithstanding the foregoing, effective January 1, 2001, the normal rate of contribution for school members whose service is included in the federal system shall not be reduced pursuant to this paragraph as applied to compensation earned on or after that date.

(b) (1) The normal rate of contribution for a state miscellaneous member employed by the California State University, the University, *or* the legislative~~,~~ or ~~the~~ judicial branch whose service has been included in the federal system shall be 5

percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member employed by the California State University, the University, *or* the legislative~~,~~ or ~~the~~ judicial branch, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (5) of subdivision (a).

SEC. 133. Section 20677.4 of the Government Code is amended to read:

20677.4. (a) (1) The normal rate of contribution for a state miscellaneous or state industrial member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid to that member for service rendered on or after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or state industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(3) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21354.1, because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs.

(b) The normal rate of ~~contributions~~ *contribution* for a state miscellaneous or state industrial member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on or after July 1, 1976.

(c) The normal rate of contribution for a state miscellaneous or state industrial member who is subject to Section 21076 or 21077 shall be 0 percent.

(d) A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

(e) A member who elects to become subject to Section 21354.1, as applicable, shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073 or 21073.1, as applicable.

(f) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless and until approved by the Legislature in the annual Budget Act.

(g) The Director of the Department of Personnel Administration may establish the normal rate of contribution for a state employee who is excepted from the definition of ''state employee'' in subdivision (c) of Section 3513, and an officer or employee of the executive branch of state government who is not a member of the civil service. The normal rate of contribution shall be the same for all members identified in this subdivision. The contribution rate shall be effective the beginning of the pay period indicated by the Director of the Department of Personnel Administration but shall be no earlier than the beginning of the pay period following the date the board receives notification.

SEC. 134. Section 20752 of the Government Code is amended to read:

20752. A member of the Judges' Retirement System, the Legislators' Retirement System, the State Teachers' Retirement ~~System~~ *Plan*, the University of California Retirement System, or a county retirement system, who has withdrawn accumulated contributions from this system shall have the right to redeposit

those contributions, subject to the same conditions as imposed for redeposits of accumulated contributions by Section 20750, including the right as he or she would have had under Section 20638 had he or she not withdrawn his or her contributions.

Provisions of this section extending a right to redeposit accumulated contributions withdrawn from this system shall also apply to members of any retirement system established under Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 with respect to which an ordinance complying with Section 45310.5 has been filed with and accepted by the board or any retirement system established by or pursuant to the charter of a city or city and county or by any other public agency of this state which system, in the opinion of the board, provides a similar modification of rights and benefits because of membership in this system and with respect to which the governing body of the city, city and county, or public agency and the board have entered into agreement pursuant to Section 20351.

A member who elects to redeposit under this section shall have the same rights with respect thereto as a member who has elected pursuant to Section 20731 to leave his or her accumulated contributions on deposit in the fund.

SEC. 135. Section 20902.5 of the Government Code is amended to read:

20902.5. (a) Notwithstanding any other provision of this part, whenever the Chief Justice, by formal action, determines that because of an impending curtailment of, or change in the manner of performing, judicial branch services, the best interests of the state would be served by encouraging the retirement of judicial branch state employees from the Administrative Office of the Courts, the Supreme Court, the Courts of Appeal, or the Habeas Corpus Resource Center and that sufficient economies could be realized to offset any costs to the judicial branch resulting from this action, an additional two years of service shall be credited to the affected members, if both of the following conditions ~~exists~~ *exist*:

(1) The member is credited with five or more years of service and retires during a period not to exceed 120 days or less than 60 days commencing no sooner than the operative date of the formal action of the Chief Justice that shall specify the period.

(2) The Administrative Office of the Courts transmits to the retirement fund an amount determined by the board that is equal

to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount the member would have received without that service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the employer and the board with respect to all eligible members who retire during the specified period.

(b) As used in this section, ''member'' means a state employee who is employed in an organizational unit of the judicial branch designated by the Chief Justice in the formal action crediting the additional service credit.

(c) The amount of service credit shall be two years regardless of credited service. Any member who qualifies under this section shall, upon subsequent reentry to this system, forfeit the service credit acquired under this section.

(d) This section is not applicable to any member otherwise eligible, if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the operative date of the formal action of the Chief Justice or if the member is not eligible to retire without the additional credit available under this section.

SEC. 136. Section 21220 of the Government Code is amended to read:

21220. (a) A person who has been retired under this system, for service or for disability, shall not be employed in any capacity thereafter by the state, the university, a school employer, or by a contracting agency, unless the employment qualifies for service credit in the University of California Retirement System or the State Teachers' Retirement ~~System~~ *Plan*, unless he or she has first been reinstated from retirement pursuant to this chapter, or unless the employment, without reinstatement, is authorized by this article. A retired person whose employment without reinstatement is authorized by this article shall acquire no service credit or retirement rights under this part with respect to the employment.

(b) Any retired member employed in violation of this article shall:

(1) Reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law.

(2) Pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.

(3) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

(c) Any public employer that employs a retired member in violation of this article shall:

(1) Pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.

(2) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

SEC. 137. Section 21362.3 of the Government Code is amended to read:

21362.3. (a) Notwithstanding subdivision ~~(h)~~ *(b)* of Section 21362.2, for the California Highway Patrol Commissioner, with respect to service to all state employers under Section 21362.2, the benefit may not exceed 100 percent of final compensation.

(b) This section shall become inoperative on January 1, 2008, unless a later enacted statute deletes or extends that date.

SEC. 138. Section 21465 of the Government Code is amended to read:

21465. (a) Optional settlement 5 consists of a partial distribution of the actuarial present value of the portion, as specified in this section, of the member's unmodified monthly allowance, as prescribed in Section 21362, 21362.2, 21363, or 21363.1, or Section 21423 when a service retirement allowance is payable. The actuarial present value shall be based upon the investment return and postretirement mortality assumptions adopted by the board for that purpose. The member may elect to receive the actuarial present value of no less than 20 percent and no more than 50 percent of his or her unmodified allowance. The member may elect to receive the remaining portion of the unmodified allowance, not distributed as a ~~lump sum~~ *lump-sum*,

under one of the settlements specified in this article for the remainder of his or her lifetime and thereafter to his or her designated beneficiary, unless this amount is solely limited to the survivor continuance portion. Under no circumstances shall the portion of the unmodified allowance equivalent to the survivor continuance pursuant to Section 21624 be distributed as a ~~lump sum~~ *lump-sum*. Under no circumstances shall the benefits provided under this section exceed the benefits that would have otherwise been provided under any other section in this article.

(b) This section shall only apply to the following members who retire on or after January 1, 1999:

(1) State peace officer/firefighter members in State Bargaining Unit 6.

(2) State peace officer/firefighter members in State Bargaining Unit 8 and state patrol members in State Bargaining Unit 5, provided that a memorandum of understanding has been agreed upon by the state and the recognized employee organization to become subject to this section.

(3) This section shall also apply to state peace officer/firefighter members and state patrol members in related supervisory and confidential positions, provided the Department of Personnel Administration has approved their inclusion.

SEC. 139. Section 22009.03 of the Government Code is amended to read:

22009.03. ''Public agency'' also includes a school district, a county superintendent of schools, and a regional occupational center or program established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, with respect to employees eligible for membership in the State Teachers' Retirement ~~System~~ *Plan*.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 140. Section 22009.1 of the Government Code is amended to read:

22009.1. ''Retirement system'' includes:

(a) A pension, annuity, retirement, or similar fund or system established by a public agency and covering only positions of that agency.

(b) The Public Employees' Retirement System with respect only to employees of the state and employees of the University of California in positions covered by that system.

(c) The Public Employees' Retirement System with respect to employees of all school districts in positions covered under each contract entered into by a county superintendent of schools and the system.

(d) The State Teachers' Retirement System with respect to all employees in positions subject to coverage ~~under the Defined Benefit Program system~~ *by the State Teachers' Retirement Plan* except employees of a public agency having any employees in positions covered by such system who are also in positions covered by a local retirement system for the retirement of teachers, or for membership in which public school teachers are eligible, operated by city, city and county, county, or other public agency or combination of public agencies of the state.

(e) The Legislators' Retirement System with respect to all employees in positions covered by that system.

(f) The Judges' Retirement System with respect to all employees in positions covered by that system.

(g) The University of California Retirement System only with respect to all employees in positions covered by that system.

(h) The San Francisco City and County Employees' Retirement System with respect to all employees in positions covered by that system.

(i) Any other retirement system with respect only to employees of any two or more of the public agencies having employees in positions covered by such system, as designated by the board and with regard to which the board authorizes conduct of a referendum.

(j) Any retirement system with respect only to employees of a hospital which is an integral part of a city incorporated between January 15, 1898, and July 15, 1898, in positions covered by the system, as designated by the board on request of the city.

(k) Except as otherwise provided in subdivisions (b) ~~through (j) above~~ *to (j), inclusive*, any retirement system with respect to employees of each of the public agencies having employees in positions covered by the system.

(*l*) Each division or part of a retirement system, as defined in subdivisions (a), (b), (c), (e), (g), (h), (i), (j), (k), and (m) ~~of this section~~, which is divided pursuant to this chapter into two parts:

(1) The part composed of the positions of members of ~~such~~ *a* system who desire coverage under the federal system.

(2) The part composed of the positions of members of ~~such~~ *a* system who do not desire coverage under the federal system.

(m) The State Teachers' Retirement System with respect to all employees of each public agency, as defined by Section 22009.03, in positions covered by ~~that system~~ *the State Teachers' Retirement Plan*. This subdivision shall become inoperative on July 1, 2004.

SEC. 141. Section 22018 of the Government Code is amended to read:

22018. (a) It is the intent of the Legislature that, to the extent possible, members of the State Teachers' Retirement ~~System~~ *Plan* earn credit towards Medicare coverage.

(b) In accomplishing the goal specified in subdivision (a), the board shall make available to school districts, community college districts, and county superintendents of schools information concerning the procedure for earning credit for social security coverage for ~~school-related~~ *school-related* service not credited under the ~~State~~ Teachers' Retirement Law.

SEC. 142. Section 22156 of the Government Code is amended to read:

22156. (a) A division of the State Teachers' Retirement System is hereby authorized by the Legislature to provide Medicare coverage for employees of a public agency as defined in Section 22009.03, upon the request of the public agency.

(b) The division authorized by subdivision (a) shall be conducted pursuant to this article.

(c) A member of the State Teachers' Retirement ~~System~~ *Plan* on whose behalf a request is made pursuant to subdivision (a), may elect to be covered by Medicare, pursuant to Section 218 of the federal Social Security Act (42 U.S.C. Sec. 418), and applicable federal regulations if (1) the member was employed in a position covered by the system on March 31, 1986, and (2) the member has not since been mandated into Medicare coverage due to the enactment of Public Law 99-272, and (3) the member is in a position covered or the member is eligible to elect to be covered by the retirement system on the date of the division.

(d) The public agency shall, immediately after the elections authorized in subdivision (b) have been made, make application pursuant to Chapter 2 (commencing with Section 22200) of this part for Medicare coverage for those members who have elected to receive Medicare coverage.

(e) The effective date of the coverage may be retroactive a maximum of five years but not earlier than January 1, 1987.

(f) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 143. Section 22502 of the Government Code is amended to read:

22502. Agreements as defined in Section 22006, and all applications and agreements and contracts and any amendments thereto between the board and the Adjutant General, the ~~State Teachers~~ *Teachers'* Retirement Board, the Regents of the University of California, and any public agency, except the ~~State~~ *state*, executed by the board pursuant to this part are hereby excepted from the provisions of Section 13370 ~~of the Government Code~~, and of any other statutory provision which would otherwise require the approval of any such agreements and contracts and any amendments thereto by any other state officer or agency.

SEC. 144. Section 22754 of the Government Code is amended to read:

22754. As used in this part, the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) ''Board'' means the Board of Administration of the Public Employees' Retirement System.

(b) ''Employee'' means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement ~~System~~ *Plan* employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district

or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular, or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(4) Any officer or employee of a contracting agency as defined in paragraph (3) of subdivision (g) that has elected to become subject to this part, except persons who are determined to be ineligible.

(c) ''Carrier'' means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act *(42 U.S.C. Sec. 201 et seq.)*, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) ''Health benefits plan'' means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) ''Annuitant'' means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21547 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) or (3) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) ''Family member'' means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) ''Contracting agency'' means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district, or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds and a trial court as defined in the

Trial Court Employment Protections and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8).

(3) The protection and advocacy agency described in subdivision (h) of Section 4900 of the Welfare and Institutions Code, if the agency obtains a written advisory opinion from the United States Department of Labor stating that the organization is an agency or instrumentality of the state or a political subdivision thereof within the meaning of the Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code.

(h) ''Employer'' means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.

(i) ''Special district'' means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 145. Section 22810 of the Government Code is amended to read:

22810. (a) An employee or annuitant may, under eligibility rules as the board may by regulation prescribe, enroll in an approved health benefits plan, either as an individual or for self and family, except that an employee of a contracting agency, or an annuitant who retired while an employee or *who* is the beneficiary of an employee, may enroll only in a health benefits plan for which the board has contracted. With respect to state officers and employees, the regulations shall provide that every employee or annuitant enrolled in a health benefits plan shall be enrolled in a major medical plan or shall provide for inclusion of major medical benefits in health benefits plans. The regulations may provide for the exclusion of employees on the basis of the nature and type of their employment or conditions pertaining thereto, *including,* but not limited to, short-term appointments, seasonal or intermittent employment, and employment of a like nature, but no employee or group of employees ~~shall~~ *may* be excluded solely on the basis of the hazardous nature of the employment. Any enrollment shall authorize the deduction of the contributions required under this part from the employee's or annuitant's salary or retirement allowance.

(b) Any annuitant who satisfies the requirement to retire within 120 days of separation as specified in subdivision (e) of Section

22754 may continue his or her enrollment, enroll within 60 days of retirement, or enroll during any future open enrollment period, as provided by regulations of the board, without discrimination as to premium rates or benefits coverage. If the survivor of an annuitant who satisfied the requirement to retire within 120 days of separation as specified in subdivision (e) of Section 22754 is also an annuitant as defined in this part, he or she shall also be eligible to enroll within 60 days of the annuitant's death or during any future open enrollment period, as provided by regulation of the board, without discrimination as to premium rates or benefits coverage. The effective date of enrollment of persons who, at the time of becoming an annuitant or survivor, were not enrolled in a health benefits plan under this part shall be a prospective date determined by the board.

(c) Any permanent intermittent employee and any employee who works less than full time may continue his or her enrollment while retired from state employment if (1) he or she was enrolled prior to separation from state employment and (2) he or she lost eligibility prior to separation but continued his or her coverage under federal law.

(d) Any annuitant who becomes entitled to the survivor allowance under Section 21571 at the age of 62 years and who was enrolled in a health benefits plan at the death of the member on whose account the survivor allowance is payable may enroll in a health benefits plan without discrimination as to premium rates or benefits coverage.

(e) In the case of the death of an employee after application has been filed for coverage of family members but prior to the effective date of coverage, family members shall be deemed to have been covered on the date of the death of the employee, and if one of the family members is an annuitant he or she shall be enrolled as if the coverage applied for were continued without discrimination as to premium rates or benefits coverage.

(f) The board shall, by rule and regulation, make whatever provisions it deems necessary to eliminate or minimize the impact of adverse selection that would affect any plans approved or contracted for because of the enrollment of annuitants. This may include the reimbursement of surcharges for late enrollment in Part B of Medicare if the board determines that payment of the

surcharge would be less costly than continued enrollment in a basic plan.

SEC. 146. Section 22840.2 of the Government Code is amended to read:

22840.2. (a) There shall be maintained in the State Treasury the Public Employees' Health Care Fund, the purpose of which is to fund the health benefits plan or plans administered or approved by the board. The board may invest funds in the Public Employees' Health Care Fund in accordance with the provisions of law governing its investment of the retirement fund.

(b) The Public Employees' Health Care Fund shall consist of the following:

(1) Any self-funded or minimum premium plan premiums paid by public agencies, the state, and enrolled employees, annuitants, and family members, including premiums paid directly for continuation coverage authorized under the Consolidated Omnibus Budget and Reconciliation Act of 1986 or as thereafter amended, and as authorized by this part.

(2) Any reserve moneys from terminated plans designated by the board for payment to self-funded or minimum premium plans.

(c) Income, of whatever nature, earned on the Public Employees' Health Care Fund during any fiscal year, shall be credited to the fund.

(d) Notwithstanding Section 13340, the Public Employees' Health Care Fund is continuously appropriated, without regard to fiscal years, to pay benefits and claims costs, to pay the costs of administering self-funded or minimum premium plans, to refund those who made direct premium payments, and to pay ~~such~~ other costs as the board may determine as necessary, consistent with its fiduciary duty.

(e) The Legislature finds and declares that the Public Employees' Health Care Fund is a trust fund held for the exclusive benefit of enrolled employees, annuitants, family members, the self-funded plan administrator, and those contracting to provide medical and hospital care services.

SEC. 147. Section 23119 of the Government Code is amended to read:

23119. The boundaries of Los Angeles County are as follows:

Beginning at a point in the southwesterly boundary line of the State of California, said point being on the southerly prolongation

of the westerly boundary line of Rancho Topanga Malibu Sequit; thence northerly along said prolongation and westerly line of said rancho to the northwesterly corner thereof; thence northeasterly in a direct line to corner number seven of the boundary of Rancho Simi; thence easterly along line number seven, northerly along line number eight, easterly along line number nine of the boundary of Rancho Simi to corner number ten of the boundary of Rancho Simi; thence following the boundary line as surveyed by E. T. Wright and J. T. Stow, county surveyors, in June and July, 1881, as shown on map recorded in book 43, page 25 et seq., miscellaneous records of Los Angeles County as follows: north 105.01 chains to a point; thence north 07 degrees 29 minutes W., 157.50 chains to a point; thence north 21 degrees 57 minutes W., to a point in the north line of Sec. 4, T. 8 N., R. 19 W., S. B. B. & M., distant westerly along said north line 1,400 feet, more or less, from the northeast corner of said Sec. 4, said point being common to the boundaries of Kern, Ventura, and Los Angeles; thence east along the north line of T. 8 N., S. B. B. & M., to the easterly line of Golden State Freeway (Interstate 5); thence southwesterly, southerly, and southeasterly along said easterly line to the south line of Sec. 3, T. 8 N., R. 19 W., S. B. B. & M.; thence easterly along said south line and the south line of Sec. 2, T. 8 N., R. 19 W., S. B. B. & M., to the southeast corner of said Sec. 2; thence northerly along the east line of said Sec. 2 to the north line of T. 8 N., ~~S. B. M.~~ *S. B. B. & M.*; thence easterly along the north line of T. 8 N., S. B. B. & M. to the northeast corner of T. 8 N., R. 8 W., S. B. B. & M., said corner being a point common to the boundaries of San Bernardino, Kern, and Los Angeles;

Thence south along the range line between R. 7 and 8 W., to the southeast corner of T. 6 N., R. 8 W., S. B. B. & M.; thence east along the township line between T. 5 and 6 N., to the northeast corner of T. 5 N., R. 8 W., S. B. B. & M.; thence south along the range line between R. 7 and 8 W., to a point in the east line of Sec. 12, T. 4 N., R. 8 W., S. B. B. & M., distant southerly 940 feet, measured along said east line, from the northeast corner of said Sec. 12; thence southerly in a direct line to the summit of San Antonio Peak; thence southerly along a straight line which passes through the northwest corner of Rancho Cucamonga to a point in said straight line distant south 11°51′04″ west thereon, 333.81 feet from its intersection with the north line of Tract 37, T. 2 N.,

R. 7 W., S. B. B. & M.; thence north 25°38′59″ west, 15.06 feet; thence south 70°15′29″ west, 47.76 feet; thence south 09°57′30″ east, 62.51 feet; thence south 34°17′02″ east, 36.94 feet to said straight line; thence continuing southerly along said straight line to a point in said straight line distant north 11°51′04″ east, 547.37 feet from its intersection with the south line of said Tract 37; thence south 84°57′02″ west, 35.25 feet; thence south 23°47′27″ west, 75.70 feet to the beginning of a nontangent curve concave to the southwest having a radius of 181.00 feet and to which beginning a radial line bears south 29°24′24″ west; thence southeasterly along said curve through a central angle of 12°08′32″ an arc distance of 38.36 feet to the beginning of a reverse curve concave to the northeast having a radius of 169.00 feet; thence southeasterly 16.07 feet along said curve through a central angle of 05°26′52″ to said straight line; thence southwest in a direct line to the northwest corner of Rancho Cucamonga, thence southwesterly along the northwesterly boundary line of Rancho Cucamonga to the most westerly corner of Rancho Cucamonga; thence southwesterly in a direct line to the northeast corner of Rancho San Jose; thence southwesterly and westerly along the easterly and southerly boundary lines of Rancho San Jose to the range line between R. 8 and 9 W. in T. 2 S., S. B. B. & M.;

Thence south along the range line between R. 8 and 9 W., to the southeast corner of Sec. 12, T. 2 S., R. 9 W., S. B. B. & M., said corner being an angle point in the boundary line of Rancho Santa Ana del Chino; thence westerly, southwesterly, southerly, easterly, and southerly along the boundary line of Rancho Santa Ana del Chino to the southwest corner of Rancho Santa Ana del Chino, said corner being the center of Sec. 35, T. 2 S., R. 9 W., S. B. B. & M.; thence southeasterly in a straight line to a point in the south line of Sec. 36, T. 2 S., R. 9 W., S. B. B. & M., distant 52.84 feet easterly thereon from the southwest corner of said Sec. 36, said point being common to the boundaries of San Bernardino, Orange, and Los Angeles; thence westerly along the northern line of Orange to the southeasterly corner of Tract No. 46685 filed in Book 1209, pages 56 and 57, of Maps, in the office of the Recorder of the County of Los Angeles, said southeasterly corner being common to the boundaries of Orange and Los Angeles; thence northerly following along the boundary of said Tract No. 46685, the following courses: north 13°53′07″ east 100.12 feet, north

76°01′25″ west 1018.58 feet, north 85°34′56″ west 163.25 feet, and south 00°57′29″ west 47.01 feet to a point in the northerly line of Tract No. 25335, filed in Book 775, pages 35 and 36, of said Maps, said point distant westerly along said northerly line 10.26 feet from the northeasterly corner of said Tract No. 25335; thence northwesterly following along the boundary of said Tract No. 25335 the following courses: north 76°00′59″ west 1224.52 feet and south 00°52′39″ west 564.75 feet to a point on the boundary common to Orange and Los Angeles; thence westerly along the northern line of Orange to the southwesterly boundary line of the State of California; thence northwesterly along the southwesterly boundary line of the State of California to the point of beginning. Also the Islands of Santa Catalina and San Clemente.

SEC. 148. Section 26608.3 of the Government Code is amended to read:

26608.3. (a) In Shasta County, the board of supervisors by ordinance or resolution may transfer from the sheriff to the marshal of the Shasta County Superior Court the duty to serve all writs, notices, and other process issued by any state court, or other competent authority.

(b) After adoption of the ordinance or resolution pursuant to subdivision (a), and notwithstanding any other provision of law, in Shasta County the marshal shall have the duty to serve all writs, notices, and other process issued by any state court or other competent authority, and the sheriff shall be relieved of any obligation imposed by Section 26608 and any liability imposed by Section 26663 or 26664.

(c) Nothing in this section shall be construed as limiting the responsibility or authority of a private person or registered process server from serving process and notices in the manner prescribed by law, nor shall it limit the authority of the sheriff or any other peace officer to serve warrants of arrest or other process specifically directed by a court to the sheriff or any other peace officer.

SEC. 149. Section 26638.5 of the Government Code, as added by Chapter 1072 of the Statutes of 2002, is amended and renumbered to read:

~~26638.5.~~

26638.15. Notwithstanding any other provision of law, the Board of Supervisors of Merced County may abolish, by

ordinance, the Merced County Marshal's office and establish a court security division in the Merced County Sheriff's Department. If the board of supervisors chooses to abolish this office, the following provisions shall apply:

(a) The sheriff shall be appointing authority for all division personnel. The person selected by the sheriff to oversee the operation of court security services shall report directly to the sheriff, or his or her designee.

(b) Notwithstanding any other provision of law, all personnel of the marshal's office affected by the abolition of the marshal's office in Merced County shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits.

(c) Permanent employees of the marshal's office on the effective date of transfer of services from the marshal to the sheriff pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Promotions for all personnel from the marshal's office shall be made pursuant to standards set by the sheriff. Probationary employees in the marshal's office on the effective date of the abolition shall not be required to serve a new probationary period. All probationary time served as an employee of the marshall shall be credited toward probationary time required as an employee of the sheriff's department.

(d) All county service with the marshal's office by employees of the marshal's office on the effective date of the abolition of the marshal's office shall be counted toward seniority in the court security division of the sheriff's department.

(e) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

(f) The personnel of the marshal's office who become employees of the sheriff's department may not be transferred from the division in the sheriff's department under which court security services are provided unless the transfer is voluntary.

(g) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed in the same manner as any other request from within the department.

SEC. 150. Section 30061 of the Government Code is amended to read:

30061. (a) There shall be established in each county treasury a Supplemental Law Enforcement Services Fund (SLESF), to receive all amounts allocated to a county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives money to be expended for the implementation of this chapter, the county auditor shall allocate moneys in the county's SLESF, including any interest or other return earned on the investment of those moneys, within 30 days of the deposit of those moneys into the fund, and shall allocate those moneys in accordance with the requirements set forth in this subdivision. However, the auditor shall not transfer those moneys to a recipient agency until the Supplemental Law Enforcement Oversight Committee certifies receipt of an approved expenditure plan from the governing board of that agency.

(1) Five and fifteen one hundredths percent (5.15%) to the county sheriff for county jail construction and operation. In the case of Madera, Napa, and Santa Clara Counties, this allocation shall be made to the county director or chief of corrections.

(2) Five and fifteen one hundredths percent (5.15%) to the district attorney for criminal prosecution.

(3) Thirty-nine and seven-tenths percent (39.7%) to the county and the cities within the county, and, in the case of San Mateo, Kern, Siskiyou, and Contra Costa Counties, also to the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District, in accordance with the relative population of the cities within the county and the unincorporated area of the county, and the Broadmoor Police Protection District in the County of San Mateo, the Bear Valley Community Services District and the Stallion Springs Community Services District in Kern County, the Lake Shastina Community Services District in Siskiyou County, and the Kensington Police Protection and Community Services District in Contra Costa County, as specified in the most recent January estimate by the population research unit of the Department of Finance, and as adjusted to provide a grant of at least one hundred thousand dollars

($100,000) to each law enforcement jurisdiction. For a newly incorporated city whose population estimate is not published by the Department of Finance but which was incorporated prior to July 1 of the fiscal year in which an allocation from the SLESF is to be made, the city manager, or an appointee of the legislative body, if a city manager is not available, and the county administrative or executive officer shall prepare a joint notification to the Department of Finance and the county auditor with a population estimate reduction of the unincorporated area of the county equal to the population of the newly incorporated city by July 15, or within 15 days after the Budget Act is enacted, of the fiscal year in which an allocation from the SLESF is to be made. No person residing within the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, or the Kensington Police Protection and Community Services District shall also be counted as residing within the unincorporated area of the County of San Mateo, Kern, Siskiyou, or Contra Costa, or within any city located within those counties. The county auditor shall allocate a grant of at least one hundred thousand dollars ($100,000) to each law enforcement jurisdiction. Moneys allocated to the county pursuant to this subdivision shall be retained in the county SLESF, and moneys allocated to a city pursuant to this subdivision shall be deposited in ~~a~~ *an* SLESF established in the city treasury.

(4) Fifty percent (50%) to the county or city and county to implement a comprehensive multiagency juvenile justice plan as provided in this paragraph. This plan shall be developed by the local juvenile justice coordinating council in each county and city and county with the membership described in Section 749.22 of the Welfare and Institutions Code. If a plan has been previously approved by the Board of Corrections, the plan shall be reviewed and modified annually by the council. The plan or modified plan shall be approved by the county board of supervisors, and in the case of a city and county, the plan shall also be approved by the mayor. The plan or modified plan shall be submitted to the Board of Corrections by May 1, 2002, and annually thereafter.

(A) Juvenile justice plans shall include, but not be limited to, all of the following components:

(i) An assessment of existing law enforcement, probation, education, mental health, health, social services, drug and alcohol, and youth services resources that specifically target at-risk juveniles, juvenile offenders, and their families.

(ii) An identification and prioritization of the neighborhoods, schools, and other areas in the community that face a significant public safety risk from juvenile crime, such as gang activity, daylight burglary, late-night robbery, vandalism, truancy, controlled substances sales, firearm-related violence, and juvenile substance abuse and alcohol use.

(iii) A local juvenile justice action strategy that provides for a continuum of responses to juvenile crime and delinquency and demonstrates a collaborative and integrated approach for implementing a system of swift, certain, and graduated responses for at-risk youth and juvenile offenders.

(iv) Programs identified in clause (iii) that are proposed to be funded pursuant to this subparagraph, including the projected amount of funding for each program.

(B) Programs proposed to be funded shall satisfy all of the following requirements:

(i) Be based on programs and approaches that have been demonstrated to be effective in reducing delinquency and addressing juvenile crime for any elements of response to juvenile crime and delinquency, including prevention, intervention, suppression, and incapacitation.

(ii) Collaborate and integrate services of all the resources set forth in clause (i) of subparagraph (A), to the extent appropriate.

(iii) Employ information sharing systems to ensure that county actions are fully coordinated, and designed to provide data for measuring the success of juvenile justice programs and strategies.

(iv) Adopt goals related to the outcome measures that shall be used to determine the effectiveness of the local juvenile justice action strategy.

(C) The plan shall ~~also~~ identify the specific objectives of the programs proposed for funding and specified outcome measures to determine the effectiveness of the programs and *provide* an accounting for all program participants, including those who do not complete the programs. Outcome measures of the programs proposed to be funded shall include, but not be limited to, all of the following:

(i) The rate of juvenile arrests per 100,000 population.

(ii) The rate of successful completion of probation.

(iii) The rate of successful completion of restitution and court-ordered community service responsibilities.

(iv) Arrest, incarceration, and probation violation rates of program participants.

(v) Quantification of the annual per capita costs of the program.

(D) The Board of Corrections shall review plans or modified plans submitted pursuant to this paragraph within 30 days upon receipt of submitted or resubmitted plans or modified plans. The board shall approve only those plans or modified plans that fulfill the requirements of this paragraph, and shall advise a submitting county or city and county immediately upon the approval of its plan or modified plan. The board shall offer, and provide if requested, technical assistance to any county or city and county that submits a plan or modified plan not in compliance with the requirements of this paragraph. The SLESF shall only allocate funding pursuant to this paragraph upon notification from the board that a plan or modified plan has been approved.

(E) To assess the effectiveness of programs funded pursuant to this paragraph using the program outcome criteria specified in subparagraph (C), the following periodic reports shall be submitted:

(i) Each county or city and county shall report, beginning October 15, 2002, and annually each October 15 thereafter, to the county board of supervisors and the Board of Corrections, in a format specified by the Board of Corrections, on the programs funded pursuant to this chapter and program outcomes as specified in subparagraph (C).

(ii) The Board of Corrections shall compile the local reports and, by March 15, 2003, and annually thereafter, make a report to the Governor and the Legislature on program expenditures within each county and city and county from the appropriation for the purposes of this paragraph, on the outcomes as specified in subparagraph (C) of the programs funded pursuant to this paragraph and the statewide effectiveness of the comprehensive multiagency juvenile justice plans.

(c) Subject to subdivision (d), for each fiscal year in which the county, each city, the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs

Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District receive moneys pursuant to paragraph (3) of subdivision (b), the county, each city, and each district specified in this subdivision shall appropriate those moneys in accordance with the following procedures:

(1) In the case of the county, the county board of supervisors shall appropriate existing and anticipated moneys exclusively to provide frontline law enforcement services, other than those services specified in paragraphs (1) and (2) of subdivision (b), in the unincorporated areas of the county, in response to written requests submitted to the board by the county sheriff and the district attorney. Any request submitted pursuant to this paragraph shall specify the frontline law enforcement needs of the requesting entity, and those personnel, equipment, and programs that are necessary to meet those needs. The board shall, at a public hearing held in September in each year that the Legislature appropriates funds for purposes of this chapter, consider and determine each submitted request within 60 days of receipt, pursuant to the decision of a majority of a quorum present. The board shall consider these written requests separate and apart from the process applicable to proposed allocations of the county general fund.

(2) In the case of a city, the city council shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with written requests submitted by the chief of police of that city or the chief administrator of the law enforcement agency that provides police services for that city. These written requests shall be acted upon by the city council in the same manner as specified in paragraph (1) for county appropriations.

(3) In the case of the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County, the legislative body of that special district shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with written requests submitted by the chief administrator of the law

enforcement agency that provides police services for that special district. These written requests shall be acted upon by the legislative body in the same manner specified in paragraph (1) for county appropriations.

(d) For each fiscal year in which the county, a city, or the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community Services District within Siskiyou County, or the Kensington Police Protection and Community Services District within Contra Costa County receives any moneys pursuant to this chapter, in no event shall the governing body of any of those recipient agencies subsequently alter any previous, valid appropriation by that body, for that same fiscal year, of moneys allocated to the county or city pursuant to paragraph (3) of subdivision (b).

(e) Funds received pursuant to subdivision (b) shall be expended or encumbered in accordance with this chapter no later than June 30 of the following fiscal year. A local agency that has not met this requirement shall remit unspent SLESF moneys to the Controller for deposit into the General Fund.

(f) In the event that a county, a city, a city and county, or a qualifying special district does not comply with the requirements of this chapter to receive an SLESF allocation, the Controller shall revert those funds to the General Fund.

SEC. 151. Section 30063 of the Government Code is amended to read:

30063. (a) The Supplemental Law Enforcement Services Fund (SLESF) in each county or city is to be expended exclusively as required by this chapter. Moneys in that fund shall not be transferred to, or intermingled with, the moneys in any other fund in the county or city treasury, except that moneys may be transferred from the SLESF to the county's or city's general fund to the extent necessary to facilitate the appropriation and expenditure of those transferred moneys in the manner required by this chapter.

(b) Moneys in ~~a~~ *an* SLESF may only be invested in safe and conservative investments in accordance with those standards of prudent investment applicable to the investment of trust moneys. The treasurer of the county and each city shall provide a monthly

SLESF investment report to either the police chief or the county sheriff and district attorney, as applicable.

(c) Each year, at least 30 days prior to the date of the duly noticed public hearing required pursuant to paragraph (1) of subdivision (c) of Section 30061, the county auditor and city treasurer shall detail and summarize allocations from the county's or city's SLESF, as applicable, in a written, public report filed with the Supplemental Law Enforcement Oversight Committee (SLEOC), the county board of supervisors, or the city council, as applicable, for the entirety of the immediately preceding fiscal year, and the county sheriff or police chief, as applicable.

(d) A summary of the annual reports required in subdivision (c) shall be submitted in a standardized format to be developed by the Controller, in conjunction with the California District Attorney's Association, California Police Chief's Association, California State Sheriff's Association, California Peace Officer's Association, California County Auditor's Association, and California Municipal Treasurer's Association, by each SLEOC to the Controller on or before October 15, 2001, and each year thereafter. The Controller shall make a copy of the summarized reports available to the Governor, the Legislature, and the Legislative Analyst's office.

(e) By March 1 of each year, the Legislative Analyst's office shall report to the Legislature on the types of expenditures made by local law enforcement agencies in the previous fiscal year pursuant to this chapter, and, to the extent feasible, on the effects of those expenditures on law enforcement and public safety.

(f) A county, a city, or a city and county that fails to submit the data required pursuant to subdivision (d) of this section or to report as required pursuant to clause (i) of subparagraph (E) of paragraph (4) of subdivision (b) of Section 30061 shall not continue to expend funds allocated pursuant to subdivision (b) of Section 30061 or interest earned pursuant to subdivision (b) of this section until that data and that report are submitted as required by this chapter.

(g) Notwithstanding subdivision (f), if the ~~Supplemental Law Enforcement Oversight Committee (SLEOC)~~ *SLEOC* fails to transmit the data to the Controller required pursuant to subdivision (d), the local law enforcement agency may submit its expenditure data directly to the Controller no later than 15 days after the date

specified in subdivision (d). If the local law enforcement agency has complied with other requirements in this chapter, it may continue to expend funds allocated and interest earned pursuant to this chapter.

SEC. 152. Section 31520.1 of the Government Code is amended to read:

31520.1. In any county subject to the provisions of Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662.2), the board of retirement shall consist of nine members and one alternate, one of whom shall be the county treasurer. The second and third members of the board shall be members of the association, other than safety members, elected by such members within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth, fifth, sixth, and ninth members shall be qualified electors of the county who are not connected with the county government in any capacity, except one may be a supervisor, and shall be appointed by the board of supervisors. A supervisor appointed as a member of the retirement board shall not serve beyond his term of office as supervisor. The seventh member shall be a safety member of the association elected by the safety members. The eighth member shall be a retired member elected by the retired members of the association in a manner to be determined by the board of supervisors. The alternate member shall be that candidate, if any, for the seventh member from the group under Section 31470.2 or 31470.4, which is not represented by a board member who received the highest number of votes of all candidates in that group. If there is no such candidate there shall be no alternate member. The first person chosen as the second and fourth members shall serve for a term of two years beginning with the date the system becomes operative, the third and fifth members shall serve for a term of three years beginning with that date, and the sixth, seventh, and alternate members shall serve for a term of two years beginning January 1, 1952, or the date on which a retirement system established by this chapter becomes operative, whichever is the later. The eighth and ninth members shall take office as soon as practicable for an initial term to expire concurrent with the expiration of the longest remaining term of an elected member. Thereafter the terms of office of the elected and appointed members and alternate are three years.

The alternate member provided for by this section shall vote as a member of the board only in the event the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate member shall fill such vacancy until a successor qualifies. The alternate shall sit on the board in place of the seventh member when a member of the same service is before the board for determination of his retirement.

The amendments to this section during the 1972 Regular Session shall not be construed to affect the continuation on the board of retired members appointed by *the* board of supervisors until the expiration of the term for which they were appointed.

SEC. 153. Section 31629.5 of the Government Code is amended to read:

31629.5. (a) Notwithstanding Sections 31628 and 31629, on ~~or~~ *and* after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the retirement fund. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund.

(b) An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time except: (1) while the member is employed in county service in a position in which the member is not excluded from membership in this system with respect to that service; (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service, entered within six months after discontinuing county service, as a member of a reciprocal retirement system. All accumulated contributions contributed up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements that apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated

contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) Notwithstanding Section 31467, for purposes of this section, ''accumulated contributions'' means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

SEC. 154. Section 31787.6 of the Government Code is amended to read:

31787.6. A surviving spouse of a safety member who is killed in the performance of duty or who dies as the result of an accident or injury caused by external violence or physical force, incurred in the performance of his *or her* duty, shall be paid the following amount in addition to all other benefits provided by this chapter:

A one-time lump-sum benefit equal to an amount, provided from contributions by the county or district, equal to the annual compensation earnable by the deceased at his *or her* monthly rate of compensation at the time of his *or her* death.

This section is not applicable to members described in Section 31469.2.

SEC. 155. Section 45310.7 of the Government Code is amended to read:

45310.7. (a) On ~~or~~ *and* after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the retirement fund of the city's retirement system. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the system's retirement fund.

(b) An election to allow accumulated contributions to remain in the system's retirement fund may be revoked by the member at

any time except: (1) while the member is employed in service in a position in which the member is not excluded from membership in the system with respect to that service; (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service in a reciprocal retirement system, entered within six months after discontinuing service in the city's retirement system. All accumulated contributions made up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements as apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) For purposes of this section, ''accumulated contributions'' means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

(f) It is the intent of the Legislature in enacting this section to recognize that the state has a compelling interest in ensuring that its public agencies recruit and retain the highest caliber of public employees by allowing local public employees to retain the service credit that they earned through their service as local public employees in order to encourage them to return to public employment and continue to serve the public.

SEC. 156. Section 53216.8 of the Government Code, as added by Chapter 883 of the Statutes of 2002, is amended to read:

53216.8. (a) Any former member who left the service of a local agency with established reciprocity, and who became a member of a county retirement system, a retirement system established under the Public Employees' Retirement Law, or another reciprocal retirement system and who did not elect to, or was not eligible to, leave his or her contributions on deposit, may elect to redeposit those contributions if he or she is an active member of a reciprocal retirement system or the Public Employees' Retirement System at the time of redeposit. A former member may exercise this right by redepositing in the retirement fund of the local agency he or she left, the amount of accumulated contributions and interest that he or she withdrew from that retirement fund plus regular interest thereon from the date of separation.

(b) A former member who redeposits under this section shall have the same rights as a member who elected to leave his or her accumulated contributions on deposit in the local agency's fund. The deferred retirement allowance of the member shall be determined in accordance with provisions applicable to a member retiring directly from local agency employment on the date of his or her retirement.

(c) A former member who redeposits under this section shall be entitled to a reduced age at entry, commencing with contributions payable the first day of the month following the date the local agency receives notice of the redeposit, if applicable.

(d) This section does not apply to either of the following:

(1) A member or former member who is retired.

(2) A former member who is not in the service of an employer making him or her a member of a county retirement system, a retirement system established under the Public Employees' Retirement Law, or another reciprocal retirement system.

(e) This section shall only apply to either of the following:

(1) A former member who is in the service of an employer as an officer or employee of a law enforcement agency or fire department whose principal duties consist of active law enforcement or firefighting and prevention service, but excluding one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement or firefighting and prevention service, even though

the officer or employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(2) A former member who is in the service of an employer and seeks to redeposit contributions for past employment as an officer or employee of a law enforcement agency or fire department in this system whose principal duties consisted of active law enforcement or firefighting and prevention service, but excluding one whose principal duties were those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions did not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee was subject to occasional call, or was occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(f) For purposes of this section, a ''former member'' is a member who left service under a retirement system established under this ~~chapter~~ *article* and who did not elect to, or was not eligible to, leave his or her contributions on deposit.

(g) Each retirement system subject to this section shall establish criteria to determine the eligibility of a former member to redeposit contributions, and the amount of contributions that may be redeposited, in those cases in which the system no longer maintains complete records with respect to the former member.

(h) It is the intent of the Legislature in enacting this section to recognize a statewide public obligation to all those whose duties as local public safety officers expose them to more than ordinary risks through their contribution to ensuring public safety and to ensure that those who do serve or have served as local public safety officers shall have the ability to receive pension benefits for past public service in other jurisdictions within the state.

SEC. 157. Section 53601.7 of the Government Code is amended to read:

53601.7. Notwithstanding the investment parameters of Sections 53601 and 53635, a local agency that is a county or a city and county may invest any portion of the funds that it deems wise or expedient, using the following criteria:

(a) No investment shall be made in any security, other than a security underlying a repurchase or reverse purchase agreement, that, at the time of purchase, has a term remaining to maturity in

excess of 397 days, and that would cause the dollar-weighted average maturity of the funds in the investment pool to exceed 90 days.

(b) All corporate and depository institution investments shall meet or exceed the following credit rating criteria at time of purchase:

(1) Short-term debt shall be rated at least ''A-1'' by Standard & Poor's Corporation, ''P-1'' by Moody's Investors Service, Inc., or ''F-1'' by Fitch Ratings. If the issuer of short-term debt has also issued long-term debt, this long-term debt rating shall be rated at least ''A,'' without regard to +/- or 1, 2, 3 modifiers, by Standard & Poor's Corporation, Moody's Investors Service, Inc., or Fitch Ratings.

(2) Long-term debt shall be rated at least ''A,'' without regard to +/- or 1, 2, 3 modifiers, by Standard & Poor's Corporation, Moody's Investors Service, Inc., or Fitch Ratings.

(c) No more than 5 percent of the total assets of the investments held by a local agency may be invested in the securities of any one issuer, except the obligations of the United States government, United States government agencies, and United States government-sponsored enterprises. No more than 10 percent may be invested in any one mutual fund.

(d) Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. A later increase or decrease in a percentage resulting from a change in values or assets shall not constitute a violation of that restriction. If subsequent to purchase, securities are downgraded below the minimum acceptable rating level, the securities shall be reviewed for possible sale within a reasonable amount of time after the downgrade.

(e) Within the limitations set forth in this section, a local agency electing to invest its funds pursuant to this section may invest in the following securities:

(1) Direct obligations of the United States Treasury or any other obligation guaranteed as to principal and interest by the United States government.

(2) Bonds, notes, debentures, or any other obligations of, or securities issued by, any federal government agency, instrumentality, or government-sponsored enterprise.

(3) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or other entity of the state.

(4) Bonds, notes, warrants, or other indebtedness of the local agency, or any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(5) Bankers ~~Acceptance~~ *acceptance*, otherwise known as bills of exchange or time drafts drawn on and accepted by a commercial bank, primarily used to finance international trade. Purchases of bankers acceptances may not exceed 180 days to maturity.

(6) Short-term unsecured promissory notes issued by corporations for maturities of 270 days or less. Eligible commercial paper is further limited to the following:

(A) Issuing corporations that are organized and operating within the United States, having total assets in excess of five hundred million dollars ($500,000,000).

(B) Maturities for eligible commercial paper that may not exceed 270 days and may not represent more than 10 percent of the outstanding paper of an issuing corporation.

(7) A certificate representing a deposit of funds at a commercial bank for a specified period of time and for a specified return at maturity. Eligible certificates of deposit shall be issued by a nationally or state-chartered bank or a state or federal association, as defined in Section 5102 of the Financial Code, or by a state-licensed branch of a foreign bank. For purposes of this subdivision, certificates of deposits shall not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money may not invest local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decisionmaking authority in the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed

by the board of directors, other credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificate of deposit.

(8) Repurchase agreements, reverse repurchase agreements, or securities lending agreements of any securities authorized by this section, if the agreements meet the requirements of this paragraph and the delivery requirements specified in Section 53601. Investments in repurchase agreements may be made, on any investment authorized by this section, when the term of the agreement does not exceed one year. The market value of the securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities, and the value shall be adjusted no less than quarterly. Because the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance with this section if the value of the underlying securities is brought back to 102 percent no later than the next business day. Reverse repurchase agreements may be utilized only when all of the following criteria are met:

(A) The security being sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to the sale.

(B) The total of all reverse repurchase agreements on investments owned by the local agency not purchased or committed to purchase does not exceed 20 percent of the market value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, may not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale

of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(E) Investments in reverse repurchase agreements or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, shall only be made with prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

''Securities,'' for purposes of this paragraph, means securities of the same issuer, description, issue date, and maturity.

(9) All debt securities issued by a corporation or depository institution with a remaining maturity of not more than 397 days, including securities specified as ''medium-term notes,'' as well as other debt instruments originally issued with maturities longer than 397 days, but which, at time of purchase, have a final maturity of 397 days or less. Eligible medium-term notes shall be issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

(10) (A) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations described in this subdivision and that comply with the investment restrictions of this section. However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement shall not be required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default. The value of the securities underlying a repurchase agreement may be 100 percent of the sales price if the securities are marked to market daily.

(B) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 ~~and following~~ *et seq.*).

(C) All shares of beneficial interest described in this paragraph shall have met either of the following criteria:

(i) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(ii) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission and who has not less than five years' experience investing in money market instruments and with assets under management in excess of five hundred million dollars ($500,000,000).

(11) Any mortgage ~~passthrough~~ *pass-through* security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond.

Securities eligible for investment under this paragraph shall be issued by an issuer having an "A" or higher rating from the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a ~~national~~ *nationally* recognized rating.

(12) Contracts issued by insurance companies that provide the policyholder with the right to receive a fixed or variable rate of interest and the full return of principal at the maturity date.

(13) Any investments that would qualify under SEC Rule 2a-7 of the Investment Company Act of 1940 guidelines. These investments shall also meet the limitations detailed in this section.

(f) For purposes of this section, all of the following definitions shall apply:

(1) "Repurchase agreement" means a purchase of securities pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement.

(2) "Significant banking relationship" means any of the following activities of a bank:

(A) Involvement in the creation, sale, purchase, or retirement of a local agency's bands, warrants, notes, or other evidence of indebtedness.

(B) Financing of a local agency's securities or funds as deposits.

(C) Acceptance of a local agency's securities or funds as deposits.

(3) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(4) ''Securities lending agreement'' means an agreement with a local agency that agrees to transfer securities to a borrower who, in turn agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(5) ''Local agency'' means a county or city and county.

(g) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, or other similar borrowing methods.

(h) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

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

SEC. 158. Section 53635 of the Government Code is amended to read:

53635. (a) This section shall apply to a local agency that is a county, a city and ~~a~~ county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. However, Section 53601 shall apply to all local agencies that pool money in deposits or investments exclusively with local agencies that have the same governing body.

This section shall be interpreted in a manner that recognizes the distinct characteristics of investment pools and the distinct administrative burdens on managing and investing funds on a

pooled basis pursuant to Article 6 (commencing with Section 27130) of Chapter 5 of Division 2 of Title 3.

A local agency that is a county, a city and county, or other local agency that pools money in deposits or investments with other agencies may invest in commercial paper pursuant to subdivision (g) of Section 53601, except that the local agency shall be subject to the following concentration limits:

(1) No more than 40 percent of the local agency's money may be invested in eligible commercial paper.

(2) No more than 10 percent of the local agency's money that may be invested pursuant to this section may be invested in the outstanding commercial paper of any single corporate issuer.

(3) No more than 10 percent of the outstanding commercial paper of any single corporate issuer may be purchased by the local agency.

(b) Notwithstanding Section 53601, the City of Los Angeles shall be subject to the concentration limits of this section for counties and cities and counties with regard to the investment of money in eligible commercial paper.

SEC. 159. Section 57116 of the Government Code is amended to read:

57116. In addition to any other requirements, any resolution of the commission ordering an incorporation subject to an election shall do all of the following:

(a) Provide for the election of the officers of the proposed city required to be elected, except as provided in Section ~~56727~~ *56724* and except as to officers designated as appointive, pursuant to Section 56723.

(b) Provide for the election on the question of whether members of the city council in future elections are to be elected by district or at large.

(c) If the petition so requests, state that the voters may express a preference as to whether or not the city shall operate under the city manager form of government, the ballot question being for or against the city manager form of government.

(d) If the petition so requests, state that the voters may express their preference between names for the new city.

SEC. 160. Section 68085 of the Government Code is amended to read:

68085. (a) (1) There is hereby established the Trial Court Trust Fund, the proceeds of which shall be apportioned at least quarterly for the purpose of funding trial court operations, as defined in Section 77003. Apportionment payments may not exceed 30 percent of the total annual apportionment to the Trial Court Trust Fund for state trial court funding in any 90-day period.

(2) The apportionment payments shall be made by the Controller. The final payment from the Trial Court Trust Fund for each fiscal year shall be made on or before August 31 of the subsequent fiscal year.

(3) If apportionment payments are made on a quarterly basis, the payments shall be on July 15, October 15, January 15, and April 15. In addition to quarterly payments, a final payment from the Trial Court Trust Fund for each fiscal year may be made on or before August 31 of the subsequent fiscal year.

(4) Notwithstanding any other provision of law, in order to promote statewide efficiency, the Judicial Council may authorize the direct payment or reimbursement or both of actual costs from the Trial Court Trust Fund for trial court programs, contract costs, or legal and financial services to one or more participating courts upon appropriation of funding for these purposes in the annual Budget Act. Upon prior written approval of the Director of Finance, the Judicial Council may also authorize an increase in any reimbursements or direct payments in excess of the amount appropriated in the annual Budget Act. For any increases in reimbursements or direct payments within the fiscal year that exceed two hundred thousand dollars ($200,000), the Director of Finance shall provide notification in writing of any approval granted under this section, not less than 30 days prior to the effective date of that approval, to the chairperson of the committee in each house of the Legislature that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house of the Legislature that consider the annual Budget Act, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance, determine. The direct payment or reimbursement of costs may be supported by the reduction of a participating court's allocation from the Trial Court Trust Fund to the extent that the court's expenditures for the program are

reduced and the court is supported by the program. The Judicial Council shall provide the affected ~~trail~~ *trial* courts with quarterly reports on expenditures incurred as authorized by this subdivision. The Judicial Council shall establish procedures to provide for the administration of this paragraph in a way that promotes the effective, efficient, reliable, and accountable operation of the trial courts.

(b) Notwithstanding any other provision of law, the fees listed in subdivision (c) shall all be deposited upon collection in a special account in the county treasury, and transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

(c) (1) Except as specified in subdivision (d), this section applies to all fees collected pursuant to Sections 631.3, 116.230, and 403.060 of the Code of Civil Procedure and Sections 26820.4, 26823, 26826, 26826.01, 26827, 26827.4, 26830, 26832.1, 26833.1, 26835.1, 26836.1, 26837.1, 26838, 26850.1, 26851.1, 26852.1, 26853.1, 26855.4, 26862, 27081.5, 68086, 72055, 72056, 72056.01, and 72060.

(2) If any of the fees provided for in this subdivision are partially waived by court order, and the fee is to be divided between the Trial Court Trust Fund and any other fund, the amount of the partial waiver shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee.

(3) Any amounts transmitted by a county to the Controller for deposit into the Trial Court Trust Fund from fees collected pursuant to Section 27361 between January 1, 1998, and the effective date of this paragraph shall be credited against the total amount the county is required to pay to the state pursuant to paragraph (2) of subdivision (b) of Section 77201 for the 1997–98 fiscal year.

(d) This section does not apply to that portion of a filing fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056 which is allocated for dispute resolution pursuant to Section 470.3 of the Business and Professions Code, the county law library pursuant to Section 6320 of the Business and Professions Code, the Judges' Retirement Fund pursuant to Section 26822.3, automated recordkeeping or conversion to micrographics pursuant to Sections 26863 and 68090.7, and courthouse financing pursuant

to Section 76238. This section also does not apply to fees collected pursuant to subdivisions (a) and (c) of Section 27361.

(e) This section applies to all payments required to be made to the State Treasury by any county or city and county pursuant to Section 77201, 77201.1, or 77205.

(f) Notwithstanding any other provision of law, no agency may take action to change the amounts allocated to any of the funds described in subdivision (a), (b), (c), or (d).

(g) Before making any apportionments under this section, the Controller shall deduct, from the annual appropriation for that purpose, the actual administrative costs that will be incurred under this section. Costs reimbursed under this section shall be determined on an annual basis in consultation with the Judicial Council.

(h) Any amounts required to be transmitted by a county or city and county to the state pursuant to this section shall be remitted to the Controller no later than 45 days after the end of the month in which the fees were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund to which it is to be deposited. Any remittance which is not made by the county or city and county in accordance with this section shall be considered delinquent, and subject to the penalties specified in this section.

(i) Upon receipt of any delinquent payment required pursuant to this section, the Controller shall calculate a penalty on any delinquent payment by multiplying the amount of the delinquent payment at a daily rate equivalent to $1^1/_2$ percent per month for the number of days the payment is delinquent. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse to a county's general fund pursuant to this section and Section 24353 shall be paid from the Trial Court Operations Fund for that court.

(j) Penalty amounts calculated pursuant to subdivision (i) shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(k) The Trial Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Trial Court Trust Fund semiannually and shall be allocated

among the courts in accordance with the requirements of subdivision (a). The specific allocations shall be specified by the Judicial Council, based upon recommendations from the Trial Court Budget Commission.

(*l*) It is the intent of the Legislature that the revenues required to be deposited into the Trial Court Trust Fund be remitted as soon after collection by the courts as possible. Not later than February 1, 2001, the Judicial Council, in consultation with the California State Association of Counties and the California County Auditors Association, shall study and make recommendations to the Legislature on alternative procedures that would improve the collection and remittance of revenues to the Trial Court Trust Fund.

SEC. 161. Section 68095 of the Government Code is amended to read:

68095. Except as otherwise provided by law, witness' fees for each day's actual attendance, when legally required to attend, or if the witness attends voluntarily and is called to testify, before a coroner's jury, are twelve dollars ($12) a day and mileage for each mile actually traveled in attendance as a witness, one way only, twenty cents ($0.20). ~~Such~~ *That* per diem and mileage shall be a county charge.

SEC. 162. Section 68115 of the Government Code is amended to read:

68115. When war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to the building appointed for holding the court, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of a superior court, the presiding judge may request and the ~~Chair~~ *Chairperson* of the Judicial Council may, notwithstanding any other provision of law, by order authorize the court to do one or more of the following:

(a) Hold sessions anywhere within the county.

(b) Transfer civil cases pending trial in the court to a superior court in an adjacent county. No such transfer shall be made pursuant to this subdivision except with the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial. Any civil case so transferred shall be integrated into the existing

caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council.

(c) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 825 of the Penal Code within which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than seven days, with the number of days to be designated by the ~~Chair~~ *Chairperson* of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order.

(d) Extend the time period provided in Section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 15 days.

(e) Extend the time period provided in Section 1382 of the Penal Code within which the trial must be held by not more than 30 days, but the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.

(f) Within the affected area of a county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Sections 632 and 637 of the Welfare and Institutions Code within which a minor shall be given a detention hearing, with the number of days to be designated by the ~~Chair~~ *Chairperson* of the Judicial Council. The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency, but in no event shall the time period within which a detention hearing must be given be extended to more than seven days. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

(g) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition shall be

held ~~by~~ *to* not more ~~then~~ *than* 15 days, with the number of days to be designated by the ~~Chair~~ *Chairperson* of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

SEC. 163. Section 68620 of the Government Code is amended to read:

68620. (a) Each superior court shall establish a delay reduction program for limited civil cases in consultation with the local bar that is consistent with the provisions of this article. In its discretion, the Judicial Council may assist in the development of, or may develop and adopt, any or all procedures, standards, or policies for a delay reduction program for limited civil cases in superior courts on a statewide basis which are consistent with the provisions of the Trial Court Delay Reduction Act.

(b) Actions and proceedings subject to the provisions of Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure or provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure ~~shall~~ *may* not be assigned to or governed by the provisions of any delay reduction program established pursuant to ~~the~~ *this* section.

(c) It is the intent of the Legislature that the civil discovery in actions and proceedings subject to a program established pursuant to Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure shall be governed by the times and procedures specified in that article. Civil discovery in these actions and proceedings ~~shall~~ *is* not ~~be~~ affected by the provisions of any delay reduction program adopted pursuant to this section.

SEC. 164. Section 69587 of the Government Code is amended to read:

69587. In the County of Madera there are seven judges *of the Superior Court*.

SEC. 165. Section 69588 of the Government Code is amended to read:

69588. In the County of Marin there are 10 judges *of the Superior Court*.

SEC. 166. Section 70367 of the Government Code is amended to read:

70367. (a) Within 30 days after the Administrative Director of the Courts has mailed to the county, under Section 70364, the approved county facilities payment, the Administrative Director of the Courts may submit a declaration to the Court Facilities Dispute Resolution Committee, mailing of copies to the other parties, that the amount is incorrect because the county failed to report court facilities expenses paid by the county which reduced the amount of the approved county facilities payment.

(b) The county shall mail its comments to the Court Facilities Dispute Resolution Committee on the administrative director's declaration within 30 days of the mailing of the administrative director's declaration, with mailing to the other parties.

(c) Within 90 days of receipt of comments pursuant to subdivision (b), the Court Facilities Dispute Resolution Committee shall review the declarations and comments received, and ~~makes~~ *make* its recommendation to the Director of Finance concerning correction of any errors and, if necessary, adjustment of the amount of the county facilities payment. The Court Facilities Dispute Resolution Committee shall mail a copy of its recommendation to all the parties.

(d) The Director of Finance or his or her designee shall review the recommendations of the Court Facilities Dispute Resolution Committee and make his or her determination concerning any correction of errors and, if necessary, adjustment of the amount of the county facilities payment. The director shall serve a copy of his or her determination on all the parties.

SEC. 167. Section 70391 of the Government Code is amended to read:

70391. The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law:

(a) Exercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities whose title is held by the state, including, but not limited to, the acquisition and development of facilities.

(b) Exercise the full range of policymaking authority over trial court facilities, including, but not limited to, planning, construction, acquisition, and operation, to the extent not expressly otherwise limited by law.

(c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:

(1) If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011, and as follows, except that, notwithstanding any other provision of law, the proportion of the net proceeds that represents the proportion of other state funds used on the property other than for operation and maintenance, shall be returned to the fund from which it came and the remainder of the proceeds shall be deposited in the State Court Facilities Construction Fund.~~,~~

(2) The Judicial Council shall consult with the county concerning the disposition of the facility.

(3) The Judicial Council shall consider whether the potential new or planned use of the facility:

(A) Is compatible with the use of other adjacent public buildings.

(B) Unreasonably departs from the historic or local character of the surrounding property or local community.

(C) Has a negative impact on the local community.

(D) Unreasonably interferes with other governmental agencies that use or are located in or adjacent to the building containing the court facility.

(E) Is of sufficient benefit to outweigh the public good in maintaining it as a court facility or building.

(4) All funds received for disposal of surplus court facilities shall be deposited by the Judicial Council in the State Court Facilities Construction Fund.

(5) If the facility was acquired, rehabilitated, or constructed, in whole or in part, with money in the State Court Facilities Construction Fund that was deposited in that fund from the state fund, any funds received for disposal of that facility shall be apportioned to the state fund and the State Court Facilities Construction Fund in the same proportion that the original cost of the building was paid from the state fund and other sources of the State Court Facilities Construction Fund.

(d) Conduct audits of all of the following:

(1) The collection of fees by the local courts.

(2) The money in local courthouse construction funds established pursuant to Section 76100.

(e) Establish policies, procedures, and guidelines for ensuring that the courts have adequate and sufficient facilities, including, but not limited to, facilities planning, acquisition, construction, design, operation, and maintenance.

(f) Establish and consult with local project advisory groups on the construction of new trial court facilities, including the trial court, the county, state agencies, bar groups, and members of the community.

(g) Manage court facilities in consultation with the trial courts.

(h) Allocate appropriated funds for court facilities maintenance and construction, subject to the other provisions of this chapter.

(i) Manage shared-use facilities to the extent required by the agreement under Section 70343.

(j) Prepare funding requests for court facility construction, repair, and maintenance.

(k) Implement the design, bid, award, and construction of all court construction projects, except as delegated to others.

(*l*) Provide for capital outlay projects that may be built with funds appropriated or otherwise available for these purposes as follows:

(1) Approve five-year and master plans for each district.

(2) Establish priorities for construction.

(3) Recommend to the Governor and the Legislature the projects ~~shall~~ *to* be funded ~~from~~ *by* the State Court Facilities Construction Fund.

(4) Submit the cost of projects proposed to be funded to the Department of Finance for inclusion in the Governor's ~~budget~~ *Budget*.

(m) In carrying out its responsibilities and authority under this section, the Judicial Council shall consult with the local court for:

(1) Selecting and contracting with facility consultants.

(2) Preparing and reviewing architectural programs and designs for court facilities.

(3) Preparing strategic master and five-year capital facilities plans.

(4) Major maintenance of any facility.

SEC. 168. Section 70392 of the Government Code is amended to read:

70392. Pursuant to ~~paragraph (2) of~~ subdivision (b) of Section 70374, the Administrative Office of the Courts shall have the following responsibilities and authority in addition to other responsibilities and authority granted by law or delegated by the Judicial Council:

(a) Notwithstanding any other provision of law and subject to the appropriation of funds, provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts, if the responsibility for the facility has been transferred to the Judicial Council pursuant to this chapter.

(b) Carry out the Judicial Council's policies with regard to trial court facilities, except as otherwise expressly limited by law.

(c) Develop for Judicial Council approval the master plans for trial court facilities in each district.

(d) Construction of court buildings, including, but not limited to, selection of architects and contractors, except as otherwise expressly limited by law.

(e) Delegate its responsibilities and authority to the local trial court for court facilities used by that court.

SEC. 169. Section 71601 of the Government Code is amended to read:

71601. For purposes of this chapter, the following definitions shall apply:

(a) ''Appointment'' means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court's personnel policies, procedures, and plans.

(b) ''Employee organization'' means any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with the trial court.

(c) ''Hiring'' means appointment as defined in subdivision (a).

(d) ''Mediation'' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(e) ‘‘Meet and confer in good faith’’ means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) ‘‘Personnel rules,’’ ‘‘personnel policies, procedures, and plans,’’ and ‘‘rules and regulations’’ mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) ‘‘Promotion’’ means promotion within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) ‘‘Recognized employee organization’’ means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630) of this chapter.

(i) ‘‘Subordinate judicial officer’’ means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, juvenile referee, and judge pro tempore.

(j) ‘‘Transfer’’ means transfer within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) ‘‘Trial court’’ means a superior court or a municipal court.

(*l*) ‘‘Trial court employee’’ means a person who is both of the following:

(1) Paid from the trial court’s budget, regardless of the funding source. For the purpose of this paragraph, ‘‘trial court’s budget’’

means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court's right to control the manner and means of his or her work because of the trial court's authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the ''trial court'' includes the judges of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a ''trial court employee'' if and only if both paragraphs (1) and (2) of subdivision (*l*) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 810 of the California Rules of Court. The phrase ''trial court employee'' includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (*l*). The phrase ''trial court employee'' does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed. ~~Any~~ *A* temporary employee, whether hired through an agency or not, ~~shall~~ *may* not be employed in the trial court for a period exceeding 180 calendar days.

SEC. 170. Section 71615 of the Government Code is amended to read:

71615. (a) Except as provided in subdivision (b), the effective date of this act shall be its implementation date.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this act later than the effective date of this act. However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to ~~such~~ *those* provisions the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of

the predecessor memorandum of understanding or agreement, unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

(c) As of the implementation date of this chapter, all of the following shall apply:

(1) All persons who meet the definition of trial court employee shall become trial court employees at their existing or equivalent classifications.

(2) Employment seniority of a trial court employee, as calculated and used under the system in effect prior to the implementation of this act, shall be calculated and used in the same manner by the trial court.

(3) A trial court employee shall have the same status he or she had as a probationary, permanent, or regular employee under the system in effect prior to implementation of this act. A probationary employee shall not be required to serve a new probationary period and shall continue the existing probationary period under the terms of hire.

(4) Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding transfer between the trial court and the county that are in place as of the implementation date of this act shall be continued while an existing memorandum of understanding or agreement remains in effect or for two years, whichever is longer, and any further rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good faith at the local level between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county. Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that are in effect upon the implementation date of this act shall be continued if trial court or county employees transfer between the trial court and the county or the county and the trial court while an existing memorandum of understanding or agreement remains in effect, or for a period of two years, whichever is longer. Any further right of trial court employees to portability is subject to the obligation to meet and confer in good faith between representatives of the trial court and representatives of recognized employee

organizations and local negotiation between the trial court and the county.

(5) Each trial court shall be deemed the successor employer of all trial court employees in the county in which the trial court is located.

(d) In establishing local personnel structures for trial court employees in accordance with this chapter, the trial court shall comply with contractual obligations, and consideration shall be given to minimizing disruption of the trial court workforce and protecting the rights accrued by trial court employees under their current systems. However, prior contractual obligations and rights may be reconsidered subject to the obligation to meet and confer in good faith, provided both parties give consideration to past contractual obligations and rights.

(e) Unrepresented trial court employees are governed by a trial court's personnel policies, procedures, and plans. The implementation of this act ~~shall~~ *may* not be a cause for changing a trial court's personnel policies, procedures, and plans applicable to unrepresented trial court employees except where required to bring ~~such~~ *those* policies, procedures, and plans into conformity with this chapter. Except as otherwise expressly provided in this act, a trial court retains all existing rights with respect to revising its personnel policies, procedures, and plans as applied to unrepresented trial court employees.

(f) Upon implementation of this act in a trial court, Sections 68650 to 68655, inclusive, and Rules 2201 to 2210, inclusive, of the California Rules of Court, shall be inoperative as to that trial court.

(g) Notwithstanding paragraph (4) of subdivision (c), both of the following shall apply:

(1) Unless prohibited or limited by charter provisions, the policies regarding transfer between either the trial court and the county or the county and the trial court that were in effect as of January 1, 2001, shall be continued while an existing memorandum of understanding or agreement remains in effect or until January 1, 2005, whichever period is longer. Thereafter, any rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good faith at the local level between representatives of the trial

court and representatives of recognized employee organizations, and local negotiation between the trial court and the county.

(2) Unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that were in effect on January 1, 2001, shall be continued if trial court or county employees transfer between either the trial court and the county or the county and the trial court while an existing memorandum of understanding or agreement remains in effect, or until January 1, 2005, whichever period is longer. Thereafter, any right of trial court employees to portability is subject to the obligation to meet and confer in good faith between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county.

SEC. 171. Section 71632.5 of the Government Code is amended to read:

71632.5. (a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, ‘‘agency shop’’ means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. That employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in a memorandum of understanding or agreement

between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate any funds, then to any fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement, 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 or agreement, but in no event shall there be more than one vote taken during that term.

(c) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the trial court and a recognized employee organization or recognized employee organizations shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of at least 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after the recognized employee organization has requested the trial court to negotiate on an agency shop arrangement and, beginning seven working days after the trial court received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement. An election, that may not be held more frequently than once a year, shall be conducted by the Division of Conciliation of the Department of Industrial Relations in the event that the trial court and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that was in effect on January 1, 2002, the recognized employee organization shall defend, indemnify, and hold the trial

court harmless against any liability arising from any claims, demands, or other action relating to the trial court's compliance with the agency fee obligation. Upon notification to the trial court by the recognized employee organization, the amount of the fee shall be deducted by the trial court from the wages or salary of the employee and paid to the employee organization. This subdivision shall be applicable on the operative date of this section, except that if a memorandum of understanding or agreement between the trial court and a recognized employee organization was in effect before January 1, 2002, as to the employees covered by the memorandum of understanding or agreement, the implementation date of this subdivision shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement. The trial court and representatives of recognized employee organizations may mutually agree to a different date on which this subdivision is applicable.

(d) Notwithstanding subdivisions (a), (b), and (c), the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(e) An agency shop agreement or arrangement does not apply to management, confidential, or supervisory employees. If those employees nonetheless choose to join the recognized employee organization and pay dues or pay the organization a service fee, Section 71638 shall apply to those employees, and the trial court shall administer deductions for which the recognized employee organization shall defend, indemnify, and hold the trial court harmless.

(f) Every recognized employee organization that has agreed to an agency shop provision, or is a party to an agency shop arrangement, shall keep an adequate itemized record of its financial transactions and shall make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or

corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(g) This section shall become operative only if Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement.

(h) A trial court ~~shall~~ *may* not offer employees inducements or benefits of any kind in return for employees opposing or rescinding an agency shop arrangement.

SEC. 172. Section 71636 of the Government Code is amended to read:

71636. (a) A trial court may adopt reasonable rules and regulations, after consultation in good faith with representatives of an employee organization or organizations, for the administration of employer-employee relations under this article. These rules and regulations may include provisions for:

(1) Verifying that an organization does in fact represent employees of the trial court.

(2) Verifying the official status of employee organization officers and representatives.

(3) Recognition of employee organizations.

(4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the trial court or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 71631.

(5) Additional procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.

(6) Access of employee organization officers and representatives to work locations.

(7) Use of official bulletin boards and other means of communication by employee organizations.

(8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.

(9) ~~Such~~ *Any* other matters as are necessary to carry out the purposes of this article.

(b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.

(c) No trial court shall unreasonably withhold recognition of employee organizations. A trial court ~~shall~~ *may* not offer to provide employees benefits of any kind for the purpose of inducing those employees to decertify or withdraw support from a recognized employee organization.

(d) Pursuant to the obligation to meet and confer in good faith, the trial court shall establish procedures to determine the appropriateness of any bargaining unit of court employees.

SEC. 173. Section 71636.3 of the Government Code is amended to read:

71636.3. (a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a trial court in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a trial court pursuant to Section 71636, a bargaining unit in effect as of January 1, 2002, shall continue in effect unless changed under the rules adopted by the trial court pursuant to Section 71636.

(c) A trial court shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party, selected by the trial court and the employee organization, who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. ~~In the event~~ *If* the trial court and the employee organization cannot agree on a neutral third party, the Division of Conciliation of the Department of Industrial Relations shall be the neutral third party

and shall verify the exclusive or majority status of the employee organization. ~~In the event that~~ *If* the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

SEC. 174. Section 73665 of the Government Code is amended to read:

73665. (a) Effective January 1, 1999, the Sheriff of Humboldt County shall assume the duties and responsibilities of the Humboldt County Marshal and the office of the marshal shall be consolidated with the office of sheriff. Upon the effective date of the consolidation there shall be established within the Humboldt County Sheriff's Department a unit designated as the Court Security Services Division. The Sheriff of Humboldt County shall be responsible for the management and operation of this division, in accordance with this article.

(b) ~~Neither this article nor any provision hereof, shall~~ *No provision of this article may* be deemed in any manner to limit or otherwise impair the power vested by all other laws in the Superior Court of Humboldt County to secure proper provision of court-related services.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 175. Section 73757 of the Government Code is amended to read:

73757. (a) In Madera County the majority of the judges of the superior court have voted to consolidate court services and security functions in the office of the Sheriff of Madera County.

(b) The sheriff's functions shall include, but not be limited to, providing all bailiff functions for the unified superior court in Madera County, and all other duties imposed by law upon deputy sheriffs and peace officers generally.

(c) The sheriff shall be responsible for the service of all writs, notices, and other processes issued by any court or other competent authority. Nothing in this section shall be construed as limiting the

responsibility or authority of a private person or registered process server from serving process or notices in the manner prescribed by law, nor shall it limit the authority of the sheriff or any other peace officer to serve warrants of arrest or other process specifically directed by any court to the sheriff or any other peace officer.

(d) Each elected marshal holding office in Madera County as of January 1, 2000, shall become an employee of the Madera County Sheriff's Department in the position of sheriff's bailiff, as of that date and each elective position of Marshal of the Madera County Municipal Court District is abolished as of that date. Each marshal transferring to the sheriff's department pursuant to this section shall be compensated at not less than the EL-10 step of Salary Range 43 (table B). No transferring marshal shall lose peace officer status or be demoted or otherwise be adversely affected by the consolidation of court-related services accomplished by this section. Each transferring marshal employed in the position of sheriff's bailiff shall be deemed duly qualified for that position and no other qualifications shall be required for that employment or retention in that position. Any transferring marshal wishing to transfer to another position shall meet the qualifications of a peace officer as required by subdivision (a) of Section 832 of the Penal Code and any other requirements of the Madera County civil service system. For purposes of establishing seniority within the class of sheriff's bailiff, each transferring marshal shall be credited with the marshal's total years of ~~services~~ *service* to Madera County as a constable and marshal.

(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

SEC. 176. Section 82011 of the Government Code is amended to read:

82011. ''Code reviewing body'' means all of the following:

(a) The commission, with respect to the conflict-of-interest code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.

(b) The board of supervisors, with respect to the conflict-of-interest code of any county agency other than the board

of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county.

(c) The city council, with respect to the conflict-of-interest code of any city agency other than the city council.

(d) The Attorney General, with respect to the conflict-of-interest code of the commission.

(e) The Chief Justice *of California* or his or her designee, with respect to the conflict-of-interest code of the members of the Judicial Council, Commission on Judicial Performance, and Board of Governors of the State Bar of California.

(f) The Board of Governors of the State Bar of California with respect to the conflict-of-interest code of the State Bar of California.

(g) The Chief Justice of California, the administrative presiding judges of the courts of appeal, and the presiding judges of superior courts, or their designees, with respect to the conflict-of-interest code of any agency of the judicial branch of government subject to the immediate administrative supervision of that court.

(h) The Judicial Council of California, with respect to the conflict-of-interest code of any state agency within the judicial branch of government not included under subdivisions (e), (f), and (g).

SEC. 177. Section 1339.63 of the Health and Safety Code is amended to read:

1339.63. (a) (1) As a condition of licensure under this division, every general acute care hospital, as defined in subdivision (a) of Section 1250, special hospital, as defined in subdivision (f) of Section 1250, and surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204, shall adopt a formal plan to eliminate or substantially reduce medication-related errors. With the exception of small and rural hospitals, as defined in Section 124840, this plan shall include technology implementation, such as, but not limited to, computerized physician order entry or other technology that, based upon independent, expert scientific advice and data, has been shown effective in eliminating or substantially reducing medication-related errors.

(2) Each facility's plan shall be provided to the State Department of Health Services no later than January 1, 2002. Within 90 days after submitting a plan, the department shall either approve the plan, or return it to the facility with comments and suggestions for improvement. The facility shall revise and resubmit the plan within 90 days after receiving it from the department. The department shall provide final written approval within 90 days after resubmission, but in no event later than January 1, 2003. The plan shall be implemented on or before January 1, 2005.

(b) Any of the following facilities that is in the process of constructing a new structure or retrofitting an existing structure for the purposes of complying with seismic safety requirements shall be exempt from implementing a plan by January 1, 2005:

(1) General acute care hospitals, as defined in subdivision (a) of Section 1250.

(2) Special hospitals, as defined in subdivision (f) of Section 1250.

(3) Surgical clinics, as defined in paragraph (1) of subdivision (b) of Section 1204.

(c) The implementation date for facilities that are in the process of constructing a new structure or retrofitting an existing structure ~~shall be~~ *is* six months after the date of completion of all retrofitting or new construction. The exemption and new implementation date specified in *subdivision (b) and* this ~~paragraph shall~~ *subdivision* apply to those facilities that have construction plans and financing for ~~these~~ projects in place no later than July 1, 2002.

(d) For purposes of this chapter, a ''medication-related error'' means any preventable medication-related event that adversely affects a patient in a facility listed in subdivision (a), and that is related to professional practice, or health care products, procedures, and systems, including, but not limited to, prescribing, prescription order communications, product labeling, packaging and nomenclature, compounding, dispensing, distribution, administration, education, monitoring, and use.

(e) Each facility's plan shall do the following:

(1) Evaluate, assess, and include a method to address each of the procedures and systems listed under subdivision (d) to identify weaknesses or deficiencies that could contribute to errors in the administration of medication.

(2) Include an annual review to assess the effectiveness of the implementation of each of the procedures and systems listed under subdivision (d).

(3) Be modified as warranted when weaknesses or deficiencies are noted to achieve the reduction of medication errors.

(4) Describe the technology to be implemented and how it is expected to reduce ~~medication errorsas~~ *medication-related errors as* described in paragraph (1) of subdivision (a).

(5) Include a system or process to proactively identify actual or potential medication-related errors. The system or process shall include concurrent and retrospective review of clinical care.

(6) Include a multidisciplinary process, including health care professionals responsible for pharmaceuticals, nursing, medical, and administration, to regularly analyze all identified actual or potential medication-related errors and describe how the analysis will be utilized to change current procedures and systems to reduce medication-related errors.

(7) Include a process to incorporate external medication-related error alerts to modify current processes and systems as appropriate. Failure to meet this criterion shall not cause disapproval of the initial plan submitted.

(f) Beginning January 1, 2005, the department shall monitor the implementation of each facility's plan upon licensure visits.

(g) The department may work with the facility's health care community to present an annual symposium to recognize the best practices for each of the procedures and systems listed under subdivision (d).

SEC. 178. Section 1368.015 of the Health and Safety Code is amended to read:

1368.015. (a) Effective July 1, 2003, every plan with a Web site shall provide an online form through its Web site that subscribers or enrollees can use to file with the plan a grievance, as described in Section 1368, online.

(b) The Web site shall have an easily accessible online grievance submission procedure that shall be accessible through a hyperlink on the Web site's home page or member services portal clearly identified as ''GRIEVANCE FORM.'' All information submitted through this process shall be processed through a secure server.

(c) The online grievance submission process shall be approved by the Department of Managed Health Care and shall meet the following requirements:

(1) It shall utilize an online grievance form in HTML format that allows the user to enter required information directly into the form.

(2) It shall allow the subscriber or enrollee to preview the grievance that will be submitted, including the opportunity to edit the form prior to submittal.

(3) It shall include a current hyperlink to the California Department of Managed Health Care Web site, and shall include a statement in a legible font that is clearly distinguishable from other content on the page and is in a legible size and type, containing the following language:

''The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a grievance against your health plan, you should first telephone your health plan at (insert health plan's telephone number) and use your health plan's grievance process before contacting the department. Utilizing this grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your health plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are experimental or investigational in nature and payment disputes for emergency or urgent medical services. The department also has a toll-free telephone number (1-888-HMO-2219) and a TDD line (1-877-688-9891) for the hearing and speech impaired. The department's Internet Web site http://www.hmohelp.ca.gov has complaint forms, IMR application forms and instructions online.''

The plan shall update the URL, hyperlink, and telephone numbers in this statement as necessary.

(d) A plan that utilizes a hardware system that does not have the minimum system requirements to support the software necessary

to meet the requirements of this section ~~shall be~~ *is* exempt from these requirements until January 1, 2006.

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

(1) ''Homepage'' means the first page or welcome page of a Web site that serves as a starting point for navigation of the Web site.

(2) ''HTML'' means Hypertext Markup Language, the authoring language used to create documents on the World Wide Web, which defines the structure and layout of a Web document.

(3) ''Hyperlink'' means a special HTML code that allows text or graphics to serve as a link that, when clicked on, takes a user to another place in the same document, to another document, or to another Web site or Web page.

(4) ''Member services portal'' means the first page or welcome page of a Web site that can be reached directly by the Web site's homepage and that serves as a starting point for a navigation of member services available on the Web site.

(5) ''Secure server'' means an Internet connection to a Web site that encrypts and decrypts transmissions, protecting them against third-party tampering and allowing for the secure transfer of data.

(6) ''URL'' or ''Uniform Resource Locator'' means the address of a Web site or the location of a resource on the World Wide Web that allows a browser to locate and retrieve the Web site or the resource.

(7) ''Web site'' means a site or location on the World Wide Web.

(f) Every health care service plan, except a plan that primarily serves Medi-Cal or Healthy Families *Program* enrollees, shall maintain a Web site.

SEC. 179. Section 1368.02 of the Health and Safety Code is amended to read:

1368.02. (a) The director shall establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the director.

(b) Every health care service plan shall publish the department's toll-free telephone number, the department's TDD line for the hearing and speech impaired, the plan's telephone number, and the department's Internet address, on every plan contract, on every evidence of coverage, on copies of plan

grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan, including any written communications to an enrollee that offer the enrollee the opportunity to participate in the grievance process of the plan and on all written responses to grievances. The department's telephone number, the department's TDD line, the plan's telephone number, and the department's Internet address shall be displayed by the plan in each of these documents in 12-point boldface type in the following regular type statement:

''The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a grievance against your health plan, you should first telephone your health plan at (insert health plan's telephone number) and use your health plan's grievance process before contacting the department. Utilizing this grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your health plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are experimental or investigational in nature and payment disputes for emergency or urgent medical services. The department also has a toll-free telephone number (1-888-HMO-2219) and a TDD line (1-877-688-9891) for the hearing and speech impaired. The department's Internet Web site http://www.hmohelp.ca.gov has complaint forms, IMR application forms and instructions online.''

(c) (1) There is within the department an Office of Patient Advocate, which shall be known and may be cited as the Gallegos-Rosenthal Patient Advocate Program, to represent the interests of enrollees served by health care service plans regulated by the department. The goal of the office shall be to help enrollees secure health care services to which they are entitled under the laws administered by the department.

(2) The office shall be headed by a patient advocate recommended to the Governor by the Secretary of the Business, Transportation and Housing Agency. The patient advocate shall be appointed by and serve at the pleasure of the Governor.

(3) The duties of the office shall be determined by the secretary, in consultation with the director, and shall include, but not be limited to:

(A) Developing educational and informational guides for consumers describing enrollee rights and responsibilities, and informing enrollees on effective ways to exercise their rights to secure health care services. The guides shall be easy to read and understand, available in English and other languages, and shall be made available to the public by the department, including access on the department's Internet Web site and through public outreach and educational programs.

(B) Compiling an annual publication, to be made available on the department's Internet Web site, of a quality of care report card, including, but not limited to, health care service plans.

(C) Rendering advice and assistance to enrollees regarding procedures, rights, and responsibilities related to the use of health care service plan grievance systems, the department's system for reviewing unresolved grievances, and the independent review process.

(D) Making referrals within the department regarding studies, investigations, audits, or enforcement that may be appropriate to protect the interests of enrollees.

(E) Coordinating and working with other government and nongovernment patient assistance programs and health care ~~ombudsprograms~~ *ombudsperson programs.*

(4) The director, in consultation with the patient advocate, shall provide for the assignment of personnel to the office. The department may employ or contract with experts when necessary to carry out functions of the office. The annual budget for the office shall be separately identified in the annual budget request of the department.

(5) The office shall have access to department records including, but not limited to, information related to health care service plan audits, surveys, and enrollee grievances. The department shall assist the office in compelling the production and disclosure of any information the office deems necessary to

perform its duties, from entities regulated by the department, if the information is determined by the department's legal counsel to be subject, under existing law, to production or disclosure to the department.

(6) The patient advocate shall annually issue a public report on the activities of the office, and shall appear before the appropriate policy and fiscal committees of the Senate and Assembly, if requested, to report and make recommendations on the activities of the office.

SEC. 180. Section 1797.115 of the Health and Safety Code is amended to read:

1797.115. (a) To the extent permitted by federal law and upon appropriation in the annual Budget Act or another statute, the Director of Finance may transfer any moneys in the Federal Trust Fund established pursuant to Section 16360 of the Government Code to the Emergency Medical Services Authority if the money is made available by the United States for expenditure by the state for purposes consistent with the implementation of this section.

(b) Moneys appropriated pursuant to subdivision (a) shall be allocated by the authority to the California Fire Fighter Joint Apprenticeship Program to do all of the following:

(1) Offset the cost of paramedic training course development.

(2) Enter into reimbursement contracts with eligible state and local agencies that in turn may contract with educational institutions for the delivery of paramedic training conducted in compliance with the requirements of subdivision (a) of Section 1797.172.

(3) Allocate funds, in the form of grants, to eligible state and local agencies to defray the cost of providing paramedic training for fire services personnel, including, but not limited to, instructional supplies and trainee compensation expenses. ~~To~~

(c) To the extent permitted by federal law, the authority shall recover its costs for administration of this section from the funds transferred pursuant to subdivision (a).

~~(c)~~

(d) In order to be eligible for a grant under paragraph (3) of subdivision (b), a state or local agency shall demonstrate a need for additional paramedics.

~~(d)~~

(e) For purposes of this section, the following definitions ~~shall~~ apply:

(1) ''Fire service personnel'' includes, but is not limited to, a firefighter or prehospital emergency medical worker employed by a state or local agency.

(2) ''Local agency'' means any city, county, city and county, fire district, special district, joint powers agency, or any other political subdivision of the state that provides fire protection services.

(3) ''State agency'' means any state agency that provides residential or institutional fire protection, including, but not limited to, the Department of Forestry and Fire Protection.

SEC. 181. Section 1797.196 of the Health and Safety Code, as amended by Section 3 of Chapter 718 of the Statutes of 2002, is amended to read:

1797.196. (a) For purposes of this section, ''AED'' or ''defibrillator'' means an automated or automatic external defibrillator.

(b) In order to ensure public safety, any person or entity that acquires an AED is not ~~be~~ liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care under subdivision (b) of Section 1714.21 of the Civil Code, if that person or entity does all of the following:

(1) Complies with all regulations governing the placement of an AED.

(2) Ensures all of the following:

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

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

(C) That any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activates the emergency medical services system as soon as possible, and

reports any use of the AED to the licensed physician and to the local EMS agency.

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

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

(3) Building owners ensure that tenants annually receive a brochure, approved as to content and style by the American Heart Association or American Red Cross, which describes the proper use of an AED, and also ensure that similar information is posted next to any installed AED.

(4) No less than once a year, building owners will notify their tenants as to the location of AED units in the building.

(c) Any person or entity that supplies an AED shall do all of the following:

(1) Notify an agent of the local EMS agency of the existence, location, and type of AED acquired.

(2) Provide to the acquirer of the AED all information governing the use, installation, operation, training, and maintenance of the AED.

(d) A violation of this provision is not subject to penalties pursuant to Section 1798.206.

(e) The protections specified in this section do not apply in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment by the use of an AED.

(f) Nothing in this section or Section 1714.21 ~~shall~~ *may* be construed to require a building owner or a building manager to acquire and have installed an AED in any building.

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

SEC. 182. Section 11571 of the Health and Safety Code is amended to read:

11571. Whenever there is reason to believe that a nuisance as described in Section 11570 is kept, maintained, or exists in any county, the district attorney of the county, or the city attorney of any incorporated city or of any city and county, in the name of the people, may, or any citizen of the state resident in the county, in his or her own name, may maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place~~,~~ in or upon which the nuisance exists~~,~~ from directly or indirectly maintaining or permitting the nuisance.

SEC. 183. Section 11581 of the Health and Safety Code is amended to read:

11581. (a) If the existence of the nuisance is established in the action, an order of abatement shall be entered as a part of the judgment, which order shall direct the removal from the building or place of all fixtures, musical instruments, and other movable property used in conducting, maintaining, aiding, or abetting the nuisance and shall direct their sale in the manner provided for the sale of chattels under execution.

(b) (1) The order shall provide for the effectual closing of the building or place against its use for any purpose, and for keeping it closed for a period of one year. This subdivision is intended to give priority to closure. Any alternative to closure may be considered only as provided in this section.

(2) In addition, the court may assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any or all of the defendants, based upon the severity of the nuisance and its duration.

(3) One-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury, the proceeds of which shall be available only upon appropriation by the Legislature to indemnify persons filing

claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered, if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties collected shall be paid to the treasurer of the county in which the judgment was entered.

(c) (1) If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is otherwise harmful to the community, in lieu of ordering the building or place closed, the court may order the person who is responsible for the existence of the nuisance, or the person who knowingly permits controlled substances to be unlawfully sold, served, stored, kept, or given away in or from a building or place he or she owns, to pay damages in an amount equal to the fair market rental value of the building or place for one year to the city or county in whose jurisdiction the nuisance is located for the purpose of carrying out ~~their~~ drug abuse treatment, prevention, and education programs. If awarded to a city, eligible programs may include those developed as a result of cooperative programs among schools, community agencies, and the local law enforcement agency. These funds shall not be used to supplant existing city, county, state, or federal resources used for drug prevention and education programs.

(2) For purposes of this subdivision, the actual amount of rent being received for the rental of the building or place, or the existence of any vacancy therein, may be considered, but shall not be the sole determinant of the fair market rental value. Expert testimony may be used to determine the fair market rental value.

(d) This section shall become operative on January 1, 1996.

SEC. 184. Section 18943 of the Health and Safety Code is amended to read:

18943. Building standards in individual titles of the California Code of Regulations other than the California Building Standards Code shall have no force ~~nor~~ *or* effect after January 1, 1985.

SEC. 185. Section 25249.7 of the Health and Safety Code is amended to read:

25249.7. (a) Any person that violates or threatens to violate Section 25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.

(b) (1) Any person who has violated Section 25249.5 or 25249.6 shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation in addition to any other penalty established by law. 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 chapter, 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 chapter 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) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California, by any district attorney, by any city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor, or as provided in subdivision (d).

(d) Actions pursuant to this section may be brought by any person in the public interest if both of the following requirements are met:

(1) The private action is commenced more than 60 days from the date that the person has given notice of an alleged violation of Section 25249.5 or 25249.6 that is the subject of the private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. If the notice alleges a violation of Section 25249.6, the notice of the alleged violation shall include a certificate of merit executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not

represented by an attorney. The certificate of merit shall state that the person executing the certificate has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action, and that, based on that information, the person executing the certificate believes there is a reasonable and meritorious case for the private action. Factual information sufficient to establish the basis of the certificate of merit, including the information identified in paragraph (2) of subdivision (h), shall be attached to the certificate of merit that is served on the Attorney General.

(2) Neither the Attorney General, any district attorney, any city attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the violation.

(e) Any person bringing an action in the public interest pursuant to subdivision (d) and any person filing any action in which a violation of this chapter is alleged shall notify the Attorney General that the action has been filed. Neither this subdivision nor the procedures provided in subdivisions (f) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on January 1, 2002, concerning whether any person filing any action in which a violation of this chapter is alleged is required to comply with the requirements of subdivision (d).

(f) (1) Any person filing an action in the public interest pursuant to subdivision (d), any private person filing any action in which a violation of this chapter is alleged, or any private person settling any violation of this chapter alleged in a notice given pursuant to paragraph (1) of subdivision (d), shall, after the action or violation is subject either to a settlement or to a judgment, submit to the Attorney General a reporting form that includes the results of that settlement or judgment and the final disposition of the case, even if dismissed. At the time of the filing of any judgment pursuant to an action brought in the public interest pursuant to subdivision (d), or any action brought by a private person in which a violation of this chapter is alleged, the plaintiff shall file an affidavit verifying that the report required by this subdivision has been accurately completed and submitted to the Attorney General.

(2) Any person bringing an action in the public interest pursuant to subdivision (d), or any private person bringing an

action in which a violation of this chapter is alleged, shall, after the action is either subject to a settlement, with or without court approval, or to a judgment, submit to the Attorney General a report that includes information on any corrective action being taken as a part of the settlement or resolution of the action.

(3) The Attorney General shall develop a reporting form that specifies the information that shall be reported, including, but not limited to, for purposes of subdivision (e), the date the action was filed, the nature of the relief sought, and for purposes of this subdivision, the amount of the settlement or civil penalty assessed, other financial terms of the settlement, and any other information the Attorney General deems appropriate.

(4) If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:

(A) Any warning that is required by the settlement complies with this chapter.

(B) Any award of attorney's fees is reasonable under California law.

(C) Any penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).

(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in any proceeding without intervening in the case.

(6) Neither this subdivision nor the procedures provided in subdivision (e) and subdivisions (g) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on ~~the~~ January 1, 2002, concerning whether claims raised by any person or public prosecutor not a party to the action are precluded by a settlement approved by the court.

(g) The Attorney General shall maintain a record of the information submitted pursuant to subdivisions (e) and (f) and shall make this information available to the public.

(h) (1) Except as provided in paragraph (2), the basis for the certificate of merit required by subdivision (d) is not discoverable.

However, nothing in this subdivision shall preclude the discovery of information related to the certificate of merit if that information is relevant to the subject matter of the action and is otherwise discoverable, solely on the ground that it was used in support of the certificate of merit.

(2) Upon the conclusion of an action brought pursuant to subdivision (d) with respect to any defendant, if the trial court determines that there was no actual or threatened exposure to a listed chemical, the court may, upon the motion of that alleged violator or upon the court's own motion, review the basis for the belief of the person executing the certificate of merit, expressed in the certificate of merit, that an exposure to a listed chemical had occurred or was threatened. The information in the certificate of merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, shall be disclosed to the court in an in-camera proceeding at which the moving party shall not be present. If the court finds that there was no credible factual basis for the certifier's belief that an exposure to a listed chemical had occurred or was threatened, then the action shall be deemed frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action. The court shall not find a factual basis credible on the basis of a legal theory of liability that is frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action.

(i) The Attorney General may provide the factual information submitted to establish the basis of the certificate of merit on request to any district attorney, city attorney, or prosecutor within whose jurisdiction the violation is alleged to have occurred, or to any other state or federal government agency, but in all other respects the Attorney General shall maintain, and ensure that all recipients maintain, the submitted information as confidential official information to the full extent authorized in Section 1040 of the Evidence Code.

(j) In any action brought by the Attorney General, a district attorney, a city attorney, or a prosecutor pursuant to this chapter, the Attorney General, district attorney, city attorney, or prosecutor may seek and recover costs and attorney's fees on behalf of any

party who provides a notice pursuant to subdivision (d) and who renders assistance in that action.

SEC. 186. Section 42801.1 of the Health and Safety Code is amended to read:

42801.1. For purposes of this chapter, the following terms have the following meanings:

(a) ''Annual emissions results'' means the participant's applicable data on the direct and indirect release of greenhouse gases in one particular year. In addition to annual emissions results a participant may report data annually on emission reductions from a project or other action, including the sequestration of stocks of carbon in forests.

(b) ''Baseline'' means a datum against which to measure greenhouse gas emissions performance over time, usually annual emissions in a selected base year. For the purposes of this subdivision, the baseline shall start on or after January 1, 1990.

(c) ''Certification'' means the determination of whether a given participant's greenhouse gas emissions inventory (either baseline or annual result) has met a minimum quality standard and complied with an appropriate set of registry-approved procedures and protocols for submitting emissions inventory information. The process for certification of emissions results will be specified within the procedures and protocols approved for industry-specific emissions inventory reporting, and may involve a range of options depending upon the nature of the emissions, complexity of a company's facilities and operations, or both, and the procedures deemed necessary by the registry board to validate a participant's emissions information.

(d) ''De minimis emissions'' means emissions that are below a certain threshold, when summed across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry for adoption a threshold emissions level for each type of greenhouse gas emission that shall be considered de ~~minimus~~ *minimis*.

(e) ''Emissions'' means the release of greenhouse gases into the atmosphere.

(f) (1) ''Emissions inventory'' means an accounting of the amount of greenhouse gases discharged into the atmosphere. It is generally characterized by all of the following factors:

(A) The chemical or physical identity of the pollutants included.

(B) The geographic area covered.

(C) The institutional entities covered.

(D) The time period over which emissions are estimated.

(E) The types of activities that cause emissions.

(2) An emissions inventory shall include sufficient documentation and supporting data to make transparent the underlying assumptions and calculations for all of the reported results.

(g) ''Forest'' means lands that support, or can ~~support,''~~ *support*, at least 10 percent tree canopy cover and that allow for management of one or more forest resources including timber, fish and wildlife, biodiversity, water quality, recreation, aesthetics, and other public benefits.

(h) ''Greenhouse gases'' include all of the following gases: carbon dioxide, methane, nitrous oxide, ~~hydroflurocarbons~~ *hydrofluorocarbons*, perfluorocarbons, and sulfur hexafluoride.

(i) ''Material'' means any emission of greenhouse gas that is not de minimis.

(j) ''Native'' means forests classified in the 1988 edition, or its approved successor equivalent, of ''A Guide to Wildlife Habitats of California,'' published by the Department of Fish and Game, and forests that are composed of the forest types within those classifications.

(k) ''Natural forest management'' means forest management practices that promote and maintain native forests comprised of multiple ages and mixed native species in the overstory and understory.

SEC. 187. Section 44299.80 of the Health and Safety Code is amended to read:

44299.80. As used in this chapter, the following terms have the following meanings:

(a) ''Advanced introduction cost'' means the cost of a project less a baseline cost that would otherwise be incurred by the applicant in the normal course of business based on the actual age and turnover rates of trucks used at ports, and may include, but is not limited to, any of the following: incremental engine costs, re-engine or retrofit costs, additional operational costs,

incremental fuel costs, facility modifications, and scrappage costs to eliminate operation on highways in the state.

(b) ''Cost-effectiveness'' means the funds provided to a project for each ton of particulate matter reduction attributed to a project or to the program as a whole. In calculating cost-effectiveness, a one-time grant of funds made at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project. Cost-effectiveness shall be calculated by dividing annualized costs by local emissions reductions of PM.

(c) ''Covered engine'' includes an engine from any onroad heavy-duty diesel truck or bus weighing over 33,000 pounds and used in for-hire or proprietary trucking operated by a trucking company that services a port in the state.

(d) ''Covered source'' includes onroad heavy-duty diesel vehicles and other onroad high-emitting diesel engine categories.

(e) ''Covered vehicle'' includes any vehicle or piece of equipment powered by a covered engine.

(f) ''District'' means the Bay Area Air Quality Management District as described in Chapter 4 (commencing with Section 40200) of Part 3 and the South Coast Air Quality Management District as described in Chapter 5.5 (commencing with Section 40400) of Part 3.

(g) ~~''Fund'' means the California Port Community Air Quality Program Trust Fund established pursuant to Section 44299.84.~~

~~(h)~~ ''Gr-bhph'' means grams-per brake horsepower hour.

~~(i)~~

(h) ''Marine terminal'' has the same meaning as in Section 40720.

~~(j)~~

(i) ''New very low-emission vehicle'' means a vehicle that qualifies as a very low-emission vehicle when it is a new vehicle, as defined in Section 430 of the Vehicle Code, with regard to particulate matter emissions standards or that is modified with the approval and warranty of the original equipment manufacturer to qualify as a very low-emission vehicle with regard to particulate matter emissions standards within 12 months of delivery to an owner for private or commercial use.

~~(k)~~

(j) ''Port'' means any sea or river port in the state.

~~(l)~~

(k) ''PM'' means particulate matter.

~~(m)~~

(l) ''Program'' means the California Port Community Air Quality Program created by this chapter.

~~(n)~~

(m) ''Project'' means the replacement, repowering, scrapping, or retrofitting of a covered vehicle or covered engine that receives a grant pursuant to this chapter.

~~(o)~~

(n) ''Repower'' means replacing an engine with a different engine. The term ~~''repower''~~ "*repower,*" as used in this chapter, refers to replacing an older, uncontrolled engine with a newer model engine that meets the latest emissions standards.

~~(p)~~

(o) ''Retrofit'' means making modifications to the engine and fuel system so that the retrofitted engine does not have the same emissions of particulate matter as the original engine.

~~(q)~~

(p) ''Very low-emission vehicle'' means a vehicle with emissions significantly lower than otherwise applicable baseline emission standards or uncontrolled emission levels.

SEC. 188. Section 50199.74 of the Health and Safety Code is amended to read:

50199.74. (a) The committee is hereby designated as the state's only commercial revitalization agency for purposes of Section 1400I of Title 26 of the United States Code. The committee shall annually allocate the aggregate commercial revitalization expenditure amount available to the state in accordance with this chapter and applicable federal law. The committee shall undertake any and all responsibilities of commercial revitalization agencies set forth in Section 1400I of Title 26 of the United States Code.

(b) For the purpose of allocating the state's aggregate commercial revitalization expenditure amount, the committee shall do all of the following:

(1) Determine and disseminate the requirements for an application for allocation of the commercial revitalization expenditures.

(2) Devise and implement the review procedure to determine the priority of each project as well as the amount of qualifying expenditures attributable to each application.

(3) Allocate the available commercial revitalization expenditures for each calendar year among the applicants.

(c) The committee shall not be required to allocate twelve million dollars ($12,000,000) to each renewal community.

(d) The committee shall develop and provide application forms for use by applicants. The committee shall adopt uniform procedures for submission and review of applications, including fees it shall charge to defray the committee's cost in administering this chapter. In the committee's discretion, the fees may be charged to an applicant as a condition of submitting an application or as a condition of receiving an allocation or reservation of the state's current or anticipated commercial revitalization ceiling, or both.

(e) No allocations or reservations shall be made pursuant to this ~~subdivision~~ *section* with respect to projects that do not meet the requirements of the qualified allocation plan, this chapter, or Section 1400I of Title 26 of the United States Code.

SEC. 189. Section 52075.1 of the Health and Safety Code is amended to read:

52075.1. As used in this chapter, ''city or county'' ~~include~~ *includes* any city and county.

SEC. 190. Section 100870 of the Health and Safety Code is amended to read:

100870. (a) Any laboratory that is ELAP certified or holds NELAP accreditation or has applied for ELAP certification or NELAP accreditation or for renewal of ELAP certification or NELAP accreditation under this article~~,~~ shall analyze proficiency testing samples, if these testing samples are available. The department shall have the authority to contract with third parties for the provision of proficiency testing samples for those laboratories that hold or are applying for ELAP certification. The samples shall be tested by the laboratory according to methods specifically approved for this purpose by the United States government or the department, or alternate methods of demonstrated adequacy or equivalence, as determined by the department. Proficiency testing sample sets shall be provided, when available, not less than twice, nor more than four times, a

year to each certified laboratory that performs analyses of food for pesticide residues.

(b) (1) The department may provide, directly or indirectly, proficiency testing samples to a laboratory for the purpose of determining compliance with this article with or without identifying the department.

(2) When the department identifies itself, all of the following shall apply:

(A) The results of the testing shall be submitted to the department on forms provided by the department on or before the date specified by the department, and shall be used in determining the competency of the laboratory.

(B) There shall be no charge to the department for the analysis.

(3) When the department does not identify itself, the department shall pay the price requested by the laboratory for the analyses.

(c) If a certified or NELAP accredited laboratory submits proficiency testing sample results generated by another laboratory as its own, the certification or NELAP accreditation shall be immediately revoked.

(d) Laboratories shall obtain their proficiency testing samples from proficiency testing sample providers that meet NELAC standards. Laboratories shall bear the cost of any proficiency testing study fee charged for participation. Each laboratory shall authorize the providers of proficiency testing samples to release the report of the study results directly to the department, as well as to the laboratory.

SEC. 191. Section 102247 of the Health and Safety Code is amended to read:

102247. (a) There is hereby created in the State Treasury the Health Statistics Special Fund. The fund shall consist of revenues, including, but not limited to, all of the following:

(1) Fees or charges remitted to the State Registrar for record search or issuance of certificates, permits, registrations, or other documents pursuant to Chapter 3 (commencing with Section 26801) of Part 3 of Division 2 of Title 3 of the Government Code, and Chapter 4 (commencing with Section 102525), Chapter 5 (commencing with Section 102625), Chapter 8 (commencing with Section 103050), and Chapter 15 (commencing with Section 103600)~~,~~ of Part 1~~,~~ of Division 102.

(2) Funds remitted to the State Registrar by the federal Social Security Administration for participation in the enumeration at birth program.

(3) Funds remitted to the State Registrar by the National Center for Health Statistics pursuant to the federal Vital Statistics Cooperative Program.

(4) Any other funds collected by the State Registrar, except Children's Trust Fund fees collected pursuant to Section 18966 of the Welfare and Institutions Code, fees allocated to the Judicial Council pursuant to Section 1852 of the Family Code, and fees collected pursuant to Section 103645, all of which shall be deposited into the General Fund.

(b) Moneys in the Health Statistics Special Fund shall be expended by the State Registrar for the purpose of funding its existing programs and programs that may become necessary to carry out its mission, upon appropriation by the Legislature.

(c) Health Statistics Special Fund moneys shall be expended only for the purposes set forth in this section and Section 102249, and shall not be expended for any other purpose or for any other state program.

(d) It is the intent of the Legislature that the Health Statistics Special Fund provide for the following:

(1) Registration and preservation of vital event records and dissemination of vital event information to the public.

(2) Data analysis of vital statistics for population projections, health trends and patterns, epidemiologic research, and development of information to support new health policies.

(3) Development of uniform health data systems that are integrated, accessible, and useful in the collection of information on health status.

SEC. 192. Section 113995 of the Health and Safety Code is amended to read:

113995. (a) Except as otherwise provided in this section, all potentially hazardous food held at a retail food facility, or being transported to or from a retail food facility for a period of longer than 30 minutes, excluding raw shell eggs, shall be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times. Storage and display of raw shell eggs shall be governed by Sections 113997 and 114351.

(b) A retail food facility may accept potentially hazardous food at or below 7 degrees Celsius (45 degrees Fahrenheit), ~~per~~ *pursuant to* subdivision (a), if the potentially hazardous food is cooled within four hours of receipt to a temperature at or below 5 degrees Celsius (41 degrees Fahrenheit).

(c) (1) Commencing January 1, 1997, all potentially hazardous food shall be held at or below 5 degrees Celsius (41 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times, except for the following:

(A) Unshucked live molluscan shellfish shall not be stored or displayed at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(B) Frozen potentially hazardous foods shall be stored and displayed in their frozen state unless being thawed in accordance with Section 114085.

(C) Potentially hazardous foods held for dispensing in serving lines and salad bars during periods not to exceed 12 hours in any 24-hour period or held in vending machines may not exceed 7 degrees Celsius (45 degrees Fahrenheit). For purposes of this subdivision, a display case shall not be deemed to be a serving line.

(D) Pasteurized milk and pasteurized milk products in original, sealed containers ~~shall~~ *may* not be held at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(2) Nothing in this subdivision shall be deemed to require any person to replace or modify any existing refrigeration equipment owned by that person on January 1, 1997, until January 1, 2002. For purposes of this paragraph, neither a simple adjustment of temperature controls nor a needed repair shall constitute a modification.

(d) Potentially hazardous foods may be held at temperatures other than those specified in this section when being heated or cooled, or when the food facility operates pursuant to a HACCP plan adopted pursuant to Section 114055 or 114056. If it is necessary to remove potentially hazardous food from specified holding temperatures to facilitate preparations, this preparation shall be diligent, and in no case shall the period of an ambient-temperature preparation step exceed two hours without a return to the specified holding temperatures. The total ambient-temperature holding of a potentially hazardous food for the purposes of preparation shall not exceed a total cumulative

time of four hours. For purposes of this subdivision, preparation shall be deemed to be ‘‘diligent’’ with respect to raw shell eggs held for the preparation of egg-containing foods that are prepared to the specific order of the customer as long as the total ambient-temperature holding of these eggs does not exceed a total time of four hours.

(e) A thermometer accurate to plus or minus 1 degree Celsius (2 degrees Fahrenheit) shall be provided for each refrigeration unit, shall be located to indicate the air temperature in the warmest part of the unit and, except for vending machines, shall be affixed to be readily visible. Except for vending machines, an accurate easily readable metal probe thermometer suitable for measuring the temperature of food shall be readily available on the premises.

SEC. 193. Section 115000.1 of the Health and Safety Code is amended to read:

115000.1. (a) For the purposes of this section, the following terms have the following meanings:

(1) ‘‘Generate’’ means to produce or cause the production of, or to engage in an activity which otherwise results in the creation or increase in the volume of, low-level radioactive waste.

(2) (A) ‘‘Generator’’ means any person who, by his or her actions, or by the actions of his or her agent, employee, or independent contractor, generates low-level radioactive waste in the state.

(B) For purposes of this section, a person who provides for or arranges for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste generated by others is a generator only to the extent that his or her actions, or the actions of his or her agent, employee, or independent contractor, generate low-level radioactive waste.

(3) ‘‘Person’’ means an individual, partnership, corporation, or other legal entity, including any state, interstate, federal, or municipal governmental entity.

(4) ‘‘Waste’’ means material that is not in use and is no longer useful.

(5) ‘‘Generator category’’ includes, but is not limited to, any of the following:

(A) Nuclear powerplants.

(B) Reactor vendors or designers.

(C) Government.

(D) Medicine.
(E) Academia.
(F) Aerospace.
(G) Military.
(H) Research.
(I) Industrial gauges.
(J) Manufacturing.

(6) ''Low-level radioactive waste'' or ''LLRW'' has the same meaning as defined in Article 2 of the Southwestern Low-Level Radioactive Waste Disposal Compact, as set forth in Section 115255.

(7) ''Class'' means the class of low-level radioactive waste. ''Class A'', ''class B'', and ''class C'' waste are those classes defined in Section 61.55 of Title 10 of the Code of Federal Regulations.

(8) ''Licensed LLRW disposal facility'' means any of the three disposal facilities located at Barnwell, South Carolina; Clive, Utah; or Richland, Washington, that exist on January 1, 2003.

(b) The department shall, for the protection of public health and safety maintain a file of each manifest from each generator of LLRW that is sent to a disposal facility or to a facility subject to the Southwestern Low-level Radioactive Waste Disposal Compact, as set forth in Article 17 (commencing with Section 115250).

(c) The department shall, for the protection of public health and safety, maintain a file of all LLRW transferred for disposal to a licensed LLRW disposal facility during the reporting period, either directly or through a broker or agent, which shall meet all of the following conditions:

(1) Specify the category of generator, class, quantity by activity, and volume of LLRW, including an estimate of the peak and average quantities in storage, along with the identity of the generator, and the chemical and physical characteristics of that waste, including its half-life, properties, or constituents, and radionuclides present at, or above, the minimum labeling requirements, with their respective concentrations and amounts of radioactivity.

(2) Be updated annually, at minimum, to ensure an accurate and timely depiction of radioactive waste in the state.

(3) Include all of the following information in the file:

(A) The total volume, volume by class, and activity by radionuclide and class.

(B) The types and specifications of individual containers used and the number of each type transferred for disposal.

(C) The maximum surface radiation exposure level on any single container of LLRW transferred, the number of disposal containers that exceed 200 mR/hour, and the volume, class, and activity by radionuclide.

(D) The identification of each licensed LLRW disposal facility to which LLRW was transferred, either directly or through a broker or agent, and the volume and activity by class of LLRW transferred by each broker to each licensed LLRW disposal facility.

(E) The identification of all brokers or agents to which LLRW was transferred and the volume and activity by class of the generator's LLRW transferred by each such broker or agent to each licensed LLRW disposal facility.

(F) The weight of source material by its type. For purposes of this paragraph, ''type'' includes, but is not limited to, natural uranium, depleted uranium, or thorium.

(G) The total number of grams of special nuclear material by radionuclide, and the maximum number of grams of special nuclear material in any single shipment by radionuclide.

(H) As complete a description as practicable of the principal chemical and physical form of the LLRW by volume and radionuclide, including the identification of any known hazardous properties, other than its radioactive property.

(I) For solidified or sorbed liquids, the nature of the liquid, the solidifying or sorbing agent used, and the final volume.

(J) For LLRW containing more than 0.1 percent by weight chelating agents, the identification of the chelating agent, the volume and weight of the LLRW and the weight percentage of chelating agent.

(K) For LLRW that was treated, either by the generator or its agent or independent contractor, in preparation for transfer to a licensed LLRW disposal facility described in paragraph (8) of subdivision (a) for the purpose of reducing its volume or activity by any method including reduction by storage for decay, or for the purpose of changing its physical or chemical characteristics in a

manner other than by solidification or sorption of liquids, the file shall include a description of the treatment process.

(L) The volume, volume by class, and activity by radionuclide and class of that LLRW, if any, that the generator is holding at the end of the annual reporting period because the generator knows or has reason to believe that LLRW will not be accepted for disposal at any of the licensed LLRW disposal facilities. The file shall include a description of this LLRW.

(d) The department shall maintain a file on each generator's LLRW stored, including specific radionuclides, total volume, volume by class, total activity, and activity by radionuclide and class of LLRW stored for decay and stored for later transfer, including the periods of time for both types of storage.

(e) (1) The department shall prepare an annual report, including a set of tables summarizing data collected from the activities and maintenance of files specified in subdivisions (c) and (d) to the department. These annual data tables shall contain information that summarizes and categorizes, by category, and if applicable, subcategory, of generator and location by county and identity of generator, the nature, characteristics and the total volume, volume by class, total activity and activity by radionuclide and class of LLRW generated, disposed of, treated, transferred, stored for later transfer, and stored for decay during each calendar year.

(2) The department shall note, in the set of tables prepared pursuant to paragraph (1), any generator for which data are lacking.

(f) The department shall make the information described in subdivisions (c) and (d) available to the public in a format that aggregates the information by county. The department shall not make public the identity and location of any site where LLRW is stored or used. The department may combine information from multiple counties if necessary to protect public security. Notwithstanding any other provision of law the department shall not make the report prepared pursuant to subdivision (e) available to the public, and the report is not subject to the California Public Records Act (Chapter 3.5 (commencing with Section ~~6250))~~ *6250)* of Division 6 of Title 1 of the Government ~~Code~~ *Code)*.

(g) The department may make the information described in subdivisions (c) and (d) available upon request to any Member of

the Legislature. No Member of the Legislature may disclose the identity or location of any site where LLRW is stored or used to any member of the general public.

(h) To meet the requirements of this section, each generator shall submit to the department the information included in Forms 540, 541, and 542, and any successor forms, of the Nuclear Regulatory Commission, for each LLRW shipment. In addition, for purposes of subparagraph (L) of paragraph (4) of subdivision (c) and subdivision (d), each generator shall annually complete and submit to the department the information included on Forms 540, 541, and 542, and any successor forms, of the Nuclear Regulatory Commission that describe the LLRW stored and shipped by the generator.

SEC. 194. Section 115928 of the Health and Safety Code is amended to read:

115928. Whenever a construction 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 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, January 1998, United States Consumer ~~Products~~ *Product* Safety Commission.

SEC. 195. Section 121140 of the Health and Safety Code is amended and renumbered to read:

~~121140.~~

120263. (a) No health care provider, as defined in this chapter, shall be subject to civil or criminal liability or professional disciplinary action for performing tests for a communicable disease on the available blood or patient sample of a source patient, or for disclosing the communicable disease status of a source patient to the source patient, an attending physician of the source patient, the certifying physician, the exposed individual, or any attending physician of the exposed individual, if the health care provider has acted in good faith in complying with this chapter.

(b) Any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of a test for a communicable disease on a source patient, that results in economic, bodily, or psychological harm to the source patient, without adhering to the procedure set forth in this chapter is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars ($10,000), or by both.

SEC. 196. Section 122137 of the Health and Safety Code is amended to read:

122137. (a) (1) It is the intent of the Legislature and the ~~purposes~~ *purpose* of this section to inform consumers who purchase dogs and cats from retail pet dealers about the benefits of spaying and neutering and the importance of establishing a relationship with a veterinarian, and to facilitate dog licensing by encouraging pet dealers to promote licensure compliance.

(2) The Legislature declares that pet dealers, when feasible, should offer incentives to purchasers to encourage the use of spaying and neutering services, and that local animal control agencies should investigate selling licenses through pet shops, or making licensure applications available in pet shops, since these businesses already serve a large number of pet owners through the sale of pet supplies.

(b) Every pet dealer shall deliver to the purchaser of each dog or cat at the time of sale, written material, in a form determined by the pet dealer, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a

veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(c) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council, the California Animal Control Directors Association, the State Humane Association of California, and the California Veterinary Medical Association shall satisfy the requirements of subdivision ~~(a)~~ *(b)*.

SEC. 197. Section 123418 of the Health and Safety Code is amended to read:

123418. Subject to all other provisions of this article, all residency programs in obstetrics and gynecology shall comply with the program requirements for residency education in obstetrics and gynecology of the Accreditation Council for Graduate Medical Education, which ~~requires~~ *require* that in addition to education and training in in-patient care, the program in obstetrics-gynecology be geared toward the development of competence in the provision of ambulatory primary health care for women, including, but not limited to, training in the performance of abortion services.

SEC. 198. Section 123464 of the Health and Safety Code is amended to read:

123464. The following definitions shall apply for purposes of this chapter:

(a) ''Abortion'' means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(b) ''Pregnancy'' means the human reproductive process, beginning with the implantation of an embryo.

(c) ''State'' means the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.

(d) ''Viability'' means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the ~~fetus's~~ *fetus'* sustained survival outside the uterus without the application of extraordinary medical measures.

SEC. 199. Section 125116 of the Health and Safety Code is amended to read:

125116. (a) A physician~~,~~ *and* surgeon~~,~~ or other health care provider delivering fertility treatment shall provide his or her patient with timely, relevant, and appropriate information to allow the individual to make an informed and voluntary choice regarding the disposition of any human embryos remaining following the fertility treatment.

(b) Any individual to whom information is provided pursuant to subdivision (a) shall be presented with the option of storing any unused embryos, donating them to another individual, discarding the embryos, or donating the remaining embryos for research.

(c) Any individual who elects to donate embryos remaining after fertility treatments for research shall provide written consent.

SEC. 200. Section 1211 of the Insurance Code is amended to read:

1211. (a) For the purposes of this section the following definitions shall apply:

(1) ''Aggregate counterparty exposure'' means the sum of the aggregate statement value options, swaptions, caps, floors, and warrants purchased, and the aggregate potential exposure of collars, swaps, forwards, and futures entered into.

(2) ''Cap'' means an agreement obligating the seller to make payments to the buyer with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes referred to as the strike rate or strike price.

(3) ''Collar'' means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

(4) ''Credit default swap'' means an agreement obligating the buyer to pay a periodic payment to the seller in return for the seller's obligation to make a payment to the buyer if a credit event or events occur with respect to underlying interests or an entity, as specified in the documentation of the credit default swap.

(5) ''Derivative instrument'' means an agreement, option, instrument, or a series or combination of those (A) to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof, or (B) that has a price, performance, value, or ~~cash flow~~ *cashflow* based primarily upon the actual or expected price, level,

performance, value, or cashflow of one or more underlying interests.

A derivative instrument includes all investment instruments or contracts that derive all or almost all of their value from the performance of an underlying market, index, or financial instruments. The term includes options, warrants, caps, floors, collars, swaps, credit default swaps, swaptions, forwards, and futures.

(6) ''Derivative transaction'' means a transaction involving the use of one or more derivative instruments.

(7) ''Floor'' means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests.

(8) ''Forward'' means an agreement, other than a future, to make or take delivery in the future of one or more underlying interests, or effect a cash settlement, based on the actual or expected price, level, performance, or value of those underlying interests, but does not mean or include spot transactions effected within customary settlement periods, when issued purchases, or other similar cash market transactions.

(9) ''Future'' means an agreement traded on an organized and qualified futures exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests.

(10) ''Hedging transaction'' means a derivative transaction that is entered into and at all times maintained to reduce (A) risk due to a change in the value, yield, price, cashflow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring or (B) risk due to changes in the currency exchange rate or the degree of exposure as to assets or liabilities denominated in a foreign currency that an insurer has acquired or incurred or anticipates acquiring or incurring.

(11) ''Option'' means an agreement giving the buyer the right to buy or receive, sell, or deliver, enter into, extend, or terminate or effect a cash settlement based on the actual or expected price, spread, level, performance, or value of one or more underlying interests.

(A) For purposes of this paragraph, an agreement giving the buyer the right to buy or receive may also be called a ''call option.''

(B) For purposes of this paragraph, an agreement giving the buyer the right to sell or deliver may be called a ''put option.''

(12) ''Potential exposure'' means the amount determined in accordance with the National Association of Insurance Commissioners Annual Statement Instructions.

(13) ''Qualified bank'' means a bank or trust company that meets all of the following:

(A) The bank or trust company is organized and existing, or in the case of a branch or agency of a foreign banking organization is licensed, under federal law or the law of any state.

(B) The bank or trust company is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies.

(C) The bank or trust company has assets in excess of five billion dollars ($5,000,000,000).

(D) The bank or trust company has senior obligations outstanding, or has a parent corporation that has senior obligations outstanding, rated AA or better, or the equivalent, by two independent nationally recognized statistical rating organizations.

(E) The bank or trust company has a ratio of primary capital to total assets of at least $5^1/_2$ percent and a ratio of total capital to total assets of at least 6 percent.

(14) ''Qualified counterparty'' is a qualified broker or dealer or a qualified bank or other counterparty rated AA- or Aa3 or higher by a nationally recognized statistical rating organization.

(15) ''Qualified broker or dealer'' means a broker or dealer that is organized under the laws of a state and is registered under the Securities Exchange Act of 1934 (15 ~~U.S.C.A.78a-78kk)~~ *U.S.C. Sec. 78a et seq.)*, and has net capital in excess of two hundred fifty million dollars ($250,000,000).

(16) ''Replication transaction'' means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's investment portfolio in order to replicate the investment characteristic of another authorized transaction, investment, or instrument or that may operate as a substitute for cash market investments. A derivative transaction entered into by

the insurer as a hedging transaction authorized pursuant to this section shall not be considered a replication transaction.

(17) ''Swap'' means an agreement to exchange or to net payments or income streams at one or more times based on the actual or expected price, yield, level, performance, or value of one or more underlying interests.

(18) ''Swaption'' means an option to purchase or sell a swap at a given price and time or at a series of prices and times. A swaption does not mean a swap with an embedded option.

(19) ''Underlying interest'' means the assets, liabilities, other interests, or a combination thereof, underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments.

(20) ''Warrant'' means an instrument that gives the holder the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times outlined in the warrant agreement.

(b) Any domestic incorporated insurer having admitted assets, as of the preceding December 31, of at least one billion dollars ($1,000,000,000) and capital and surplus of at least two hundred million dollars ($200,000,000), after investing an amount equal to its required minimum paid-in capital in securities specified in Article 3 (commencing with Section 1170), may engage in derivative transactions pursuant to, and in compliance with, this section.

(c) An insurer may only use derivative instruments under this section to engage in hedging transactions and replication transactions authorized pursuant to this section.

(d) An insurer that engages in hedging transactions or replication transactions as authorized pursuant to this section shall do both of the following:

(1) Maintain its position in any outstanding derivative instrument used as part of a hedging transaction or replication transaction for only as long as the hedging transaction or replication transaction, as the case may be, continues to be effective in meeting the objective and the rationale the insurer identifies at the point of inception of the hedging or replication transaction.

(2) Be able to demonstrate to the commissioner, upon request, that any hedging transaction or replication transaction continues to be effective in meeting that objective and rationale.

(e) (1) The aggregate statement value, and potential exposure, of all transactions held under the authority of this section at any one time shall not be in excess of $7^1/_2$ percent of the insurer's admitted assets, as of the preceding December 31.

(2) Hedging transactions under this section may only be made if, as a result of, and after giving effect to the transaction, all of the following is established:

(A) Excluding options acquired under Section 1212, the aggregate statement value of options, swaptions, caps, floors, and warrants purchased pursuant to this section does not exceed $7^1/_2$ percent of its admitted assets as of the preceding December 31.

(B) Excluding options acquired under Section 1212, the aggregate statement value of options, swaptions, caps, and floors written pursuant to this section does not exceed 3 percent of its admitted assets as of the preceding December 31.

(C) Excluding futures entered into under Section 1212, the aggregate potential exposure of collars, swaps, forwards, and futures, entered into and, except for options acquired under Section 1212, options, swaptions, caps, and floors written pursuant to this section does not exceed $6^1/_2$ percent of its admitted assets as of the preceding December 31.

(f) An insurer may purchase or sell one or more derivative instruments to offset any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this section, provided that the derivative instrument is an exact offset to the original derivative instrument being offset.

(g) (1) The board of directors of any domestic insurer that makes investments pursuant to this section shall first adopt written guidelines for the making of the investments. The guidelines shall cover factors including concentration and diversification of counterparty risk, quality, maturity, and diversification of derivative investments, and other specifications, including investment strategies, asset liability management practices, the insurer's liquidity needs and its capital and surplus, and other factors that the board of directors deems appropriate. The guidelines shall also include processes and practices that will

facilitate the monitoring of derivative transactions through cashflow testing or other methods to substantiate the effectiveness of the hedging strategies and derivative transactions and provide the board of directors of the committee thereof charged with the responsibility for supervising investments the opportunity to assure itself of the training, sufficient understanding, and competency of pertinent personnel implementing the derivative transactions.

(2) In order to address the need for appropriate oversight by senior management and by the board of directors, or a committee thereof charged with the responsibility for supervising investments, and to provide for a comprehensive risk management process, an insurer shall establish the following with respect to derivative transactions:

(A) Appropriate limits for various identified risks relevant to the derivative transactions used by the insurer.

(B) Procedures and practices that control the nature and amount of those risks.

(C) Adequate systems or processes for identifying and measuring those risks.

(D) Systems or processes for documenting, monitoring, and reporting risk exposures on a timely basis.

(E) Systems or processes of internal review and audit to ensure the integrity of the overall risk management process.

(3) The board of directors, or a committee thereof charged with the responsibility for supervising investments, shall receive and review quarterly reports which shall include all of the following:

(A) Information to ascertain that all derivative transactions have been made in accordance with delegations, standards, limitations, and investment objectives contained in the derivative guidelines.

(B) The outstanding derivative positions.

(C) The unrealized gains or losses thereon.

(D) The derivative transactions closed during the report period.

(E) A performance review of the derivative transactions.

(F) An evaluation of the risks and benefits of the derivative transactions.

(G) Other information necessary to ensure that the internal control procedures are being followed.

(4) The board of directors, or a committee thereof charged with the responsibility for supervising investments, shall establish the following management oversight standards for derivative transactions:

(A) The board of directors, or a committee thereof charged with the responsibility for supervising investments, has an affirmative obligation to inform management of its desired risk tolerance levels. Management shall appropriately translate these risk tolerance levels into effective policies and procedures that address both individual transactions and entire portfolios.

(B) Management and the board of directors, or a committee thereof charged with the responsibility for supervising investments, shall receive sufficient information to assess the strengths and limitations of the insurer's risk measurement systems in order to determine appropriate risk limits. The board of directors, or a committee thereof charged with the responsibility for supervising investments, shall also review management's response to strengths and limitations identified through oversight processes such as stress testing, independent validation, and back-testing of risk measurement models. Management and the board of directors, or a committee thereof charged with the responsibility for supervising investments, shall consider the information identified by the oversight processes, including the potential for indirect effects of downside performance beyond the insurer's finances, when they determine and communicate their risk profile.

(C) When management or the board of directors, or a committee thereof charged with the responsibility for supervising investments, identifies weaknesses in the risk management process, they shall consider alternatives and take steps to strengthen that process and maintain detailed documentation of steps and actions taken.

(D) Actions shall be taken to correct any deficiencies in internal controls relative to derivative transactions, including any deficiencies determined by the independent certified public accountant in the evaluation of accounting procedures and internal controls and maintain detailed documentation of steps and actions taken.

(E) Personnel responsible for risk oversight functions shall possess independence, authority, and expertise.

(F) Issuer and counterparty credit decisions for each transaction shall be consistent with the overall credit standards of the insurer.

(G) In connection with each derivative transaction under this section, insurers shall maintain a statement in their records listing any member of the board of directors who is employed by, or a partner in, a party involved in the derivative transaction.

(5) The board of directors or committee charged with the responsibility of supervising investments shall determine at least quarterly whether all derivative transactions have been made in accordance with delegations, standards, limitations, and investment objectives prescribed in the guidelines. If the determinations are made by a committee of the board of directors, the minutes of the committee reflecting the determinations shall be recorded and a report thereon shall be submitted to the board for its review at the board's next meeting.

(6) The commissioner shall require the guidelines to be submitted and shall disapprove the guidelines if the insurer is unable to show that the guidelines are found sufficient to prevent financially unsound or hazardous transactions or practices.

(h) An insurer shall comply with applicable financial requirements as promulgated by the commissioner and the National Association of Insurance Commissioners included in the Purposes and Procedures Manual of the National Association of Insurance Commissioners Securities Valuation Office, the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, and the National Association of Insurance Commissioners Annual Statement Instructions, including, but not limited to, the reporting of transfers, if any, of interests in the assets of the insurer pledged as collateral or interests in the assets of counterparties received as collateral in connection with derivative transactions.

(i) (1) The counterparty exposure under a derivative instrument entered into by an insurer authorized to engage in derivative transactions pursuant to this section shall be deemed to be an obligation of the institution to which the insurer is exposed to credit risk and shall be included in determining compliance with any single or aggregate quantitative limitation on investments made by an insurer under this section.

(2) An insurer shall only enter into derivative transactions with counterparties that are rated one by the Securities Valuation Office.

(3) Notwithstanding any single or aggregate quantitative limitation on investments made by an insurer under this section, the aggregate counterparty exposure under one or more derivative transactions to any single counterparty rated one by the Securities Valuation Office, other than a ''qualified counterparty,'' shall be limited to one-half of 1 percent of an insurer's admitted assets, and all counterparties rated one by the Securities Valuation Office, other than qualified counterparties, shall be limited to 3 percent of an insurer's admitted assets.

(j) Investments made pursuant to this section, and related transactions, are deemed excess funds investments and shall be subject to the provisions of Sections 1153.5, 1154, and 1210, and Article 4 (commencing with Section 1190), provided that if an insurer classifies an investment under Section 1210 that investment shall continue to be subject to the limitations of paragraph (1) of subdivision (e). Notwithstanding anything to the contrary, a requirement providing that any derivative transaction be disposed of by the insurer pursuant to Section 1202 shall be deemed conclusive unless the insurer establishes that the derivative transaction or transactions are financially sound and not hazardous. This section shall only be deemed to permit replication of investments or instruments, that are otherwise permitted in this code, and that are reported in compliance with the requirements of the risk-based capital and risk-based capital instructions required by Section 739.2.

(k) Except as permitted in this section, nothing in this section shall be deemed to permit an investment, transaction, or practice that is not authorized by another section of this code. Exposure to risk by use of derivatives shall be consistent with the overall investment guidelines. Insurers shall not enter into derivative transactions in whole or in part with funds borrowed for that purpose, including, but not limited to, on margin.

(*l*) The commissioner may adopt rules and issue guidelines establishing standards and requirements relative to practices authorized in this section. In connection with any of the actions contemplated by this section to be taken by the commissioner, including review of an insurer's written guidelines with respect to

derivative transactions and review of documentation maintained by an insurer with respect to derivative transactions, the commissioner may deem the actions to be an examination of an insurer subject to the provisions of Sections 730 to 738, inclusive. The commissioner shall issue regulations establishing requirements regarding the disclosure of affiliations and conflicts of interest between an insurer and persons contracted by the commissioner to perform services on behalf of the commissioner in connection with the matters authorized by this section.

(m) An insurer that is not engaged in the issuance of new policies of insurance and that is formed for the purpose of facilitating the rehabilitation of an insolvent insurer under Article 14 (commencing with Section 1010) of Chapter 1, shall, prior to engaging in any derivative transaction, obtain approval for each transaction from the commissioner, and shall otherwise comply with the requirements of this section. However, the insurer may, upon request to the commissioner, and upon showing satisfactory to the commissioner that prior approval of each transaction would not be in the best interests of the policyholders, request that the commissioner waive the requirement of prior approval and the insurer shall, in addition to complying with the requirements of this section, submit monthly written reports of all derivative transactions to the commissioner in the form required by the commissioner within 30 days of the prior month's end.

SEC. 201. Section 10235.52 of the Insurance Code, as added by Section 3 of Chapter 675 of the Statutes of 2002, is amended to read:

10235.52. (a) Every policy shall contain a provision that, in the event the insurer develops new benefits or benefit eligibility or new policies with new benefits or benefit eligibility not included in the previously issued policy, the insurer will grant current holders of its policies who are not in benefit or within the elimination period the following rights:

(1) The policyholder will be notified of the availability of the new benefits or benefit eligibility or new policy within 12 months. The insurer's notice shall be filed with the department at the same time as the new policy or rider.

(2) The insurer shall offer the policyholder new benefits or benefit eligibility in one of the following ways:

(A) By adding a rider to the existing policy and paying a separate premium for the new ~~benefit~~ *benefits* or benefit eligibility based on the insured's attained age. The premium for the existing policy will remain unchanged based on the insured's age at issuance.

(B) By replacing the existing policy or certificate in accordance with Section 10234.87.

(C) By replacing the existing policy or certificate with a new policy or certificate in which case consideration for past insured status shall be recognized by setting the premium for the replacement policy or certificate at the issue age of the policy or certificate being replaced.

(b) The insured may be required to undergo new underwriting, but the underwriting can be no more restrictive than if the policyholder or certificate holder were applying for a new policy or certificate.

(c) The insurer of a group policy as defined under subdivisions (a) to (c), inclusive, of Section 10231.6 must offer the group policyholder the opportunity to have the new benefits and provisions extended to existing certificate holders, but the insurer is relieved of the obligations imposed by this section if the holder of the group policy declines the issuer's offer.

(d) This section shall become operative on June 30, 2003.

SEC. 202. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award, the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure ~~shall be~~ *is* applicable.

(b) Whenever an employer files an appeal pursuant to this section, the employer shall post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee,

the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, ~~shall be~~ *is* forfeited to the employee.

(c) If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered ~~shall have~~ *has* the same force and effect as, and ~~shall be~~ *is* subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(f) In order to ensure that judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (a) of Section 116.830 of the Code of Civil Procedure to assist in

identifying the nature and location of any assets of the judgment debtor.

The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(g) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award that has become final upon good cause appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(h) When a judgment is satisfied in fact, ~~otherwise~~ *other* than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(i) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(j) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, ~~shall be~~ *is* entitled to court costs and reasonable ~~attorney~~ *attorney's* fees for enforcing the judgment that is rendered pursuant to this section.

SEC. 203. Section 176 of the Labor Code is amended to read:

176. (a) The Legislature hereby finds and declares that the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, was enacted in 1973 to provide for the removal of language barriers that prevent the people of this state who are not proficient in English from effectively accessing government services and otherwise communicating with their government.

The Legislature further finds and declares that limited-English-proficient individuals will benefit from increased language-based access to the programs and services of the Division of Occupational Safety and Health.

The Legislature further finds and declares that federal statistics show that from 1996 to 2000, while overall worker fatalities dropped 14 percent, immigrant worker fatalities rose 17 percent. Immigrant workers die on the job at higher rates because they frequently work in more dangerous industries with little or no training. Language barriers compound the problem because training and warning signs are often only in English.

(b) As used in this section, a ''public contact position'' means any position responsible for responding to telephone or in-office inquiries or taking complaints from the general public regarding matters pertaining to occupational safety and health.

(c) As used in the section, an ''investigative position'' means any position responsible for investigating complaints, injuries, or deaths related to occupational safety and health.

(d) As used in this section, ''limited-English-proficient'' refers to persons who speak English less than ''very well,'' in accordance with United States Census data.

(e) The division shall make all efforts to ensure that limited-English-proficient persons can communicate effectively with the division. Examples of potential measures include, but are not limited to, the hiring of bilingual persons in public ~~contract~~ *contact* positions and investigative positions, the use of contract based interpreters, and the use of telephone-based interpretation services. Nothing contained in this section relieves the division of its separate obligations under the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, or any other state or federal laws requiring the provision of its services in languages other than English.

(f) On July 30, 2004, the Division of Occupational Health and Safety shall issue a progress report to the Legislature on the implementation of this section that shall, at a minimum, include all of the following:

(1) The most recent information provided to the California State Personnel Board pursuant to Section 7299.4 of the Government Code.

(2) The number of bilingual employees in public ~~contract~~ *contact* and investigative positions in each local office of the division and the languages they speak, other than English.

(3) A description of any centralized system or other resources for providing translation and interpretation services within the division.

(4) A description of any quality control measures or evaluations undertaken by the division to evaluate whether limited-English-proficient persons are able to communicate effectively with the division.

(5) A description of any means, such as contracted interpreters, telephone-based interpretation services, or video conferencing, used by the division to communicate with individuals who are limited-English-proficient in the event that bilingual employees in public ~~contract~~ *contact* or investigative positions are not available, and the frequency in which these services were used by the division during the most recent fiscal year.

SEC. 204. Section 230.1 of the Labor Code is amended to read:

230.1. (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to attend to any of the following:

(1) To seek medical attention for injuries caused by domestic violence or sexual assault.

(2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault.

(3) To obtain psychological counseling related to an experience of domestic violence or sexual assault.

(4) To participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer ~~shall~~ *may* not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification

to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence or sexual assault.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(3) To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (a) ~~shall have~~ *has* one year from the date of occurrence of the violation to file his or her complaint.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee

under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a). The entitlement of any employee under this section ~~shall~~ *may* not be diminished by any collective bargaining agreement term or condition.

(f) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. ~~2606~~ *2601* et seq.).

(g) For purposes of this section:

(1) ''Domestic violence'' means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) ''Sexual assault'' means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

SEC. 205. Section 1776 of the Labor Code is amended to read:

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public ~~shall~~ *may* not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 ~~(Section 175a of Title 29 of the United States Code)~~ *(29 U.S.C. Sec. 175a)* shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent

jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's ~~fee~~ *fees* and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor ~~shall have~~ *has* 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act~~,~~ (Chapter 3.5 (commencing with Section 6250)~~,~~ *of* Division 7~~,~~ *of* Title 1~~,~~ *of the* Government Code) and the Information Practices Act of 1977~~,~~ (Title 1.8 (commencing with Section 1798)~~,~~ *of* Part 4~~,~~ *of* Division 3~~,~~ *of the* Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

SEC. 206. Section 3099.3 of the Labor Code is amended to read:

3099.3. The Division of Apprenticeship Standards shall do all of the following:

(a) Make information about electrician certification available in non-English languages spoken by a substantial number of construction workers, as defined in Section 7296.2 of the Government Code.

(b) Provide for the administration of certification tests in non-English languages spoken by a substantial number of applicants, as defined in Section 7296.2 of the Government Code, except insofar as the ability to understand warning signs, instructions, and certain other information in English is necessary for safety reasons.

(c) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter that impose minimum formal education requirements as a condition of entry provide for reasonable alternative means of satisfying those requirements.

(d) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter have adopted reasonable procedures for granting credit toward a term of apprenticeship for other vocational training and on-the-job training experience.

(e) Report to the Legislature by January 1, 2004, on the status of electrician certification, including all of the following:

(1) The number of persons who have been certified pursuant to Section 3099.

(2) The number of persons enrolled in electrician apprenticeship programs.

(3) The number of persons who have registered pursuant to Section 3099.4.

(4) The estimated number of individuals performing work for Class C-10 electrical contractors for which certification will be required after January 1, 2005, who have not yet been certified and are not enrolled in apprenticeship programs or registered pursuant to Section 3099.4.

(5) Whether enforcement of the January 1, 2005, deadline for certification will cause a shortage of electricians in California.

(6) Whether persons who wish to become certified electricians will have an adequate opportunity to pass the certification exam,

to register pursuant to Section ~~399.4~~ *3099.4*, or to enroll in an apprenticeship program prior to January 1, 2005.

SEC. 207. Section 179 of the Military and Veterans Code is amended to read:

179. (a) The Adjutant General shall establish a California State Military Museum and Resource Center as a repository for military artifacts, memorabilia, equipment, documents, and other items relating to the history of the California National Guard, in accordance with applicable regulations of the United States Army governing Army museum activities. The museum *and resource center* shall consist of the facility described in the Proclamation of the Governor dated May 11, 1994, and any branches as may currently exist or may from time-to-time be created throughout the state. Each facility shall be deemed to be an armory within the meaning of Section 430.

(b) The Adjutant General shall enter into an operating agreement with the California Military Museum Foundation, formerly known as the California National Guard Historical Society, an existing California nonprofit public benefit corporation, that is tax exempt under Section 501(c)(3) of the Internal Revenue Code. Under the operating agreement with the Adjutant General, the foundation shall operate the museum *and resource center* in coordination with the California Center for Military History of the California State Military Reserve. The foundation shall develop, administer, interpret, and manage museum *and resource center* historical programs and related public services, and acquire and manage funding for museum *and resource center* programs and services.

(c) Volunteers, docents, members of the State Military Reserve, or others working with or for the California Military Museum Foundation for purposes consistent with the mission of the organization, shall be considered volunteers under Sections 3118 and 3119 of the Government Code and Section 3363.5 of the Labor Code.

(d) The Board of Trustees of the California Military Museum Foundation shall include the Adjutant General, or the Assistant Adjutant General, or any Deputy Adjutant General designated by the Adjutant General, as an ex officio voting member of the board. The board of trustees of the foundation shall be the governing authority for operations funded through moneys received by the

foundation. The board of trustees of the foundation shall submit an audit report annually to the Adjutant General. The board of trustees of the foundation shall submit copies of annual audit reports to the Director of the Department of Finance, the Chair of the Joint Legislative Audit Committee, and the Chair of the Joint Legislative Budget Committee. No funds raised or assets acquired by the foundation shall be used for purposes inconsistent with support of the museum *and resource center.*

(e) The Board of Trustees of the California Military Museum Foundation shall, no later than January 10 of each year, submit a business plan for the following fiscal year to the Adjutant General, the Director of the Department of Finance, and the Chair of the Joint Legislative Budget Committee for review and comment. The board of trustees shall also submit, not less than 30 days prior to adoption, any proposed formal amendments to the business plan to the Adjutant General, the Director of the Department of Finance, and the Chair of the Joint Legislative Budget Committee for review and comment.

(f) The Adjutant General or the California State Military Museum *and Resource Center* may solicit, receive, and administer donations of funds or property for the support and improvement of the museum *and resource center.* Any grants or donations received may be expended or used for museum *and resource center* purposes. Property of historical military significance, not including real property, that is owned by the state and is determined by the Adjutant General to be in excess of the needs of the Military Department, shall be transferred to the museum *and resource center.* Property determined by the California State Military Museum *and Resource Center* to be in excess of the needs of the museum *and resource center* may be sold, donated, exchanged, or otherwise disposed of, at its discretion, in a manner appropriate to the historical and intrinsic value of the property, and the benefits from the disposition shall inure to the museum *and resource center.*

(g) The Adjutant General or the California State Military Museum *and Resource Center* may solicit and receive firearms and other weaponry confiscated by or otherwise in the possession of law enforcement officers as donations to the museum *and resource center* if he or she deems them to be of historical or military interest.

(h) The Adjutant General shall, in cooperation with the California State Military Museum *and Resource Center*, conduct a study of the future needs of the National Guard to preserve, display, and interpret artifacts, documents, photographs, films, literature, and other items relating to the history of the military in California.

SEC. 208. Section 395.3 of the Military and Veterans Code is amended to read:

395.3. In the event that any public officer or employee has resigned or resigns his or her office or employment to serve or to continue to serve in the Armed Forces of the United States or in the ~~Armed Forces~~ *militia* of this state, he or she shall have a right to return to and reenter the office or employment prior to the time at which his or her term of office or his or her employment would have ended if he or she had not resigned, on serving a written notice to that effect upon the authorized appointing power, or if there is no authorized appointing power, upon the officer or agency having power to fill a vacancy in the office or employment, within six months of the termination of his or her active service with the Armed Forces; provided, that the right to return and reenter upon the office or position shall not extend to or be granted to any public officer or employee, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the Armed Forces of the United States or of the militia of this state.

As used in this section, ‘‘public officers and employees’’ includes all of the following:

(a) Members of the Senate and of the Assembly.

(b) Justices of the Supreme Court and the courts of appeal, judges of the superior courts, and all other judicial officers.

(c) All other state officers and employees not within Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, including all officers for whose selection and term of office provision is made in the *California* Constitution and laws of this state.

(d) All officers and employees of any county, city and county, city, township, district, political subdivision, authority, commission, board, or other public agency within this state.

The right of reentry into public office or employment provided for in this section shall include the right to be restored to the civil service status as the officer or employee would have if he or she had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive the officer or employee of his or her right to restoration as provided for herein.

This section shall be retroactively applied to extend the right of reentry into public office or employment to public officers and employees who resigned prior to its effective date.

This section does not apply to any public officer or employee to whom the right to reenter public office or employment after service in the Armed Forces has been granted by any other provision of law.

If any provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, or the application of this section to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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 such 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. 209. Section 406 of the Military and Veterans Code is amended to read:

406. (a) No eviction or distress shall be made during the period of military service specified in Section 400, during which a service member is called to active state service pursuant to Section 143 or 146 or active federal service pursuant to Title 10 or 32 of the United States Code or active duty, until 30 days after the service member is released from active service or duty if the premises are occupied primarily for dwelling purposes by the spouse, children, or other dependents of a service member, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(b) On any application or in any action under this section, the court may on its own motion, and shall, on application, stay the proceedings for the period specified in subdivision (a) or rather than granting a complete stay, the court may require the tenant to make regular partial payments during the service member's period of military service, or the court may make any other order that it finds to be just, unless the court finds that the ability of the tenant to pay the agreed rent is not materially affected by that military service. Where ~~such~~ *that* stay is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of those premises similar to that granted persons in military service in Sections 407, 408, and ~~411~~ *409.1* to that extent and for that period as may appear to the court to be just.

(c) Any person who knowingly takes part in any eviction or distress as provided in this section or who attempts to do so, is guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by a fine not to exceed one thousand dollars ($1,000), or both.

SEC. 210. Section 411 of the Military and Veterans Code, as added by Section 6, first occurrence, of Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~411.~~

409.1. (a) Where any life insurance policy on the life of a service member in military service has been assigned prior to that person's period of military service to secure the payment of any obligation of the person, no assignee of the policy, except the insurer in connection with a policy loan, shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during that period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of that assignment unless upon leave of court granted upon an application made therefor by the assignee. The court may thereupon refuse to grant that leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his or her military service.

(b) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a service member during that person's period of military

service and for three months thereafter, except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In that proceeding the court may, after hearing, in its discretion on its own motion, and shall, on application to it by a service member or some person on his or her behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his or her military service, do either of the following:

(1) Stay the proceedings as provided in this chapter.

(2) Make that other disposition of the case as may be equitable to conserve the interest of all parties. This section shall not be construed in any way as affecting or as limiting the scope of Section 408.

(c) A person violating any provision of this section is guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by a fine not to exceed one thousand dollars ($1,000), or both.

SEC. 211. Section 411 of the Military and Veterans Code, as added by Section 6, second occurrence, of Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~411.~~

409.2. (a) This section shall apply when any taxes or assessments, whether general or special, other than taxes on income, whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a service member or his or her dependents at the commencement of the service member's period of military service and still so occupied by the service member's dependents or employees are not paid.

(b) No sale of this property shall be made to enforce the collection of any tax or assessment, or any proceeding or action commenced for that purpose, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the service member to pay the taxes or assessments is not materially affected by reason of that service, may stay the proceedings or sale, as provided in this section, for a period

extending not more than six months after the termination of the period of military service.

(c) When by law this property may be sold or forfeited to enforce the collection of any tax or assessment, the service member shall have the right to redeem or commence an action to redeem that property, at any time not later than six months after the termination of the period of military service.

(d) Whenever any tax or assessment shall not be paid when due, the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year, and no other penalty or interest shall be incurred by reason of that nonpayment. Any lien for any unpaid taxes or assessment shall also include that interest thereon.

SEC. 212. Section 412 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~412.~~

409.3. (a) A service member may, at any time during his or her period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by the service member prior to his or her period of military service or in respect of any tax or assessment whether falling due prior to or during his or her period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of the obligation or liability or to pay the tax or assessment has not been materially affected by reason of his or her military service, may grant the following relief:

(1) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after the service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant or any part of the combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the

case may be, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to any other terms as may be just.

(2) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after the service, for a period of time equal to the period of military service of the applicant or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or the date of application, as the case may be, in equal periodic installments during the extended period at the rate of interest as may be prescribed for the obligation, liability, tax, or assessment, if paid when due, and subject to any other terms as may be just.

(b) When any court has granted a stay as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of the stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which the stay was granted.

(c) Nothing in this section shall permit a service member ordered to military service to obtain a delay, deferment, or stay on an obligation to pay child support. Nothing in this section shall preclude a service member ordered to military service from seeking a modification of an order to pay child support due to a reduction in income resulting from the order to service, or from seeking the imposition of the maximum interest rate provided by this chapter on arrearages in child support payments existing prior to the order to service.

SEC. 213. Section 413 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~413.~~

409.4. (a) A person who by reason of military service is entitled to the rights and benefits of this chapter shall also be entitled upon release from that military service to reinstatement of any health insurance that was in effect on the day before the service

commenced, and was terminated effective on a date during the period of the service.

(b) An exclusion or a waiting period may not be imposed in connection with reinstatement of health insurance coverage of a health or physical condition of a person under subdivision (a), or a health or physical condition of any other person who is covered by the insurance by reason of the coverage of such person, if any of the following apply:

(1) The condition arose before or during that person's period of service.

(2) An exclusion or waiting period would not have been imposed for the condition during a period of coverage resulting from participation by that person in the insurance.

(3) The condition of the person has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty within the meaning of Section 105 of Title 38 of the United States Code.

SEC. 214. Section 414 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~414.~~

409.5. Dependents of a service member shall be entitled to the benefits accorded to service members under Sections 406 to ~~413~~ *409.4*, inclusive, upon application to a court therefor, unless in the opinion of the court the ability of the dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent.

SEC. 215. Section 415 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~415.~~

409.6. The collection from any service member of any tax on the income of the person, whether falling due prior to or during his or her period of military service, shall be deferred for a period extending not more than six months after the termination of his or her period of military service if the person's ability to pay the tax is materially impaired by reason of the service. No interest on any amount of tax, collection of which is deferred for any period under this chapter, and no penalty for nonpayment of the amount during

that period, shall accrue for any period of deferment by reason of that nonpayment. The running of any statute of limitations against the collection of any tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the period of military service.

SEC. 216. Section 416 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~416.~~

409.7. Where in any proceeding to enforce a civil right in any court, it is made to appear to the satisfaction of the court that any interest, property, or contract has been transferred or acquired since the effective date of this chapter with the intent to delay the just enforcement of that right by taking advantage of the benefits provided under this chapter, the court shall enter such judgment or make such order as might lawfully be entered or made, notwithstanding any contrary provision of this chapter.

SEC. 217. Section 417 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~417.~~

409.8. (a) In any proceeding under this chapter, a certificate signed by an appropriately authorized officer of the military department, branch, or unit in which a service member is serving shall be prima facie evidence as to any of the following facts stated in that certificate:

(1) That a person named has not been, or is, or has been in the military service.

(2) The time when and the place where the person entered military service.

(3) The person's residence at that time, and the rank, branch, and unit of the service that the person entered.

(4) The dates within which the person was in the military service.

(5) The monthly pay received by the person at the date of issuing the certificate.

(6) The time when and the place where the person died in or was discharged from the service.

(b) It shall be the duty of the authorized officer to furnish that certificate on application, and any certificate, when purporting to be signed by an officer purporting on the face of the certificate to have been so authorized, shall be prima facie evidence of its contents and of the authority of the signer to issue the certificate.

(c) Where a person in military service has been reported missing, he or she shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of the person shall begin or end until the death of the person is in fact reported to or found by the United States Department of Defense or any court or board thereof, or the Military Department or any court or board thereof, or until such death is found by a court of competent jurisdiction.

SEC. 218. Section 418 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~418.~~

409.9. Any interlocutory order made by any court under the provisions of this chapter may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon notice to the parties affected as it may require.

SEC. 219. Section 419 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~419.~~

409.10. The provisions of this chapter are severable. If any provision of this chapter 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. 220. Section 420 of the Military and Veterans Code, as added by Chapter 60 of the Statutes of 2002, is amended and renumbered to read:

~~420.~~

409.11. It is the intent of the Legislature that qualification for the benefits and protections conferred upon service members, as defined by Section 400, by this chapter apply retroactively to September 11, 2001. However, it is also the intent of the Legislature that the benefits and protections that attach to qualified service members under this chapter apply only on a prospective basis.

SEC. 221. Section 1035.6 of the Military and Veterans Code is amended to read:

1035.6. (a) The administrator shall provide each member of the home with a quarterly statement or accounting of all charges for the ~~cost~~ *costs* of care rendered to the member in excess of the member fee, as defined in subdivision (b). The quarterly statement or accounting of charges shall clearly indicate that the charges for the excess costs of care are provided to the member for informational purposes only.

(b) ~~"Cost~~ "*Costs* of care in excess of the member fee" means all costs that are not covered by the member contribution fee, including, but not limited to, the unreimbursed ~~cost~~ *costs* of medical or dental services rendered to the member, either by the home or under contract with the home. The Department of Veterans Affairs shall promulgate regulations specifying the costs that are in excess of the member contribution fee and constitute the unreimbursed ~~cost~~ *costs* of care.

SEC. 222. Section 132.5 of the Penal Code, as amended by Section 1 of Chapter 210 of the Statutes of 2002, is amended to read:

132.5. (a) A person who is a witness to an event or occurrence that he or she knows, or reasonably should know, is a crime or who has personal knowledge of facts that he or she knows, or reasonably should know, may require that person to be called as a witness in a criminal prosecution shall not accept or receive, directly or indirectly, any payment or benefit in consideration for providing information obtained as *a* result of witnessing the event or occurrence or having personal knowledge of the facts.

(b) A violation of this section is a misdemeanor and shall be punished by imprisonment in a county jail for not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) Upon conviction under this section, in addition to the penalty described in subdivision (b), any compensation received in violation of this section shall be forfeited by the defendant and deposited in the Victim Restitution Fund.

(d) This section shall not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (a) unless prosecution has commenced for that criminal act. If prosecution has commenced,

this section shall remain applicable until the final judgment in the action.

(e) This section shall not apply to any of the following circumstances:

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.

(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Protection Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(f) For purposes of this section, ''information'' does not include a photograph, videotape, audiotape, or any other direct recording of events or occurrences.

SEC. 223. Section 132.5 of the Penal Code, as amended by Section 2 of Chapter 210 of the Statutes of 2002, is amended to read:

132.5. (a) The Legislature supports and affirms the constitutional right of every person to communicate on any subject. This section is intended to preserve the right of every accused person to a fair trial, the right of the people to due process of law, and the integrity of judicial proceedings. This section is not intended to prevent any person from disseminating any information or opinion.

The Legislature hereby finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses can cause the loss of credible evidence in criminal trials and threatens to erode the reliability of verdicts.

The Legislature further finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses creates an appearance of injustice that is destructive of public confidence.

(b) A person who is a witness to an event or occurrence that he or she knows is a crime or who has personal knowledge of facts that he or she knows or reasonably should know may require that person to be called as a witness in a criminal prosecution shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as *a* result of witnessing the event or occurrence or having personal knowledge of the facts.

(c) Any person who is a witness to an event or occurrence that he or she reasonably should know is a crime shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as a result of his or her witnessing the event or occurrence.

(d) The Attorney General or the district attorney of the county in which an alleged violation of subdivision (c) occurs may institute a civil proceeding. Where a final judgment is rendered in the civil proceeding, the defendant shall be punished for the violation of subdivision (c) by a fine equal to 150 percent of the amount received or contracted for by the person.

(e) A violation of subdivision (b) is a misdemeanor punishable by imprisonment for a term not exceeding six months in a county jail, a fine not exceeding three times the amount of compensation requested, accepted, or received, or both the imprisonment and fine.

(f) This section does not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (b) or (c) unless prosecution has commenced for that criminal act. If prosecution has commenced, this section shall remain applicable until the final judgment in the action.

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

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.

(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies or private reward programs offered by victims of crimes for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Protection Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(h) For purposes of this section, ''information'' does not include a photograph, videotape, audiotape, or any other direct recording of an event or occurrence.

(i) For purposes of this section, ''victims of crimes'' shall be construed in a manner consistent with Section 28 of Article I of the California Constitution, and shall include victims, as defined in subdivision (3) of Section 136.

SEC. 224. Section 171.5 of the Penal Code is amended to read:

171.5. (a) For purposes of this section:

(1) ''Airport'' means an airport, with a secured area, that regularly serves an air carrier holding a certificate issued by the United States Secretary of Transportation.

(2) ''Sterile area'' means a portion of an airport defined in the airport security program to which access generally is controlled through the screening of persons and property, as specified in Section 1540.5 of Title 49 of the Code of Federal Regulations.

(b) It is unlawful for any person to knowingly possess within any sterile area of an airport, any of the items listed in subdivision (c).

(c) The following items are unlawful to possess as provided in subdivision ~~(a)~~ *(b)*:

(1) Any firearm.

(2) Any knife with a blade length in excess of four inches, the blade of which is fixed in an unguarded position by the use of one or two hands.

(3) Any box cutter or straight razor.

(4) Any metal military practice hand grenade.

(5) Any metal replica hand grenade.

(6) Any plastic replica hand grenade.

(7) Any imitation firearm as defined in Section 417.4.

(8) Any frame, receiver, barrel, or magazine of a firearm.

(9) Any unauthorized tear gas weapon.

(10) Any taser or stun gun, as defined in Section 244.5.

(11) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun or paint gun.

(12) Any ammunition as defined in Section 12316.

(d) Subdivision (b) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(2) A person who has authorization to possess a weapon specified in subdivision (c), granted in writing by an airport security coordinator who is designated as specified in Section 1542.3 of Title 49 of the Code of Federal Regulations, and who is responsible for the security of the airport.

(e) A violation of this section is punishable by imprisonment in a county jail for a period not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission that is punishable in different ways by this and any other provision of law shall not be punished under more than one provision.

(g) Nothing in this section is intended to affect existing state or federal law regarding the transportation of firearms on airplanes in checked luggage, or the possession of the items listed in subdivision (c) in areas that are not "sterile areas."

SEC. 225. Section 337u of the Penal Code is amended to read:

337u. It is unlawful for any person to commit any of the following acts:

(a) To alter or misrepresent the outcome of a gambling game or other event on which wagers lawfully have been made after the outcome is ~~made sure~~ *determined*, but before it is revealed to the players.

(b) To place, increase, or decrease a wager or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the gambling game or any event that affects the outcome of the gambling game or which is the subject of the wager or to aid anyone in acquiring that knowledge for the purpose of placing, increasing, or decreasing a wager or determining the course of play contingent upon that event or outcome.

(c) To claim, collect, or take, or attempt to claim, collect, or take, money or anything of value in or from a gambling game, with intent to defraud, without having made a wager contingent on the game, or to claim, collect, or take an amount greater than the amount actually won.

(d) Knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of this section, or Section 337v, 337w, 337x, or 337y, with the intent that the other person play or participate in that gambling game.

(e) To place or increase a wager after acquiring knowledge of the outcome of the gambling game or other event which is the subject of the wager, including past-posting and pressing wagers.

(f) To reduce the amount wagered or cancel the wager after acquiring knowledge of the outcome of the gambling game or other event which is the subject of the bet, including pinching wagers.

(g) To manipulate, with the intent to cheat, any component of a gambling game device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a slot machine, with

knowledge that the manipulation affects the outcome of the gambling game or with knowledge of any event that affects the outcome of the gambling game.

SEC. 226. Section 383c of the Penal Code is amended to read:

383c. Every person who with intent to defraud, sells or exposes for sale any meat or meat preparations, and falsely represents the same to be halal, whether ~~such~~ *the* meat or meat preparations ~~be~~ *is* raw or prepared for human consumption, or as having been prepared under and from a product or products sanctioned by the Islamic religious requirements; or falsely represents any food product, or the contents of any package or container, to be so constituted and prepared, by having or permitting to be inscribed thereon the ~~words~~ *word* ''halal'' in any language; or sells or exposes for sale in the same place of business both halal and nonhalal meat or meat preparations, either raw or prepared for human consumption, who fails to indicate on his *or her* window signs in all display advertising in block letters at least four inches in height ''halal and nonhalal meats sold ~~here;''~~ *here'';* or who exposes for sale in any show window or place of business as both halal and nonhalal meat preparations, either raw or prepared for human consumption, who fails to display over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height, reading ''halal meat'' or ''nonhalal meat'' as the case may be; or sells or exposes for sale in any restaurant or any other place where food products are sold for consumption on the premises, any article of food or food preparations and falsely represents the same to be halal, or as having been prepared in accordance with the Islamic religious requirements; or sells or exposes for sale in ~~such~~ *a* restaurant, or ~~such~~ other place, both halal and nonhalal food or food preparations for consumption on the premises, not prepared in accordance with the Islamic ritual, or not sanctioned by Islamic religious requirements, and who fails to display on his *or her* window signs in all display advertising, in block letters at least four inches in height ''halal and nonhalal food served here'' is guilty of a misdemeanor and upon conviction thereof be punishable by a fine of not less than one hundred dollars ($100), nor more than six hundred dollars ($600), or imprisonment in a county jail of not less than 30 days, nor more than 90 days, or both ~~such~~ *that* fine and imprisonment.

The word ''halal'' is here defined to mean a strict compliance with every Islamic law and custom pertaining and relating to the killing of the animal or fowl from which the meat is taken or extracted, the dressing, treatment, and preparation thereof for human consumption, and the manufacture, production, treatment, and preparation of ~~such~~ other food or foods in connection wherewith Islamic laws and customs obtain and to the use of tools, implements, vessels, utensils, dishes, and containers that are used in connection with the killing of ~~such~~ animals and fowls and the dressing, preparation, production, manufacture, and treatment of ~~such~~ meats and other products, foods, and food stuffs.

SEC. 227. Section 424 of the Penal Code is amended to read:

424. (a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his *or her* own use, or to the use of another; or,

2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,

3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any ~~such~~ account; or,

5. Willfully refuses or omits to pay over, on demand, any public moneys in his *or her* hands, upon the presentation of a draft, order, or warrant drawn upon ~~such~~ *these* moneys by competent authority; or,

6. Willfully omits to transfer the same, when ~~such~~ transfer is required by law; or,

7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him *or her* under any duty imposed by law so to pay over the same;—

Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

(b) As used in this section, ‘‘public moneys’’ includes the proceeds derived from the sale of bonds or other evidence or indebtedness authorized by the legislative body of any city, county, district, or public agency.

(c) This section does not apply to the incidental and minimal use of public resources authorized by Section 8314 of the Government Code.

SEC. 228. Section 597*l* of the Penal Code is amended to read:

597*l*. (a) It shall be unlawful for any person who operates a pet shop to fail to do all of the following:

(1) Maintain the facilities used for the keeping of pet animals in a sanitary condition.

(2) Provide proper heating and ventilation for the facilities used for the keeping of pet animals.

(3) Provide adequate nutrition for, and humane care and treatment of, all pet animals under his or her care and control.

(4) Take reasonable care to release for sale, trade, or adoption only those pet animals that are free of disease or injuries.

(5) Provide adequate space appropriate to the size, weight, and specie of pet animals.

(b) (1) Sellers of pet animals shall provide buyers of a pet animal with general written recommendations for the generally accepted care of the class of pet animal sold, including recommendations as to the housing, equipment, cleaning, environment, and feeding of the animal. This written information shall be in a form determined by the sellers of pet animals and may include references to Web sites, books, pamphlets, videos, and compact discs.

(2) If a seller of pet animals distributes material prepared by a third party, the seller shall not be liable for damages caused by any erroneous information in that material unless a reasonable person exercising ordinary care should have known of the error causing the damage.

(3) This subdivision shall apply to any private or public retail business that sells pet animals to the public and is required to possess a permit pursuant to Section 6066 of the Revenue and Taxation Code.

(4) Charges brought against a seller of pet animals for a first violation of the provisions of this subdivision shall be dismissed if the person charged produces in court satisfactory proof of

compliance. A second or subsequent violation is an infraction punishable by a fine not to exceed two hundred fifty dollars ($250).

(c) As used in this section, the following terms have the following meanings:

(1) ''Pet animals'' means dogs, cats, monkeys~~,~~ and other primates, rabbits, birds, guinea pigs, hamsters, mice, snakes, iguanas, turtles, and any other species of animal sold or retained for the purpose of being kept as a household pet.

(2) ''Pet shop'' means every place or premises where pet animals are kept for the purpose of either wholesale or retail sale. ''Pet shop'' does not include any place or premises where pet animals are occasionally sold.

(d) Any person who violates any provision of subdivision (a) is guilty of a misdemeanor and is punishable by a fine ~~of not to exceed~~ *not exceeding* one thousand dollars ($1,000), or by imprisonment in the county jail ~~for not more than~~ *not exceeding* 90 days, or by both that fine and imprisonment.

SEC. 229. Section 808 of the Penal Code is amended to read:

808. The following persons are magistrates:

~~1.~~

(a) The judges of the Supreme Court.

~~2.~~

(b) The judges of the courts of appeal.

~~3.~~

(c) The judges of the superior courts.

SEC. 230. Section 1089 of the Penal Code is amended to read:

1089. Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information or complaint, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as ''alternate jurors.''

The alternate jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges~~;~~, provided~~,~~ that the prosecution and the defendant shall each be entitled to as many peremptory challenges to the alternate

jurors as there are alternate jurors called. When two or more defendants are tried jointly each defendant shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called. The prosecution shall be entitled to additional peremptory challenges equal to the number of all the additional separate challenges allowed the defendant or defendants to the alternate jurors.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and must attend at all times upon the trial of the cause in company with the other jurors~~;~~, and for a failure so to do are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff or marshal during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury the alternate jurors shall be kept in the custody of the sheriff or marshal and shall not be discharged until the original jurors are discharged, except as hereinafter provided.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his *or her* duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take a place in the jury box, and be subject to the same rules and regulations as though the alternate juror had been selected as one of the original jurors.

SEC. 231. Section 1203.3 of the Penal Code is amended to read:

1203.3. (a) The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held.

(b) The exercise of the court's authority in subdivision (a) to revoke, modify, change, or terminate probation is subject to the following:

(1) Before any sentence or term or condition of probation is modified, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two-day written notice and an opportunity to be heard on the matter, except that, as to modifying or terminating a protective order in a case involving domestic violence, as defined in Section 6211 of the Family Code, the prosecuting attorney shall be given a five-day written notice and an opportunity to be heard.

(A) If the sentence or term or condition of probation is modified pursuant to this section, the judge shall state the reasons for that modification on the record.

(B) As used in this section, modification of sentence shall include reducing a felony to a misdemeanor.

(2) No order shall be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke, modify, or change its order.

(3) In all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be by the court discharged subject to the provisions of these sections.

(4) The court may modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations or the good conduct and reform of the defendant while on probation. The court shall not modify the dollar amount of the restitution obligations due to the good conduct and reform of the defendant, absent compelling and extraordinary reasons, nor shall the court limit the ability of payees to enforce the obligations in the manner of judgments in civil actions.

(5) Nothing in this section shall be construed to prohibit the court from modifying the dollar amount of a restitution order pursuant to subdivision (f) of Section 1202.4 at any time during the term of the probation.

(6) The court may limit or terminate a protective order that is a condition of probation in a case involving domestic violence, as defined in Section 6211 of the Family Code. In determining

whether to limit or terminate the protective order, the court shall consider if there has been any material change in circumstances since the crime for which the order was issued, and any issue that relates to whether there exists good cause for the change, including, but not limited to, consideration of all of the following:

(A) Whether the probationer has accepted responsibility for the abusive behavior perpetrated against the victim.

(B) Whether the probationer is currently attending and actively participating in counseling sessions.

(C) Whether the probationer has completed parenting counseling, or attended alcoholics or narcotics counseling.

(D) Whether the probationer has moved from the state, or is incarcerated.

(E) Whether the probationer is still ~~cohabitating~~ *cohabiting*, or intends to ~~cohabitate~~ *cohabit*, with any subject of the order.

(F) Whether the defendant has performed well on probation, including consideration of any progress reports.

(G) Whether the victim desires the change, and ~~is~~ *if* so, the victim's reasons, whether the victim has consulted a victim advocate, and whether the victim has prepared a safety plan and has access to local resources.

(H) Whether the change will impact any children involved, including consideration of any Child Protective Services information.

(I) Whether the ends of justice would be served by limiting or terminating the order.

(c) If a probationer is ordered to serve time in jail, and the probationer escapes while serving that time, the probation is revoked as a matter of law on the day of the escape.

(d) If probation is revoked pursuant to subdivision (c), upon taking the probationer into custody, the probationer shall be accorded a hearing or hearings consistent with the holding in the case of People v. Vickers (1972) 8 Cal.3d 451. The purpose of that hearing or hearings is not to revoke probation, as the revocation has occurred as a matter of law in accordance with subdivision (c), but rather to afford the defendant an opportunity to require the prosecution to establish that the alleged violation did in fact occur and to justify the revocation.

(e) This section does not apply to cases covered by Section 1203.2.

SEC. 232. Section 1240.1 of the Penal Code is amended to read:

1240.1. (a) In any noncapital criminal, juvenile court, or civil commitment case wherein the defendant would be entitled to the appointment of counsel on appeal if indigent, it shall be the duty of the attorney who represented the person at trial to provide counsel and advice as to whether arguably meritorious grounds exist for reversal or modification of the judgment on appeal. The attorney shall admonish the defendant that he or she is not able to provide advice concerning his or her own competency, and that the State Public Defender or other counsel should be consulted for advice as to whether an issue regarding the competency of counsel should be raised on appeal. The trial court may require trial counsel to certify that he or she has counseled the defendant as to whether arguably meritorious grounds for appeal exist at the time a notice of appeal is filed. Nothing in this section shall be construed to prevent any person having a right to appeal from doing so.

(b) It shall be the duty of every attorney representing an indigent defendant in any criminal, juvenile court, or civil commitment case to execute and file on his or her client's behalf a timely notice of appeal when the attorney is of the opinion that arguably meritorious grounds exist for a reversal or modification of the judgment or orders to be appealed from, and where, in the attorney's judgment, it is in the defendant's interest to pursue any relief that may be available to him or her on appeal; or when directed to do so by a defendant having a right to appeal.

With the notice of appeal the attorney shall file a brief statement of the points to be raised on appeal and a designation of any document, paper, pleading, or transcript of oral proceedings necessary to properly present those points on appeal when the document, paper, pleading, or transcript of oral proceedings would not be included in the normal record on appeal according to the applicable provisions of the California Rules of Court. The executing of the notice of appeal by the defendant's attorney shall not constitute an undertaking to represent the defendant on appeal unless the undertaking is expressly stated in the notice of appeal.

If the defendant was represented by appointed counsel on the trial level, or if it appears that the defendant will request the appointment of counsel on appeal by reason of indigency, the trial attorney shall also assist the defendant in preparing and submitting

a motion for the appointment of counsel and any supporting declaration or affidavit as to the defendant's financial condition. These documents shall be filed with the trial court at the time of filing a notice of appeal, and shall be transmitted by the clerk of the trial court to the clerk of the appellate court within three judicial days of their receipt. The appellate court shall act upon that motion without unnecessary delay. An attorney's failure to file a motion for the appointment of counsel with the notice of appeal shall not foreclose the defendant from filing a motion at any time it becomes known to him or her that the attorney has failed to do so, or at any time he or she shall become indigent if he or she was not previously indigent.

(c) The State Public Defender shall, at the request of any attorney representing a prospective indigent appellant or at the request of the prospective indigent appellant himself or herself, provide counsel and advice to the prospective indigent appellant or attorney as to whether arguably meritorious grounds exist on which the judgment or order to be appealed from would be reversed or modified on appeal.

(d) The failure of a trial attorney to perform any duty prescribed in this section, assign any particular point or error in the notice of appeal, or designate any particular thing for inclusion in the record on appeal shall not foreclose any defendant from filing a notice of appeal on his or her own behalf or from raising any point or argument on appeal; nor shall it foreclose the defendant or his or her counsel on appeal from requesting the augmentation or correction of the record on appeal in the reviewing court.

(e) (1) In order to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor shall continue to represent the respective parties. Each counsel's obligations extend to taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.

(2) The duties imposed on trial counsel in paragraph (1) shall not foreclose the defendant's appellate counsel from requesting additions or corrections to the record on appeal in either the trial court or the *California* Supreme Court in a manner provided by rules of court adopted by the Judicial Council.

SEC. 233. Section 1463 of the Penal Code is amended to read:

1463. All fines and forfeitures imposed and collected for crimes shall be distributed in accordance with Section 1463.001.

The following definitions shall apply to terms used in this chapter:

(a) ''Arrest'' means any law enforcement action, including issuance of a notice to appear or notice of violation, which results in a criminal charge.

(b) ''City'' includes any city, city and county, district, including any enterprise special district, community service district, or community service area engaged in police protection activities as reported to the Controller for inclusion in the 1989–90 edition of the Financial Transactions Report Concerning Special Districts under the heading of Police Protection and Public Safety, authority, or other local agency (other than a county) which employs persons authorized to make arrests or to issue notices to appear or notices of violation which may be filed in court.

(c) ''City arrest'' means an arrest by an employee of a city, or by a California Highway Patrol officer within the limits of a city.

(d) ''County'' means the county in which the arrest took place.

(e) ''County arrest'' means an arrest by a California Highway Patrol officer outside the limits of a city, or any arrest by a county officer or by any other state officer.

(f) ''Court'' means the superior court or a juvenile forum established under Section 257 of the Welfare and Institutions Code, in which the case arising from the arrest is filed.

(g) ''Division of moneys'' means an allocation of base fine proceeds between agencies as required by statute, including, but not limited to, Sections 1463.003, 1463.9, 1463.23, *and* 1463.26 *of this code*, ~~and~~ Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section 11502 of the Health and Safety Code.

(h) ''Offense'' means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code, except any parking offense as defined in subdivision (i).

(i) ''Parking offense'' means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation.

(j) ‘‘Penalty allocation’’ means the deposit of a specified part of moneys to offset designated processing costs, as provided by Section 1463.16 *of this code* and by Section 68090.8 of the Government Code.

(k) ‘‘Total parking penalty’’ means the total sum to be collected for a parking offense, whether as fine, forfeiture of bail, or payment of penalty to the Department of Motor Vehicles *(DMV)*. It may include the following components:

(1) The base parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.

(2) The ~~Department of Motor Vehicles (DMV)~~ *DMV* fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.

(3) The surcharges required by Section 76000 of the Government Code.

(4) The notice penalty added to the base parking penalty when a notice of delinquent parking violations is given.

(*l*) ‘‘Total fine or forfeiture’’ means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:

(1) The ‘‘base fine’’ upon which the state penalty and additional county penalty is calculated.

(2) The ‘‘county penalty’’ required by Section 76000 of the Government Code.

(3) The ‘‘service charge’’ permitted by Section 853.7 of the Penal Code and Section 40508.5 of the Vehicle Code.

(4) The “special penalty’’ dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.

(5) The ‘‘state penalty’’ required by Section 1464.

SEC. 234. Section 1524.1 of the Penal Code is amended to read:

1524.1. (a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be

construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.

(b) (1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other ~~body~~ *bodily* fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(2) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or with an attempt to commit any of the offenses, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288,

288a, 288.5, 289, or 289.5, or of an attempt to commit any of the offenses, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds that there is probable cause to believe that the accused committed the uncharged offense, and that there is probable cause to believe that blood, semen, or any other ~~body~~ *bodily* fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim. As used in this paragraph, ''Section 289.5'' refers to the statute enacted by Chapter 293 of the Statutes of 1991, penetration by an unknown object.

(3) (A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (2) shall be admissible.

(4) A request for a probable cause hearing made by a victim under paragraph (2) shall be made before sentencing in the superior court, or before disposition on a petition in a juvenile court, of the criminal charge or charges filed against the defendant.

(c) (1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for

prerequest counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.

(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).

(f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i). Any individual who files a false report of sexual assault in order to obtain test result information pursuant to this section shall, in addition to any other liability under law, be guilty of a misdemeanor punishable as provided in subdivision (c) of Section 120980 of the Health and Safety Code. Any individual as described in the preceding

sentence who discloses test result information obtained pursuant to this section shall also be guilty of an additional misdemeanor punishable as provided for in subdivision (c) of Section 120980 of the Health and Safety Code for each separate disclosure of that information.

(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

(k) The results of any blood or oral mucosal transudate saliva tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.

SEC. 235. Section 11171 of the Penal Code is amended to read:

11171. (a) (1) The Legislature hereby finds and declares that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) On or before January 1, 2004, the Office of Criminal Justice Planning shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California State District Attorneys Association, the California State Sheriffs Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination ~~protocol~~ *protocols* for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section ~~19823.5~~ *13823.5*.

(c) The form shall include, but not be limited to, a place for notation concerning each of the following:

(1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.

(2) Addressing relevant consent issues, if indicated.

(3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.

(4) The performance of a physical examination for evidence of child physical abuse or neglect.

(5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.

(6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.

(7) Procedures for the preservation and disposition of evidence.

(8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.

(9) An assessment as to whether there are findings that indicate physical abuse or neglect.

(c) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the Office of Criminal Justice Planning and subject to the confidentiality laws pertaining to the release of a medical forensic examination records.

(D) The forms shall be made accessible for use on the Internet.

SEC. 236. Section 11199 of the Penal Code is amended to read:

11199. (a) Any employee of a county child or adult protective services agency, while acting in his or her professional capacity or within the scope of his or her employment, who has knowledge of or observes an animal whom he or she knows or reasonably suspects has been the victim of cruelty, abuse, or neglect, may report the known or reasonably suspected animal cruelty, abuse, or neglect to the entity or entities that investigate reports of animal cruelty, abuse, and neglect in that county.

(b) The report may be made within two working days of receiving the information concerning the animal by facsimile transmission of a written report presented in the form described in

subdivision (e) or by telephone if all of the information that is required to be provided pursuant to subdivision (e) is furnished. In cases where an immediate response may be necessary in order to protect the health and safety of the animal or others, the report may be made by telephone as soon as possible.

(c) Nothing in this section shall be construed to impose a duty to investigate known or reasonably suspected animal cruelty, abuse, or neglect.

(d) As used in this section, the terms ''animal,'' ''cruelty,'' ''abuse,'' ''neglect,'' ''reasonable suspicion,'' and ''owner'' are defined as follows:

(1) ''Animal'' includes every dumb creature.

(2) ''Cruelty,'' ''abuse,'' and ''neglect'' include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(3) ''Reasonable suspicion'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect animal cruelty, abuse, or neglect.

(4) ''Owner'' means any person who is the legal owner, keeper, harborer, possessor, or the actual custodian of an animal. ''Owner'' includes corporations as well as individuals.

(e) Reports made pursuant to this section may be made on a preprinted form prepared by the entity or entities that investigate reports of animal cruelty, abuse, and neglect in that county that includes the definitions contained in subdivision ~~(e)~~ *(d)*, and a space for the reporter to include each of the following:

(1) His or her name and title.

(2) His or her business address and telephone number.

(3) The name, if known, of the animal owner or custodian.

(4) The location of the animal and the premises on which the known or reasonably suspected animal cruelty, abuse, or neglect took place.

(5) A description of the location of the animal and the premises.

(6) Type and numbers of animals involved.

(7) A description of the animal and its condition.

(8) The date, time, and a description of the observation or incident which led the reporter to suspect animal cruelty, abuse, or

neglect and any other information the reporter believes may be relevant.

(f) When two or more employees of a county child or adult protective services agency are present and jointly have knowledge of known or reasonably suspected animal cruelty, abuse, or neglect, and where there is agreement among them, a report may be made by one person by mutual agreement. Any reporter who has knowledge that the person designated to report has failed to do so may thereafter make the report.

SEC. 237. Section 11226 of the Penal Code is amended to read:

11226. Whenever there is reason to believe that a nuisance as defined in this article is kept, maintained, or is in existence in any county, the district attorney, in the name of the people of the State of California, or the city attorney of an incorporated city or any city and county may, or any citizen of the state resident within the county~~,~~ in his or her own name may, maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building~~,~~ or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

The complaint in the action shall be verified unless filed by the district attorney or the city attorney.

SEC. 238. Section 11230 of the Penal Code is amended to read:

11230. (a) (1) If the existence of a nuisance is established in an action as provided in this article, an order of abatement shall be entered as a part of the judgment in the case, directing the removal from the building or place of all fixtures, musical instruments and movable property used in conducting, maintaining, aiding, or abetting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and that it be kept closed for a period of one year, unless sooner released. If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is otherwise harmful to the community, in lieu of ordering the building or place closed, the court may order the person who is responsible for the existence of the nuisance to pay damages in an amount equal to the fair market rental value of the building or place

for one year to the city or county in whose jurisdiction the nuisance is located. The actual amount of rent being received for the rental of the building or place, or the existence of any vacancy therein, may be considered, but shall not be the sole determinant of the fair market rental value. Expert testimony may be used to determine the fair market rental value.

(2) While the order remains in effect as to closing, the building or place is and shall remain in the custody of the court.

(3) For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he or she would for levying upon and selling like property on execution.

(4) For closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

(b) The court may assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any and all of the defendants, based upon the severity of the nuisance and its duration.

(c) One-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury, the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered, if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties collected shall be paid to the treasurer of the county in which the judgment was entered.

SEC. 239. Article 4.5 (commencing with Section 12087) of Chapter 1 of Title 2 of Part 4 of the Penal Code, as added by Section 1 of Chapter 245 of the Statutes of 1999, is repealed.

SEC. 240. Section 12087.5 of the Penal Code, as added by Section 1 of Chapter 246 of the Statutes of 1999, is amended to read:

12087.5. The Legislature makes the following findings:

(a) In the years 1987 to 1996, nearly 2,200 children in the United States under the age of 15 years died in unintentional shootings. In 1996 alone, 138 children were shot and killed unintentionally. Thus, more than 11 children every month, or one

child every three days, were shot or killed unintentionally in firearms-related incidents.

(b) The United States leads the industrialized world in the rates of children and youth lost to unintentional, firearms-related deaths. A 1997 study from the federal Centers for Disease Control and Prevention reveals that for unintentional firearm-related deaths for children under the age of 15, the rate in the United States was nine times higher than in 25 other industrialized countries combined.

(c) While the number of unintentional deaths from firearms is an unacceptable toll on America's children, nearly eight times that number are treated in U.S. hospital emergency rooms each year for nonfatal unintentional gunshot wounds.

(d) A study of unintentional firearm deaths among children in California found that unintentional gunshot wounds most often involve handguns.

(e) A study in the December 1995 issue of the Archives of Pediatric and Adolescent Medicine found that children as young as three years old are strong enough to fire most commercially available handguns. The study revealed that 25 percent of three to four year olds and 70 percent of five to six year olds had sufficient finger strength to fire 59 (92 percent) of the 64 commonly available handguns referenced in the study.

(f) The Government Accounting Office (GAO), in its March 1991 study, ''Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could be Prevented,'' estimates that 31 percent of accidental deaths caused by firearms might be prevented by the addition of two safety devices: a child-resistant safety device that automatically engages and a device that indicates whether the gun is loaded. According to the study results, of the 107 unintentional firearms-related fatalities the GAO examined for the calendar years 1988 and 1989, ~~eight~~ *8* percent could have been prevented had the firearm been equipped with a child-resistant safety device. This ~~eight~~ *8* percent represents instances in which children under the age of six unintentionally shot and killed themselves or other persons.

(g) Currently, firearms are the only products manufactured in the United ~~Stated~~ *States* that are not subject to minimum safety standards.

(h) A 1997 public opinion poll conducted by the National Opinion Research Center at the University of Chicago in conjunction with the Johns Hopkins Center for Gun Policy and Research found that 74 percent of Americans support safety regulation of the firearms industry.

(i) Some currently available trigger locks and other similar devices are inadequate to prevent the accidental discharge of the firearms to which they are attached, or to prevent children from gaining access to the firearm.

SEC. 241. Section 13823.9 of the Penal Code is amended to read:

13823.9. (a) Every public or private general acute care hospital that examines a victim of sexual assault or attempted sexual assault, including child molestation, shall comply with the standards specified in Section 13823.11 and the protocol and guidelines adopted pursuant to Section 13823.5.

(b) Each county with a population of more than 100,000 shall arrange that professional personnel trained in the examination of victims of sexual assault, including child molestation, shall be present or on call either in the county hospital which provides emergency medical services or in any general acute care hospital which has contracted with the county to provide emergency medical services. In counties with a population of 1,000,000 or more, the presence of these professional personnel shall be arranged *in* at least one general acute care hospital for each 1,000,000 persons in the county.

(c) Each county shall designate at least one general acute care hospital to perform examinations on victims of sexual assault, including child molestation.

(d) (1) The protocol published by the Office of Criminal Justice Planning shall be used as a guide for the procedures to be used by every public or private general acute care hospital in the state for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom.

(2) The informational guide developed by the Office of Criminal Justice Planning shall be consulted where indicated in the protocol, as well as to gain knowledge about all aspects of examination and treatment of victims of sexual assault and child molestation.

SEC. 242. Section 10524 of the Public Contract Code is amended to read:

10524. Persons convicted under Section 10522 or 10523 are also liable to the University of California for double the amount the university may have lost~~,~~ or be liable to lose by reason of the acts made crimes by this article.

SEC. 243. Section 20103.8 of the Public Contract Code is amended to read:

20103.8. A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items *that when* taken in order from a specifically identified list of those items ~~that, when~~ in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

(e) Nothing in this section shall preclude the prequalification of subcontractors.

SEC. 244. Section 4114.5 of the Public Resources Code is amended to read:

4114.5. (a) Any contract entered into by the department to retain the services of pilots to fly firefighting aircraft shall expressly provide that, if the pilot dies while performing the duties specified in the contract, eligible survivors, if any, of the pilot shall be paid a one-time death benefit equal to the sum of the following:

(1) The amount of the one-time benefit that the eligible survivors of the pilot would receive if the pilot were subject to the federal Public Safety Officers' Death Benefits Act (42 U.S.C. *Sec.* 3796 et seq.). This paragraph shall not be applicable if, at the time of the pilot's death, the eligible survivors of the pilot are entitled to benefits under that act.

(2) An amount, as determined by the department, that would be commensurate with the death benefit payable to a mid-career firefighter employed by the department who died in the line of duty.

(b) The benefits payable pursuant to any contract subject to this section shall be paid to eligible survivors in a lump sum as follows:

(1) If there is no eligible child, to the surviving spouse.

(2) If there is an eligible child or children and a surviving spouse, one-half to the child or to the children in equal shares and one-half to the surviving spouse.

(3) If there is no surviving spouse and there is an eligible child or children, to the eligible child or in equal shares to the eligible children.

(4) If there is no surviving spouse nor any eligible child or children, to the surviving parent or in equal shares to the surviving parents.

(c) If there are no eligible survivors, no benefit shall be payable and a pilot may not otherwise designate a beneficiary to receive the benefits under the contract.

(d) (1) As used in this section, an ''eligible survivor'' means the surviving spouse, eligible children, or surviving parents of the deceased pilot.

(2) ''Surviving spouse'' means a husband or wife who was married to the pilot at the time of the pilot's death.

(3) ''Eligible child'' means an unmarried, natural child of the deceased pilot who (A) was born before or after the death of the pilot or is an adopted child or stepchild of the pilot, and (B) is 18 years of age or younger at the time of the pilot's death, or over the age of 18 years and incapable of self-support due to a physical or mental disability, or between the age of 18 and 22 years and pursuing a full-time course of study or training, if the child has not already completed four years of education beyond high school.

(e) This section shall be applicable irrespective of whether the department contracts directly with the pilot or contracts with a third party that employs or contracts with pilots.

(f) Nothing in this section ~~relieve~~ *relieves* the pilot's employer from the obligation to secure coverage for workers' compensation; ~~eliminate~~ *eliminates* or ~~reduce~~ *reduces* any workers' compensation benefits otherwise available; or ~~affect, alter, or eliminate~~ *affects, alters, or eliminates* any other remedy otherwise available at law.

SEC. 245. Section 4123 of the Public Resources Code is amended to read:

4123. (a) The director of the department shall establish a working group that consists of the following members:

(1) Four representatives from either state or local government, or both.

(2) Three representatives of industries with experience in state forestry and fire suppression policy.

(3) Three representatives of environmental groups with experience in state forestry and fire suppression policy.

(4) Two representatives with experience in state forestry and fire suppression policy from sectors of the public that are not otherwise represented in the working group.

(b) The working group established pursuant to subdivision (a) shall do both of the following:

(1) Identify potential incentives for landowners to implement prefire activities in state responsibility areas and urban wildland interface communities.

(2) Identify all federal, state, or local programs, private programs, and any other programs requiring a ~~cost-share~~ *cost share* that involves prefire activities.

(c) The department shall report the findings of the working group to the Legislature on or before January 1, 2004. The

department shall include in the report any recommendations identified by the working group to provide potential incentives for consideration by the Legislature.

(d) For the purposes of this section, the following terms mean:

(1) ‘‘Prefire activities’’ means those lawful activities that reduce the risk of wildfire, including precommercial thinning, selective harvesting, shaded fuel breaks, brush treatments, grazing, and prescribed burns.

(2) ‘‘Urban wildland interface community’’ means an area that is identified by the United States Department of Agriculture and the United States Department of the Interior as an urban wildland interface community at high risk from wildfire and listed in the ‘‘List of fire threatened communities in California, Appendix A,’’ issued by the Department of Forestry and Fire Protection.

SEC. 246. Section 5090.37 of the Public Resources Code is amended to read:

5090.37. Eminent domain shall not be exercised to acquire any interest in property for a state vehicular recreation area, the California *Statewide* Motorized Trail, or any grant program area or trail by the division or any public agency that has entered into a grant or cooperative agreement with the division.

SEC. 247. Section 5631 of the Public Resources Code is amended to read:

5631. The department, in cooperation with the federal government, local public agencies, and appropriate representatives of industry, shall, from time to time as needed but no less frequently than once ~~very~~ *every* five years, coordinate and conduct a statewide needs analysis in relation to the purposes of this chapter. That analysis shall include a full review of the grant program authorized pursuant to this chapter. The department shall report its findings and recommendations from any analysis, including recommendations as to funding levels and sources in connection with the grant program, to the Legislature. The department may recommend specific legislative changes to the program.

SEC. 248. Section 6307.1 of the Public Resources Code is amended to read:

6307.1. (a) This section applies only to land in which California has a sovereign interest that lies within the boundaries of the State of Arizona and land in which Arizona has a sovereign

interest that lies within the boundaries of the State of California, as a result of changes in the course of the Colorado River, and the redefinition in 1963 of the boundary between the two states.

(b) The commission may enter into land exchange agreements with Arizona to transfer California's sovereign interest in land located within the boundaries of Arizona and to acquire Arizona's sovereign interest in land located within the boundaries of California.

(c) The fair market value of the land transferred to Arizona shall be equal to the fair market value of the land acquired from Arizona. This requirement is not mandatory for each separate exchange transaction, but to the extent possible shall be complied with upon completion of all possible exchanges.

(d) The total value of all lands exchanged pursuant to this section shall be determined according to fair market value. Upon completion of all possible exchanges, if there is a difference between the total value of all land transferred to Arizona, and all land acquired by California, the difference shall be eliminated by cash payments from or to the Land Bank Fund established by the Kapiloff Land Bank Act *(Division 7* (commencing with Section ~~8600)~~ *8600))*.

(e) The commission may release the mineral rights in all the land transferred if it receives the mineral rights in all the land acquired.

(f) All land to be acquired by California pursuant to this section shall become, upon acquisition, sovereign land of California subject to the public trust. Any exchange shall be void unless the land to be acquired by Arizona pursuant to the exchange becomes, upon acquisition, sovereign land of Arizona subject to the public trust.

~~(f)~~

(g) Any land exchange made pursuant to this section shall be subject to the exemption from the California Environmental Quality Act contained in Section 21080.11.

SEC. 249. Section 21061.0.5 of the Public Resources Code is amended and renumbered to read:

~~21061.0.5.~~

21061.3. ''Infill site'' means a site in an urbanized area that meets either of the following criteria:

(a) The immediately adjacent parcels are developed with qualified urban uses or at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within the past 10 years.

(b) The site has been previously developed for qualified urban uses.

SEC. 250. Section 21098 of the Public Resources Code is amended to read:

21098. (a) For the purposes of this section, the following terms have the following meanings:

(1) ''Low-level flight path'' includes any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, ''Area Planning Military Training Routes: North and South America (AP/1B)'' published by the United States National Imagery and Mapping Agency.

(2) ''Military impact zone'' includes any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense.

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) ''Military service'' means any branch of the United States Armed Forces.

(4) ''Special use airspace'' means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, ''Area Planning: Special Use Airspace: North and South America (AP/1A)'' published by the United States National Imagery and Mapping Agency.

(b) If the United States Department of Defense or a military service notifies a lead agency of the contact office and address for the military service and the specific boundaries of a low-level flight path, military impact zone, or special use airspace, the lead agency shall submit notices, as required pursuant to Sections 21080.4 and 21092, to the military service if the project is within those boundaries and any of the following apply:

(1) The project includes a general plan amendment.

(2) The project is of statewide, regional, or areawide significance.

(3) The project is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(c) The requirement to submit notices imposed by this section does not apply to any of the following:

(1) Response actions taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(2) Response actions taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(3) Sites subject to corrective action orders issued pursuant to Section 25187 of the Health and Safety Code.

(d) (1) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of this division.

(2) Notwithstanding paragraph (1), a project's impact on military activities may cause, or be associated with, adverse effects on the environment that are subject to the requirements of this division, including, but not limited to, Section 21081. ~~No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.~~

SEC. 251. Section 25534 of the Public Resources Code is amended to read:

25534. (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.

(3) A violation of this division or any regulation or order issued by the commission under this division.

(4) The owner of a project does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved provided the California Consumer Power and Conservation Financing Authority notifies the commission that it is willing and able to construct the project pursuant to subdivision (g). The project owner may extend the 12-month period by 24 additional months pursuant to subdivision (f). This paragraph applies only to projects with a project permit application deemed complete by the commission after January 1, 2003.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars ($75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars ($1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars ($50,000).

(c) A project owner shall commence construction of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) within 12 months after the project has been certified by the commission and after all accompanying project permits are final and administrative and judicial appeals have been completed. The project owner shall submit construction and commercial operation milestones to the commission within 30 days after project certification. Construction milestones shall require the start of construction within the 12-month period established by this subdivision. The commission shall approve

milestones within 60 days after project certification. If the 30-day deadline to submit construction milestones to the commission is not met, the commission shall establish milestones for the project.

(d) The failure of the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to meet construction or commercial operation milestones, without a finding by the commission of good cause, shall be cause for revocation of certification or the imposition of other penalties by the commission.

(e) A finding by the commission that there is good cause for failure to meet the start-of-construction deadline required by paragraph (4) of subdivision (a) or any subsequent milestones of subdivision (c) shall be made if the commission determines that any of the following criteria are met:

(1) The change in any deadline or milestone does not change the established deadline or milestone for the start of commercial operation.

(2) The deadline or milestone is changed due to circumstances beyond the project owner's control, including, but not limited to, administrative and legal appeals.

(3) The deadline or milestone will be missed but the project owner demonstrates a good faith effort to meet the project deadline or milestone.

(4) The deadline or milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project deadline or milestone.

(5) The deadline or milestone will be missed for any other reason determined reasonable by the commission.

(f) The commission shall extend the ~~start of the construction~~ *start-of-construction* deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the project. For the purposes of this section, the commission's actual cost of licensing the project shall be based on a certified audit report filed by the commission staff within 180 days of the commission's certification of the project. The certified audit shall be filed and served on all parties to the proceeding, is subject to public review and comment, and is subject to at least one public hearing if requested by the project owner. Any reimbursement received by

the commission pursuant to this subdivision shall be deposited in the General Fund.

(g) If the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) fails to commence construction, without good cause, within 12 months after the project has been certified by the commission and has not received an extension pursuant to subdivision (f), the commission shall provide immediate notice to the California Consumer Power and Conservation Financing Authority. The authority shall evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority demonstrates to the commission that it is willing and able to construct the project either independently or in conjunction with any other public or private entity, including the original certificate holder, the commission may revoke the original certification and issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. If the authority declines to pursue the project, the permit shall remain with the current project owner until it expires pursuant to the regulations adopted by the commission.

(h) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority, the commission shall adopt new milestones for the project that allow the authority up to 24 months to start construction of the project or to start to meet the applicable deadlines or milestones. If the authority fails to begin construction in conformity with the deadlines or milestones adopted by the commission, without good cause, the certification may be revoked.

(i) (1) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority and the authority pursues the project, without participation of the original certificate holder, the authority shall offer to reimburse the original certificate holder for the actual costs the original certificate holder incurred in permitting the project and in procuring assets associated with the license, including, but not limited to, major equipment and the emission offsets. In order to receive reimbursement, the original certificate holder shall provide to the commission documentation

of the actual costs incurred in permitting the project. The commission shall validate those costs. The certificate holder may refuse to accept the offer of reimbursement for any asset associated with the license and retain the asset. To the extent the certificate holder chooses to accept the offer for an asset, it shall provide the authority with the asset.

(2) If the authority reimburses the original certificate holder for the costs described in paragraph (1), the original certificate holder shall provide the authority with all of the assets for which the original certificate holder received reimbursement.

(j) This section does not prevent a certificate holder from selling its license to construct and operate a project prior to its revocation by the commission. In the event of a sale to an entity that is not an affiliate of the certificate holder, the commission shall adopt new deadlines or milestones for the project that allow the new certificate holder up to 12 months to start construction of the project or to start to meet the applicable deadlines or milestones.

(k) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued for the modernization, repowering, replacement, or refurbishment of existing facilities or to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Parts 292.101 to 292.602, inclusive), nor shall those provisions apply to any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load. For the purposes of this subdivision, ''replacement'' of an existing facility includes, but is not limited to, a comparable project at a location different than the facility being replaced, provided that the commission certifies that the new project will result in the decommissioning of the existing facility.

(*l*) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued to ''local publicly owned electric utilities'' as defined in subdivision (d) of Section 9604 of the Public Utilities Code whose governing bodies certify to the commission that the project is needed to meet the projected native load of the local publicly owned utility.

(m) To implement this section, the commission and the California Consumer Power and Conservation Financing Authority may, in consultation with each other, adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 252. Section 30812 of the Public Resources Code is amended to read:

30812. (a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

(b) The notification specified in subdivision (a) shall indicate that the owner is required to respond in writing, within 20 days of the postmarked mailing of the notification, to object to recording the notice of violation. The notification shall also state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county ~~records~~ *recorder* where all or part of the property is located.

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

(e) (1) The notice of violation shall be contained in a separate document prominently entitled ''Notice of Violation of the Coastal Act.'' The notice of violation shall contain all of the following information:

(A) The names of the owners of record.

(B) A legal description of the real property affected by the notice.

(C) A statement specifically identifying the nature of the alleged violation.

(D) A commission file number relating to the notice.

(2) The notice of violation, when properly recorded and indexed, shall be considered notice of the violation to all successors in interest in that property. This notice is for informational purposes only and is not a defect, lien, or encumbrance on the property.

(f) Within 30 days after the final resolution of a violation that is the subject of a recorded notice of violation, the executive director shall mail a clearance letter to the owner of the real property and shall record a notice of recision in the office of each county recorder in which the notice of violation was filed, indicating that the notice of violation is no longer valid. The notice of recision shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

(g) The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.

(h) This section only applies in circumstances where the commission is the legally responsible coastal development permitting authority or where a local government or port governing body requests the commission to assist in the resolution of an unresolved violation if the local government is the legally responsible coastal development permitting authority.

(i) The commission, 24 months from the date of recordation, shall review each notice of violation that has been recorded to determine why the violation has not been resolved and whether the notice of violation should be expunged.

(j) The commission, at any time and for cause, on its own initiative or at the request of the property owner, may cause a notice of recision to be recorded invalidating the notice of violation recorded pursuant to this section. The notice of recision shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

SEC. 253. Section 30950 of the Public Resources Code, as added by Chapter 1079 of the Statutes of 1986, is amended and renumbered to read:

~~30950.~~

30960. The Secretary of the Resources Agency shall initiate a comprehensive, long-range planning process for the use of ocean waters offshore of California, may use the advisory panel appointed pursuant to paragraphs (4) of subdivision (d) of Section 6217 as the planning committee, and may use the California Sea Grant Program to promote sound scientific data analysis and assessment in this planning process.

SEC. 254. Section 31119 of the Public Resources Code is amended to read:

31119. (a) (1) The conservancy may undertake educational projects and programs for pupils in kindergarten to grade 12, inclusive, relating to the preservation, protection, enhancement, and maintenance of coastal resources, and may award grants to nonprofit organizations, educational institutions, and public agencies for those purposes, subject to the limitations contained in subdivision (b).

(2) An educational grant program established pursuant to paragraph (1) shall ~~include~~ *comply with* all of the following:

(A) Funds provided for the educational program may be used for planning and implementation or development of marine science education programs.

(B) An educational program shall meet State Board of Education adopted content standards.

(C) The conservancy may consult with the Superintendent of Public Instruction prior to awarding grants pursuant to this section.

(D) A grant recipient shall use a portion of any funding provided for an educational program to promote maximum participation of pupils and schools, by providing scholarships or grants for this purpose.

(E) A nonprofit organization shall comply with all of the following as a condition of receiving a grant:

(i) Document increased pupil participation in its educational programs.

(ii) Provide outreach to low-income, underserved, and noncoastal areas.

(iii) Maintain any data necessary for evaluation, as determined by the conservancy.

(b) The conservancy is not required to take any action under subdivision (a), unless and until new funds from sources not currently available to the conservancy are made available by the Legislature for the purposes described in subdivision (a). No more than 10 percent of the funds provided for the educational programs under subdivision (a) may be used for the costs of the conservancy in administering the projects. No General Fund money may be used to fund a grant awarded pursuant to subdivision (a) to a local public educational agency or community college.

SEC. 255. Section 40507 of the Public Resources Code is amended to read:

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

(b) Commencing January 1, 1997, the board shall file annual progress reports with the Legislature covering the activities and actions undertaken by the board in the prior fiscal year. The board

shall prepare the progress reports throughout the calendar year, as determined by the board, on the following programs:

(1) The local enforcement agency program.

(2) The research and development program.

(3) The public education program.

(4) The market development program.

(5) The used oil program.

(6) The planning and local assistance program.

(7) The site cleanup program.

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

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

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

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

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

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

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

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

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

(B) A report on the effectiveness of the public information program required to be implemented pursuant to Chapter 12

(commencing with Section 42600) of Part 3, including recommendations on administrative and legislative changes to improve the program.

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

(D) A report on the effectiveness of the integrated waste management educational program and teacher training plan implemented pursuant to Section 42603, including recommendations on administrative and legislative changes which will improve the program.

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

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

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

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

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

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

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

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

(C) A report on the Recycling Market Development Zone Loan Program ~~provided for in subdivision (c) of Section 42010), pursuant to subdivision (f) of Section 42010~~ *conducted pursuant to Article 3 (commencing with Section 42010) of Chapter 1 of Part 3*.

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

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

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

(G) The results of the study performed in consultation with the Department of General Services pursuant to Section ~~42416~~ *42415* to determine if tire retreads, procured by the department, have met all quality and performance criteria of a new tire, including any recommendations to expand, revise, or curtail the program.

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

(I) A list of established price preferences for recycled paper products for the prior fiscal year pursuant to paragraph (1) of subdivision (c) of *Section 12162 of* the Public Contract Code.

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

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

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

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

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

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

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

(C) The development by the board of model programs and materials to assist rural counties and cities in preparing city and county source reduction and recycling elements pursuant to Section ~~40914~~ *41787.3*.

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

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

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

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

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

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

SEC. 256. Section 334 of the Public Utilities Code is amended to read:

334. The Legislature finds and declares that in order to ensure the success of electric industry restructuring, in the transition to a new market structure it is important to ensure a reliable supply of electricity. Reliable electric service is of paramount importance to the safety, health, and comfort of the people of California. Transmission connections between electric utilities allow them to share generation resources and reduce the number of powerplants necessary to maintain a reliable system. The connections between utilities also create exposure to events that can cause widespread and extended transmission and service outages that reach far beyond the originating utility service area. California utilities and those in the western United States voluntarily adhere to reliability standards developed by the Western ~~Systems~~ *Electricity* Coordinating Council. The economic cost of extended electricity outages, such as those that occurred in California and throughout the Western ~~Systems~~ *Electricity* Coordinating Council on July 2, 1996, and August 10, 1996, to California's residential, commercial, agricultural, and industrial customers is significant. The proposed restructuring of the electricity industry would transfer responsibility for ensuring short- and long-term reliability away from electric utilities and regulatory bodies to the Independent System Operator and various market-based mechanisms. The Legislature has an interest in ensuring that the change in the locus of responsibility for reliability does not expose California citizens to undue economic risk in connection with system reliability.

SEC. 257. Section 345 of the Public Utilities Code is amended to read:

345. The Independent System Operator shall ensure efficient use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western ~~Systems~~ *Electricity* Coordinating Council and the North American Electric Reliability Council.

SEC. 258. Section 346 of the Public Utilities Code is amended to read:

346. The Independent System Operator shall immediately participate in all relevant Federal Energy Regulatory Commission

proceedings. The Independent System Operator shall ensure that additional filings at the Federal Energy Regulatory Commission request confirmation of the relevant provisions of this chapter and seek the authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guarantee achievement of planning and operating reserve criteria no less stringent than those established by the Western ~~Systems~~ *Electricity* Coordinating Council and the North American Electric Reliability Council.

SEC. 259. Section 350 of the Public Utilities Code is amended to read:

350. The Independent System Operator, in consultation with the California Energy Resources Conservation and Development Commission, the Public Utilities Commission, the Western ~~Systems~~ *Electricity* Coordinating Council, and concerned regulatory agencies in other western states, shall within six months after the Federal Energy Regulatory Commission approval of the Independent System Operator, provide a report to the Legislature and to the Oversight Board that does the following:

(a) Conducts an independent review and assessment of Western ~~Systems~~ *Electricity* Coordinating Council operating reliability criteria.

(b) Quantifies the economic cost of major transmission outages relating to the Pacific Intertie, Southwest Power Link, DC link, and other important high voltage lines that carry power both into and from California.

(c) Identifies the range of cost-effective options that would prevent or mitigate the consequences of major transmission outages.

(d) Identifies communication protocols that may be needed to be established to provide advance warning of incipient problems.

(e) Identifies the need for additional generation reserves and other voltage support equipment, if any, or other resources that may be necessary to carry out its functions.

(f) Identifies transmission capacity additions that may be necessary at certain times of the year or under certain conditions.

(g) Assesses the adequacy of current and prospective institutional provisions for the maintenance of reliability.

(h) Identifies mechanisms to enforce transmission right-of-way maintenance.

(i) Contains recommendations regarding cost-beneficial improvements to electric system reliability for the citizens of California.

SEC. 260. Section 360 of the Public Utilities Code is amended to read:

360. The commission shall ensure that existing, and if necessary, additional filings at the Federal Energy Regulatory Commission request confirmation of the relevant provisions of this chapter and seek the authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guarantee achievement of planning and operating reserve criteria no less stringent than those established by the Western ~~Systems~~ *Electricity* Coordinating Council and the North American Electric Reliability Council.

SEC. 261. Section 362 of the Public Utilities Code is amended to read:

362. (a) In proceedings pursuant to Section 455.5, 851, or 854, the commission shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power. In order to determine whether the facility needs to remain available and operational, the commission shall utilize standards that are no less stringent than the Western ~~Systems~~ *Electricity* Coordinating Council and North American Electric Reliability Council standards for planning reserve criteria.

(b) The commission shall require that generation facilities located in the state that have been disposed of in proceedings pursuant to Section 851, are operated by the persons or corporations who own or control them in a manner that ensures their availability to maintain the reliability of the electric supply system.

SEC. 262. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce ~~the provisions of~~ Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as

specifically set forth in this part. Electric service providers shall continue to be subject to ~~the provisions of~~ Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

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

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

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

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

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

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

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

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision ~~(e)~~ *(f)* of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5. This subdivision may not be construed to apply retroactively.

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

SEC. 263. Section 398.4 of the Public Utilities Code is amended to read:

398.4. (a) Every retail supplier that makes an offering to sell electricity that is consumed in California shall disclose its electricity sources. A retail supplier that does not make any claims that identify its electricity sources as different than net system power may disclose net system power. Every retail supplier that

makes an offering to sell electricity that is consumed in California and makes any claims that identify any of its electricity sources as different than net system power shall disclose these sources as specific purchases.

(b) The disclosures required by this section shall be made to potential end-use consumers in all product-specific written promotional materials that are distributed to consumers by either printed or electronic means, except that advertisements and notices in general circulation media shall not be subject to this requirement.

(c) The disclosures required by this section shall be made at least quarterly to end-use consumers of the offered electricity.

(d) The disclosures required by this section shall be made separately for each offering made by the retail supplier.

(e) On or before January 1, 1998, the California Energy Resources Conservation and Development Commission shall specify guidelines for the format and means for disclosure required by Section 398.3 and this section, based on the requirements of this article and subject to public hearing.

(f) The costs of making the disclosures required by this section shall be considered to be generation-related.

(g) The disclosures required by this section shall be expressed as a percentage of annual sales derived from each of the following categories, unless no specific purchases are disclosed, in which case only the first category shall be disclosed:

(1) Net system power.

(2) Specific purchases.

(h) (1) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from each fuel type of the categories specified as follows:

(A) Coal.

(B) Large hydroelectric (greater than 30 megawatts).

(C) Natural gas.

(D) Nuclear.

(E) Other.

(F) Eligible renewables, which means renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included, shall be additionally identified as a

percentage of annual sales that is derived from each fuel type of the subcategories specified as follows:

(i) Biomass and waste.

(ii) Geothermal.

(iii) Small hydroelectric (less than or equal to 30 megawatts).

(iv) Solar.

(v) Wind.

(2) The category ''Other'' shall be used for fuel types other than those listed above that represent less than 2 percent of net system power. The California Energy Resources Conservation and Development Commission may specify additional categories or change these categories, consistent with the requirements of this article and subject to public hearing, if it determines that the changes will facilitate the disclosure objectives of this section.

(i) All electricity sources disclosed as specific purchases shall meet the requirements of subdivision (b) of Section 398.2.

(j) Specific purchases identified pursuant to this section shall be from sources connected to the Western ~~Systems~~ *Electricity* Coordinating Council interconnected grid.

(k) Net system power shall be disclosed for the most recent calendar year available. Disclosure of net system power shall be accompanied by this qualifying note: ''The State of California determines this net system power mix annually; your actual electricity purchases may vary.'' The California Energy Resources Conservation and Development Commission may modify this note, consistent with the requirements of this article and subject to public hearing, if it determines that the changes will facilitate the disclosure objectives of this section.

(*l*) For each offering made by a retail supplier for which specific purchases are disclosed, the retail supplier shall disclose projected specific purchases for the current calendar year. Projected specific purchases need not be disclosed by numerical percentage at the subcategory level identified in subparagraph (F) of paragraph (1) of subdivision (h). On or before April 15, 1999, and annually thereafter, every retail supplier that discloses specific purchases shall also disclose to its customers, separately for each offering made by the retail supplier, its actual specific purchases for the previous calendar year consistent with information provided to the California Energy Resources Conservation and Development Commission pursuant to Section 398.5. Disclosure

of projected specific purchases and actual specific purchases shall each be accompanied by statements identifying whether the data are projected or actual, as developed by the California Energy Resources Conservation and Development Commission, subject to public hearing.

(m) The provisions of this section shall not apply to generators providing electric service onsite, under an over-the-fence transaction as described in Section 218, or to an affiliate or affiliates, as defined in subdivision (a) of Section 372.

SEC. 264. Section 5411.5 of the Public Utilities Code is amended to read:

5411.5. *(a)* Whenever a peace officer arrests a person for a violation of Section 5411 involving the operation of a charter-party carrier of passengers without a valid certificate or permit at a public airport, within 100 feet of a public airport, or within two miles of the international border between the United States and Mexico, the peace officer may impound and retain possession of the vehicle used in violation of Section 5411.

(b) If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

(c) The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of Section 5411 without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

(d) At any time, a person may make a motion in superior court~~,~~ for the immediate return of the vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this section is a limited civil case.

(e) No peace officer, however, ~~shall~~ *may* impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue

Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 265. Section 7000 of the Public Utilities Code is amended to read:

7000. (a) For purposes of this chapter, a utility shall mean all of the following:

(1) An electric corporation, as defined in Section 218.

(2) A water corporation, as defined in Section 241.

(3) A telephone corporation, as defined in Section 234.

(4) A telecommunications carrier, as defined in Section 153 of Title 47 of the United States Code.

(5) A gas corporation, as defined in Section 222.

(6) A local publicly owned electric utility, as defined in Section 9604, and a publicly owned gas utility.

(7) ~~a~~ *A* special district that owns or operates utilities.

(b) This chapter shall also apply to the following entities:

(1) A cable television corporation, as defined in Section 215.5.

(2) A cable operator, as defined in Section 522 of Title 47 of the United States Code.

SEC. 266. Section 15704 of the Public Utilities Code is amended to read:

15704. Each petition shall name or describe the territory within which the registered voters signing it reside. Every petition shall set forth the boundaries and name of the proposed district, which shall include the words ‘‘public utility district.’’ Every petition shall contain a prayer that a public utility district comprising all of the proposed territory, or any portions thereof as are designated in the petitions as essential to its formation, be incorporated pursuant to this division. Every registered voter signing a petition shall write his or her address opposite his *or her* signature.

SEC. 267. Section 132353.2 of the Public Utilities Code is amended to read:

132353.2. (a) A transition plan for the transfer of project development and construction responsibilities of the transit boards and the financial resources therefore to the consolidated agency shall be developed by the consolidated agency in consultation with the transit boards to ensure the efficient and timely transfer of the transit boards’ project development and construction functions and responsibilities to the consolidated agency no later than

September 30, 2003. The transfer and consolidation of project development and construction functions and responsibilities and the funding therefore shall occur no later than January 30, 2004, and shall be referred to as the subsequent transfer.

(b) The transition plans should define the functional roles and responsibilities of the consolidated agency and the transit boards and should define, in the applicable transition plan, service and operational planning~~;~~, programming~~;~~, project development, and construction. The transition plans should acknowledge a strong linkage between service planning and operations scheduling.

(c) Local route planning and scheduling and local financial planning~~ therefore~~ *therefor*, would continue to be the responsibility of the transit boards in accordance with guidelines provided by the consolidated agency. The initial transition plan would include the development of guidelines~~,~~ and would define local route planning.

(d) Notwithstanding the provisions of Section 132353.2, at any time after the initial transfer, the consolidated agency may enter into individual agreements with *the* MTDB or *the* NCTD for the transfer and consolidation of any or all functions, personnel, and funding of either agency, except those functions set forth in Section 132354.5, to the consolidated agency on ~~such~~ terms and conditions as may be mutually agreed upon.

(e) *The* MTDB and *the* NCTD shall continue to be a claimant, applicant, and grantee of local, state, and federal grants until the transfer and consolidation of functions or responsibilities to the consolidated agency pursuant to a transition plan at which time the consolidated agency shall become the claimant, applicant, and grantee for ~~such~~ *these* funds. Except for funds which are transferred to the consolidated agency pursuant to a transition plan, *the* MTDB and *the* NCTD shall continue to receive funding pursuant to *Article 4 (commencing with Section 99260) and Article 4.5 (commencing with Section 99275) of the* Transportation Development Act ~~Articles 4.0 and 4.5~~ *in Chapter 4 of Part 11 of Division 10* and the State Transportation Assistance ~~fund~~ *Fund* in accordance with state law. Except for funds which are transferred to the consolidated agency pursuant to a transition plan, *the* MTDB and *the* NCTD shall continue to receive the Federal Section 5307 Urbanized Area Formula funds pursuant to federal statute. These funds should be allocated in a manner which will help ~~to~~ enable the

transit boards to meet their obligations and responsibilities recognizing the methodology and historic funding levels that have previously guided these funding decisions. The consolidated agency shall conduct *a* periodic review of the allocation and methodology for all formula-based funding.

(f) The consolidated agency and *the* MTDB and *the* NCTD shall work together to obtain funds for transit projects and services.

(g) It is the intent of the Legislature that future consolidation of transit operations of *the* MTDB and *the* NCTD into the consolidated agency should be comprehensively evaluated by the consolidated agency. ~~Such a~~ *This* consolidation shall be referred to as a complete consolidation and shall be implemented only if it is considered to be appropriate by the consolidated agency and approved by a statute enacted by the Legislature.

SEC. 268. Section 132370.5 of the Public Utilities Code is amended to read:

132370.5. The consolidated agency shall be considered to be a ''local agency'' as defined in subdivision (f) of Section 6585 of the Government Code and the provisions of Article 4 *(commencing with Section 6584)* of Chapter 5 of Division 7 of Title 1 of the Government Code are applicable to the consolidated agency.

SEC. 269. Section 132370.6 of the Public Utilities Code is amended to read:

132370.6. The consolidated agency may borrow money in accordance with Article 7 (commencing with Section 53820), Article 7.6 (commencing with Section ~~53580~~ *53850*), or Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 270. Section 132632 of the Public Utilities Code is amended and renumbered to read:

~~132632.~~

132362. In addition to the authority set forth in Article 5 (commencing with Section 132300) and Article 6 (commencing with Section 132320) of Chapter 2 of Division 12.7, if the consolidated agency provides compensation to San Diego County for the cost of including an ordinance or measure on the ballot, the consolidated agency may call an election, including an advisory election, in San Diego County on any ordinance or measure

regarding the governance of or matters related to the powers, privileges, or duties of the consolidated agency, including, but not limited to, merger or complete consolidation of the transit boards.

SEC. 271. Section 132634 of the Public Utilities Code is amended and renumbered to read:

~~132634.~~

132364. The county shall conduct an election, including an advisory election, called by the consolidated agency in the same manner as provided by law for the conduct of elections by a county.

SEC. 272. Section 96.1 of the Revenue and Taxation Code is amended to read:

96.1. (a) Except as otherwise provided in Article 3 (commencing with Section 97), and in Article 4 (commencing with Section 98), for the 1980–81 fiscal year and each fiscal year thereafter, property tax revenues shall be apportioned to each jurisdiction pursuant to this section and Section 96.2 by the county auditor, subject to allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, to each jurisdiction in the following manner:

(1) For each tax rate area, each jurisdiction shall be allocated an amount of property tax revenue equal to the amount of property tax revenue allocated pursuant to this chapter to each jurisdiction in the prior fiscal year, modified by any adjustments required by Section 99 or ~~99.2~~ *99.02*.

(2) The difference between the total amount of property tax revenue and the amounts allocated pursuant to paragraph (1) shall be allocated pursuant to Section 96.5, and shall be known as the ‘‘annual tax increment.’’

(3) For purposes of this section, the amount of property tax revenue referred to in paragraph (1) shall not include amounts generated by the increased assessments under Chapter 3.5 (commencing with Section 75).

(b) Any allocation of property tax revenue that was subjected to a prior completed audit by the Controller, pursuant to the requirements of Section 12468 of the Government Code, where all findings have been resolved, shall be deemed correct.

(c) (1) Guidelines for legislation implementation issued and determined necessary by the State Association of County Auditors, and when adopted as regulations by either the Controller or the Department of Finance pursuant to Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, shall be considered an authoritative source deemed correct until some future clarification by legislation or court decision.

(2) If a county auditor knowingly does not follow the guidelines referred to in paragraph (1), that county auditor shall inform the Controller of the reason or reasons for not following the guidelines. If the Controller disagrees with the stated reason or reasons for not following the guidelines, the provisions of paragraph (3) do not apply.

(3) If, by audit begun on or after July 1, 2001, or discovery by an entity on or after July 1, 2001, it is determined that an allocation method is required to be adjusted and a reallocation is required for previous fiscal years, the cumulative reallocation or adjustment may not exceed 1 percent of the total amount levied at a 1 percent rate of the current year's original secured tax roll. The reallocation shall be completed in equal increments within the following three fiscal years, or as negotiated with the Controller in the case of reallocation to the Educational Revenue Augmentation Fund or school entities.

(4) If it is determined that an allocation method is required to be adjusted as provided in paragraph (3), the county auditor shall, in the fiscal year following the fiscal year in which this determination is made, correct the allocation method in accordance with statute.

SEC. 273. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e), any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement

agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees, or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Lands Commission, the State Department of Social Services, ~~The~~ *the* Department of Child Support Services, the Department of Water Resources, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Lands Commission, or the Department of Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, ''market data'' means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the

assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor ~~shall~~ *may* not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, ~~shall~~ *may* not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee

or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

SEC. 274. Section 426 of the Revenue and Taxation Code is amended to read:

426. *(a)* Notwithstanding any provision of Section 423 to the contrary, if either the county, city, or nonprofit organization or the owner of land subject to contract, agreement, scenic restriction, or open-space easement has served notice of nonrenewal as provided in Section 51091, 51245, or 51296.9 of the Government Code, and the county assessors shall, unless the parties shall have subsequently rescinded the contract pursuant to Section 51254 or 51255 of the Government Code, value the land as provided in this section.

~~(a)~~

(b) If the owner of land serves notice of nonrenewal or the county, city, or nonprofit organization serves notice of nonrenewal and the owner fails to protest as provided in Section 51091, 51245, or 51296.9 of the Government Code, subdivision ~~(b)~~ *(c)* shall apply immediately. If the county, city, or nonprofit organization serves notice of nonrenewal and the owner does protest as provided in Section 51091, 51245, or 51296 of the Government Code, subdivision ~~(b)~~ *(c)* shall apply when less than six years remain until the termination of the period for which the land is enforceably restricted.

~~(b)~~

(c) Where any of the conditions in subdivision ~~(a)~~ *(b)* apply, the board or assessor in each year until the termination of the period for which the land is enforceably restricted shall do all of the following:

(1) Determine the value of the land pursuant to Section 110.1 ~~of the Revenue and Taxation Code~~. If the land is not subject to Section 110.1 ~~of the Revenue and Taxation Code~~ when the restriction expires, the value shall be determined pursuant to Section 110 ~~of the Revenue and Taxation Code~~ as if it were free of contractual restriction. If the land will be subject to a use for which ~~the Revenue and Taxation Code~~ *this code* provides a special restricted assessment, the value shall be determined as if it were subject to the new restriction.

(2) Determine the value of the land by capitalization of income as provided in Section 423 and without regard to the existence of any of the conditions in subdivision ~~(a)~~ *(b)*.

(3) Subtract the value determined in paragraph (2) of subdivision ~~(b).~~ *(c)* by capitalization of income from the full value determined in paragraph (1)~~ of subdivision (b)~~.

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 423, discount the amount obtained in paragraph (3)~~ of subdivision (b)~~ for the number of years remaining until the termination of the contract, agreement, scenic restriction, or open-space easement.

(5) Determine the value of the land by adding the value determined by capitalization of income as provided in paragraph (2) ~~of subdivision (b)~~ and the value obtained in paragraph (4)~~ of subdivision (b)~~.

(6) Apply the ratio prescribed in Section 401 to the value of the land determined in paragraph (5) ~~of subdivision (b)~~ to obtain its assessed value.

SEC. 275. Section 998 of the Revenue and Taxation Code is amended to read:

998. (a) The full value of a ~~timeshare~~ *time-share* estate or a ~~timeshare~~ *time-share* use subject to tax under this division shall be determined by finding the real property value of the interest involved and shall not include the value of any nonreal property items, including, but not limited to, vacation exchange rights, vacation conveniences and services, and club memberships. Accordingly, the full value of a ~~timeshare~~ *time-share* estate or ~~timeshare~~ *time-share* use may be determined by reference to resort properties, condominiums, cooperatives, or other properties which are similar in size, type, and location to the property subject to ~~timeshare~~ *time-share* ownership and are not owned on a ~~timeshare~~ *time-share* basis. The aggregate assessed value of all the ~~timeshare~~ *time-share* estates or uses relating to a single lot, parcel, unit, or other segment of real property shall be determined by adding (1) the fair market value of the similar lot, parcel, unit, or other segment not owned on a ~~timeshare~~ *time-share* basis, and (2) an amount necessary to reflect any increase or decrease to the market value attributable to the fact that the property is marketed in increments of time, or by any alternate method which will

determine the real property value without regard to any nonreal property items which may be included.

(b) Nothing in this section shall authorize a reassessment of real property as a result of the creation or transfer of a ~~timeshare~~ *time-share* interest in the property unless the creation or transfer of the ~~timeshare~~ *time-share* interest constitutes a change in ownership under Chapter 2 (commencing with Section 60) of Part 2 and Section 2 of Article XIII A of the California Constitution.

(c) For purposes of this section, ~~"timeshare~~ "*time-share* estate" and ~~"timeshare~~ "*time-share* use" shall have the meanings set forth in Section 11003.5 of the Business and Professions Code, and ~~"timeshare~~ "*time-share* interest" shall refer to both ~~timeshare~~ *time-share* estates and ~~timeshare~~ *time-share* uses.

(d) Nothing in this section ~~shall~~ *may* be construed as requiring the assessment of any property at less than fair market value as required by Section 401.

SEC. 276. Section 2921.5 of the Revenue and Taxation Code is amended to read:

2921.5. Taxes, penalties, and costs on unsecured property, as defined in subdivision (b) of Section 134, shall be transferred from the "secured roll" to the "unsecured roll" of the corresponding year by the county auditor on order of the board of supervisors with the written consent of the county legal advisor pursuant to Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 at the same time the taxes are canceled on the property, and shall be collected in the same manner as other delinquent taxes on the "unsecured roll." Amounts transferred pursuant to this ~~subdivision shall~~ *section* continue to be subject to delinquent penalties until the amounts are paid~~,~~ and are collectible from either the person from whom the property was acquired or the public entity that acquired the property.

SEC. 277. Section 7280 of the Revenue and Taxation Code is amended to read:

7280. (a) The legislative body of any city or county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for any period of more than 30 days. The tax when levied by the legislative body of a county shall apply only to the unincorporated areas of the county.

(b) For purposes of this section, the term ''the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging'' does not include the right of an owner of a ~~timeshare~~ *time-share* estate in a room or rooms in a ~~timeshare~~ *time-share* project, or the owner of a membership camping contract in a camping site at a campground, or the guest of the owner, to occupy the room, rooms, camping site, or other real property in which the owner retains that interest.

For purposes of this subdivision:

(1) ~~''Timeshare~~ *''Time-share* estate'' means a ~~timeshare~~ *time-share* estate, as defined by Section 11003.5 of the Business and Professions Code.

(2) ''Membership camping contract'' means a right or license as defined by subdivision (b) of Section 1812.300 of the Civil Code.

(3) ''Guest of that owner'' means a person who does either of the following:

(A) Occupies real property accompanied by the owner of either of the following:

(i) A ~~timeshare~~ *time-share* estate in that real property.

(ii) A camping site in a campground pursuant to a right or license under a membership camping contract.

(B) Exercises that owner's right of occupancy without payment of any compensation to the owner.

''Guest of that owner'' specifically includes a person occupying a ~~timeshare~~ *time-share* unit or a camping site in a campground pursuant to any form of exchange program.

(c) For purposes of this section, ''other lodging'' includes, but is not limited to, a camping site or a space at a campground or recreational vehicle park, but does not include any of the following:

(1) Any facilities operated by a local government entity.

(2) Any lodging excluded pursuant to subdivision (b).

(3) Any campsite excluded from taxation pursuant to Section 7282.

(d) Subdivision (b) shall not affect or apply to the authority of any city or county to collect a transient occupancy tax from ~~timeshare~~ *time-share* projects which were in existence as of May 1, 1985, and which ~~timeshare~~ *time-share* projects were then subject to such a tax imposed by an ordinance duly enacted prior

to May 1, 1985, pursuant to this section. The act adding this subdivision shall not in any way affect any litigation pending on or prior to December 31, 1985.

SEC. 278. Section 7286.24 of the Revenue and Taxation Code is amended to read:

7286.24. (a) (1) In addition to any tax levied pursuant to Part 1.5 (commencing with Section 7200) and any other tax authorized by this part, and subject to paragraph (2), a qualified city may levy a transactions and use tax at a rate of 0.25 percent, or a multiple thereof not to exceed 1 percent, if both of the following conditions are met:

(A) An ordinance proposing the transactions and use tax is approved by a majority vote of all the members of the city council.

(B) The proposing ordinance is approved by a two-thirds majority of qualified voters of the city in an election on the issue.

(2) (A) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(B) The net revenues derived from a tax levied under this section shall be exclusively expended for the maintenance, repair, replacement, construction, or reconstruction of the qualified city's road system.

(b) For purposes of this section, "qualified city" means the City of Clearlake, the City of Fort Bragg, the City of Point Arena, the City of Ukiah, and the City of Willits.

SEC. 279. The heading of Chapter 2.98 (commencing with Section 7286.75) of Part 1.7 of Division 2 of the Revenue and Taxation Code is amended and renumbered to read:

CHAPTER ~~2.98.~~ *2.985.* WEST SACRAMENTO TRANSACTIONS AND USE TAX

SEC. 280. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of this state for the entire

taxable year and for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $3,650	1% of the taxable income
Over $3,650 but not over $8,650	$36.50 plus 2% of the excess over $3,650
Over $8,650 but not over $13,650	$136.50 plus 4% of the excess over $8,650
Over $13,650 but not over $18,950	$336.50 plus 6% of the excess over $13,650
Over $18,950 but not over $23,950	$654.50 plus 8% of the excess over $18,950
Over $23,950	$1,054.50 plus 9.3% of the excess over $23,950

(b) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the ''taxable income of a nonresident or part-year resident,'' as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a

resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $7,300	1% of the taxable income
Over $7,300 but not over $17,300	$73 plus 2% of the excess over $7,300
Over $17,300 but not over $22,300	$273 plus 4% of the excess over $17,300
Over $22,300 but not over $27,600	$473 plus 6% of the excess over $22,300
Over $27,600 but not over $32,600	$791 plus 8% of the excess over $27,600
Over $32,600	$1,191 plus 9.3% of the excess over $32,600

(d) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the ‘‘taxable income of a nonresident or part-year resident,’’ as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g) (1) Section 1 (g) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income, shall apply, except as otherwise provided.

(2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code, relating to income included on parent's return, is modified, for purposes of this part, by substituting ''1 percent'' for ''15 percent.''

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(i) (1) For purposes of this part, the term ''taxable income of a nonresident or part-year resident'' includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of gross income and all deductions, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, gross income and deductions derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section ~~17031~~ *17031)* and Chapter 11 (commencing with Section 17951).

(2) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss ~~which~~ *that*, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at taxable income of a nonresident or part-year resident.

(3) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1), any carryover items, deferred income, suspended losses, or suspended deductions shall only be includible or allowable to the extent that the carryover item, deferred income, suspended loss, or suspended deduction was derived from sources within this state.

SEC. 281. Section 17052.2 of the Revenue and Taxation Code is amended to read:

17052.2. (a) For each taxable year beginning on or after January 1, 2000, and before January 1, 2002, and for each taxable year beginning on or after January 1, 2003, there shall be allowed as a credit against the ''net tax'' (as defined by Section 17039) to a credentialed teacher an amount equal to the amount determined in subdivision (b).

(b) The amount of the credit shall be the lesser of the amounts computed under paragraph (1) or (2):

(1) In the case of any credentialed teacher who has, as of the last day of the taxable year:

(A) Completed at least four but less than six years of service as a credentialed teacher, the credit shall be two hundred fifty dollars ($250).

(B) Completed at least six but less than 11 years of service as a credentialed teacher, the credit shall be five hundred dollars ($500).

(C) Completed at least 11 but less than 20 years of service as a credentialed teacher, the credit shall be one thousand dollars ($1,000).

(D) Completed 20 or more years of service as a credentialed teacher, the credit shall be one thousand five hundred dollars ($1,500).

(E) For purposes of determining years of service, years of service performed as a teacher in a qualifying educational institution, which otherwise meets the criteria specified in *paragraph (2) of* subdivision ~~(d)~~ *(c)* except that the qualifying

educational institution is not located in this state, in another state shall qualify for each year the teacher was credentialed by the public education agency in that state.

(2) Fifty percent of the amount determined as follows:

(A) Divide the amount received by the taxpayer as wages and salary for services as a credentialed teacher, as defined in paragraph (3) of subdivision (c), by the taxpayer's total adjusted gross income from all sources.

(B) Multiply the taxpayer's total tax, as defined in paragraph (4) of subdivision (c), by a ratio, not to exceed 1.00, that is otherwise equal to the ratio determined for the taxpayer under subparagraph (A).

(c) For purposes of this section, all of the following definitions apply:

(1) ''Credentialed teacher'' means a person who holds a preliminary or professional clear credential as determined by the Commission on Teacher Credentialing pursuant to Article 1 (commencing with Section 44200) of Chapter 2 of Part 25 of Division 2 of Title 2 of the Education Code and who teaches at a qualifying educational institution.

(2) ''Qualifying educational institution'' means any elementary, secondary, or vocational-technical school located in this state providing education for kindergarten, grades 1 to 12, inclusive, or any part thereof. ''Qualifying educational institution'' includes an agency or instrumentality of the federal government providing education for grades kindergarten, grades 1 to 12, inclusive, or any part thereof, at any location within this state, including an Indian reservation or a military installation located within the geographical borders of this state, where a credentialed teacher is employed by the federal government or an agency or instrumentality thereof. ''Qualifying educational institution'' includes any elementary, secondary, or ~~vocational technical~~ *vocational-technical* school located in California, that files an affidavit pursuant to Sections 33190 and 33191 of the Education Code, and provides education for kindergarten and grades 1 to 12, inclusive, or any part thereof.

(3) ''Wages and salaries for services as a credentialed teacher'' includes only those amounts received with respect to services performed as a credentialed teacher, but does not include pensions or other deferred compensation.

(4) ''Total tax'' means the tax imposed under this part for the taxable year, before the application under Section 19007 of any payment of estimated tax or any installment thereof, less all credits allowed for the taxable year except for the following:

(A) The credit allowed under this section.

(B) The credit allowed under Section 17061 (relating to refunds under the Unemployment Insurance Code).

(C) The credit allowed under Section 19002 (relating to tax withholding).

(D) Any refundable credit that is allowed under this part.

SEC. 282. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the ''net tax'' (as defined in Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, as modified by the Economic Growth and Tax Relief Reconciliation Act of 2001 ~~(Public Law~~ *(P.L.* 107-16), except that the amount of the credit shall be a percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the California 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 California 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, California adjusted gross income means California adjusted gross income as computed for purposes of Section 17041.

(e) The credit authorized by this section shall be limited to those taxpayers who, during the taxable year, maintain a household, within the meaning of Section 21(e)(1) of the Internal Revenue Code, that is located within this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3) of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a ''custodial parent'' (within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who ~~live~~ *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 the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 283. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed by multiplying the alternative minimum taxable income of the nonresident or part-year resident, as defined in subparagraph (C), by a rate (expressed as a percentage) equal to the tax computed under subdivision (b) on the alternative minimum taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(C) For purposes of this section, the term ‘‘alternative minimum taxable income of a nonresident or part-year resident’’ includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of alternative minimum taxable income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, alternative minimum taxable income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section 17301) and Chapter 11 (commencing with Section 17951).

(iii) For purposes of computing ‘‘alternative minimum taxable income of a nonresident or part-year resident,’’ any carryover items, deferred income, suspended losses, or suspended deductions shall only be allowable to the extent that the carryover item, suspended loss, or suspended deduction was derived from sources within this state.

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, ‘‘qualified taxpayer’’ means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer’s proportionate interest in each trade or business.

(B) For purposes of this paragraph, ‘‘aggregate gross receipts, less returns and allowances’’ means the sum of the gross receipts of the trades or businesses that the taxpayer owns and the proportionate interest of the gross receipts of the trades or businesses that the taxpayer owns and of ~~passthrough~~ *pass-through* entities in which the taxpayer holds an interest.

(C) For purposes of this paragraph, ‘‘gross receipts, less returns and allowances’’ means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of

Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(D) For purposes of this paragraph, ''proportionate interest'' means:

(i) In the case of a ~~passthrough~~ *pass-through* entity that reports a profit for the taxable year, the taxpayer's profit interest in the entity at the end of the taxpayer's taxable year.

(ii) In the case of a ~~passthrough~~ *pass-through* entity that reports a loss for the taxable year, the taxpayer's loss interest in the entity at the end of the taxpayer's taxable year.

(iii) In the case of a ~~passthrough~~ *pass-through* entity that is sold or liquidates during the taxable year, the taxpayer's capital account interest in the entity at the time of the sale or liquidation.

(E) (i) For purposes of this paragraph, ''proportionate interest'' includes an interest in a ~~passthrough~~ *pass-through* entity.

(ii) For purposes of this paragraph, ~~''passthrough~~ *''pass-through* entity'' means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An ~~S corporation,~~ *''S corporation,''* as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(5) For taxable years beginning on or after January 1, 1998, Section 55(d)(1) of the Internal Revenue Code, relating to exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following exemption amounts in lieu of those contained therein:

(A) Fifty-seven thousand two hundred sixty dollars ($57,260) in the case of either of the following:

(i) A joint return.

(ii) A surviving spouse.

(B) Forty-two thousand nine hundred forty-five dollars ($42,945) in the case of an individual who is both of the following:

(i) Not a married individual.

(ii) Not a surviving spouse.

(C) Twenty-eight thousand six hundred thirty dollars ($28,630) in the case of either of the following:

(i) A married individual who files a separate return.

(ii) An estate or trust.

(6) For taxable years beginning on or after January 1, 1998, Section 55(d)(3) of the Internal Revenue Code, relating to the phaseout of exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following phaseout of exemption amounts in lieu of those contained therein:

(A) Two hundred fourteen thousand seven hundred twenty-five dollars ($214,725) in the case of a taxpayer described in subparagraph (A) of paragraph (5).

(B) One hundred sixty-one thousand forty-four dollars ($161,044) in the case of a taxpayer described in subparagraph (B) of paragraph (5).

(C) One hundred seven thousand three hundred sixty-two dollars ($107,362) in the case of a taxpayer described in subparagraph (C) of paragraph (5).

(7) For each taxable year beginning on or after January 1, 1999, the Franchise Tax Board shall recompute the exemption amounts prescribed in paragraph (5) and the phaseout of exemption amounts prescribed in paragraph (6). Those computations shall be made as follows:

(A) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(B) The Franchise Tax Board shall do both of the following:

(i) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to subparagraph (A) and dividing the result by 100.

(ii) Multiply the preceding taxable year exemption amounts and the phaseout of exemption amounts by the inflation adjustment factor determined in clause (i) and round off the resulting products to the nearest one dollar ($1).

(c) (1) (A) Section 56(a)(6) of the Internal Revenue Code as in effect on January 1, 1997, relating to installment sales of certain property, shall not apply to payments received in taxable years

beginning on or after January 1, 1997, with respect to dispositions occurring in taxable years beginning after December 31, 1987.

(B) This paragraph shall not apply to taxable years beginning on or after January 1, 1998.

(2) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(3) Section 56(b)(3) of the Internal Revenue Code, relating to treatment of incentive stock options, shall be modified to additionally provide the following:

(A) Section 421 of the Internal Revenue Code shall not apply to the transfer of stock acquired pursuant to the exercise of a California qualified stock option under Section 17502.

(B) Section 422(c)(2) of the Internal Revenue Code shall apply in any case where the disposition and inclusion of a California qualified stock option for purposes of this chapter are within the same taxable year and that section shall not apply in any other case.

(C) The adjusted basis of any stock acquired by the exercise of a California qualified stock option shall be determined on the basis of the treatment prescribed by this paragraph.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(f) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 284. Section 17952.5 of the Revenue and Taxation Code is amended to read:

17952.5. (a) For purposes of computing ‘‘taxable income of a nonresident or part-year resident’’ under paragraph (1) of subdivision (i) of Section 17041, gross income of a nonresident, as defined in Section 17015, from sources within this state shall not include ‘‘qualified retirement income’’ received on or after January 1, 1996, for any part of the taxable year during which the taxpayer was not a resident of this state.

(b) For purposes of this section, "qualified retirement income" means income from any of the following:

(1) A qualified trust under Section 401(a) of the Internal Revenue Code that is exempt under Section 501(a) of the Internal Revenue Code from taxation.

(2) A simplified employee pension as defined in Section 408(k) of the Internal Revenue Code.

(3) An annuity plan described in Section 403(a) of the Internal Revenue Code.

(4) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(5) An individual retirement plan described in Section 7701(a)(37) of the Internal Revenue Code.

(6) An eligible deferred compensation plan as defined in Section 457 of the Internal Revenue Code.

(7) A governmental plan as defined in Section 414(d) of the Internal Revenue Code.

(8) A trust described in Section 501(c)(18) of the Internal Revenue Code.

(9) Any plan, program, or arrangement described in Section 3121(v)(2)(C) of the Internal Revenue Code, if that income is either of the following:

(A) Part of a series of substantially equal periodic payments (not less frequently than annually) made for either of the following:

(i) The life or the life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient).

(ii) A period of not less than 10 years.

(B) A payment received after termination of employment, under a plan, program, or arrangement to which that employment relates, maintained solely for the purpose of providing retirement benefits for employees in excess of the limitation imposed by Section 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of the Internal Revenue Code, or any combination of those sections, or any other limitation on contributions or benefits in the Internal Revenue Code on plans to which any of those sections apply.

(10) Any retired or retainer pay of a member or former member of a uniform service computed under ~~Chapter 71 (commencing~~

~~with Sec. 1401)~~ *Section 1401 and following* of Title 10 of the United States Code.

(c) This section shall apply only to any taxable year, or portion thereof, that the provisions of Section 114 of Title 4 of the United States Code, relating to limitation on state income taxation of certain pension income, are effective.

(d) References to the Internal Revenue Code are subject to paragraph (1) of subdivision (a) of Section 17024.5, which identifies, for each taxable year, the effective date of the referenced provisions of the Internal Revenue Code.

SEC. 285. Section 18713 of the Revenue and Taxation Code is amended to read:

18713. All money transferred to the State Children's Trust Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all ~~cost~~ *costs* incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) ~~The~~ *To the* State Department of Social Services for innovative child abuse and neglect prevention and intervention programs operated by private nonprofit organizations or public institutions of higher education with recognized expertise in fields related to child welfare and for evaluation, research, or dissemination of information concerning existing program models for the purpose of replication of successful models as specified in Article 5 (commencing with Section 18969) of Chapter 11 of Part 6 of Division 10 of the Welfare and Institutions Code.

SEC. 286. Section 18716 of the Revenue and Taxation Code is amended to read:

18716. (a) This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

(b) If, *in* any calendar year, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2002, or the adjusted amount specified in subdivision (c), as may be applicable, then this article is repealed with respect to taxable

years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 2003, the Franchise Tax Board shall adjust, on or before September 1~~,~~ of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

SEC. 287. Section 18831 of the Revenue and Taxation Code is amended to read:

18831. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Asthma and Lung Disease Research Fund established by Section 18832. That designation is to be used as a voluntary contribution on the tax return.

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

(c) A designation shall be made for any taxable year on the initial return for that taxable year and, once made, is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the "Asthma and Lung Disease Research Fund" to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for asthma and lung disease research.

(f) Notwithstanding any other provision, a voluntary contribution designation for the Asthma and Lung Disease Research Fund shall not be added on the tax return until another voluntary contribution designation is removed.

(g) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 288. Section 19006 of the Revenue and Taxation Code is amended to read:

19006. (a) The spouse who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on the income is liable for the payment of the taxes imposed by Part 10 (commencing with Section 17001) on that income.

(b) Whenever a joint return is filed by a husband and wife, the liability for the tax on the aggregate income is joint and several. The liability may be revised by a court in a proceeding for dissolution of the marriage of the husband and wife, provided:

(1) The order revising tax liability may not relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the spouse. The liability of the spouse for the tax, penalties, and interest due for the taxable year shall be in the same ratio to total tax, penalties, and interest due for the taxable year as the income earned by or subject to the management and control of the spouse is to total gross income reportable on the return.

(2) The order revising tax liability:

(A) Must separately state the income tax liabilities for the taxable years for which revision of tax liability is granted.

(B) Shall not revise a tax liability that has been fully paid prior to the effective date of the order; however, any unpaid amount may be revised.

(C) Shall become effective when the Franchise Tax Board is served with or acknowledges receipt of the order.

(D) Shall not be effective if the gross income reportable on the return exceeds one hundred fifty thousand dollars ($150,000) or the amount of tax liability the spouse is relieved of exceeds seven thousand five hundred dollars ($7,500), unless a tax revision clearance certificate is obtained from the Franchise Tax Board and filed with the court.

(c) Notwithstanding subdivisions (a) and (b), whenever a joint return is filed by a husband and wife and the tax liability is not fully paid, that liability, including interest and penalties, may be revised by the Franchise Tax Board as to one spouse.

(1) However, the liability shall not be revised:

(A) To relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the spouse. The liability of the spouse for the tax, penalties, and interest due for the taxable year shall be in the same ratio to total tax, penalties, and interest due for the taxable year as the income earned by or subject to the management and control of the spouse is to total gross income reportable on the return.

(B) To relieve a spouse of liability below the amount actually paid on the liability prior to the granting of relief, including credit from any other taxable year available for application to the liability.

(2) The liability may be revised only if the spouse whose liability is to be revised establishes that he or she did not know of, and had no reason to know of, the nonpayment at the time the return was filed. For purposes of this paragraph, ‘‘reason to know’’ means whether or not a reasonably prudent person would have had reason to know of the nonpayment.

(3) For purposes of this section, the determination of the spouse to whom items of gross income are attributable shall be made without regard to community property laws.

(4) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one spouse shall be made not less than 30 days after notification of the other spouse and shall be based upon whether, under all of the facts and circumstances

surrounding the nonpayment, it would be inequitable to hold the spouse requesting revision liable for the nonpayment. Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both spouses, unless, within that 30-day period, one or both spouses appeal the determination to the board as provided in Section 19045.

(5) This subdivision shall apply to all taxable years subject to the provisions of this part, but shall not apply to any taxable year which has been closed by a statute of limitations, res judicata, or otherwise.

SEC. 289. Section 20503 of the Revenue and Taxation Code is amended to read:

20503. (a) ''Income'' means adjusted gross income as defined in Section 17072 plus all of the following cash items:

(1) Public assistance and relief.

(2) Nontaxable amount of pensions and annuities.

(3) Social security benefits (except ~~Medi-Care)~~ *Medicare)*.

(4) Railroad retirement benefits.

(5) Unemployment insurance payments.

(6) ~~Veteran's~~ *Veterans'* benefits.

(7) Exempt interest received from any source.

(8) Gifts and inheritances in excess of three hundred dollars ($300), other than transfers between members of the household. Gifts and inheritances ~~includes~~ *include* noncash items.

(9) Amounts contributed on behalf of the contributor to a tax-sheltered retirement plan or deferred compensation plan.

(10) Temporary ~~worker's~~ *workers'* compensation payments.

(11) Sick leave payments.

(12) Nontaxable military compensation as defined in Section 112 of the Internal Revenue Code.

(13) Nontaxable scholarship and fellowship grants as defined in Section 117 of the Internal Revenue Code.

(14) Nontaxable gain from the sale of a residence as defined in Section 121 of the Internal Revenue Code.

(15) Life insurance proceeds to the extent that the proceeds exceed the expenses incurred for the last illness and funeral of the deceased spouse of the claimant. ''Expenses incurred for the last illness'' includes unreimbursed expenses paid or incurred during

the income calendar year and any expenses paid or incurred thereafter up until the date the claim is filed. For purposes of this paragraph, funeral expenses shall not exceed five thousand dollars ($5,000).

(16) If an alternative minimum tax is required to be paid pursuant to Chapter 2.1 (commencing with Section 17062) of Part 10, the amount of alternative minimum taxable income (whether or not cash) in excess of the regular taxable income.

(17) Annual winnings from the California Lottery in excess of six hundred dollars ($600) for the current year.

(b) For purposes of this chapter, total income shall be determined for the calendar year (or approved fiscal year ending within that calendar year) which ends within the fiscal year for which assistance is claimed.

(c) For purposes of Chapter 2 (commencing with Section 20581), Chapter 3 (commencing with Section 20625), and Chapter 3.5 (commencing with Section 20640), total income shall be determined for the calendar year ending immediately prior to the commencement of the fiscal year for which postponement is claimed.

SEC. 290. Section 20563 of the Revenue and Taxation Code is amended to read:

20563. (a) The claim on which the assistance is based shall be filed after June 30 of the fiscal year for which assistance is claimed but on or before October 15 of the fiscal year succeeding the fiscal year for which assistance is claimed. The Franchise Tax Board may thereafter accept claims through June 30 of the fiscal year succeeding the fiscal year for which assistance is claimed.

(b) The state shall assist the claimant after July 15 and before November 15 of the calendar year in which the claim is filed, except that if the claim is defective, assistance shall be made as promptly as is practicable after the claim has been perfected.

(c) A claimant who, because of a medical incapacity, is prevented from filing a timely claim, shall be permitted to file a claim within six months after the end of his or her medical incapacity or three ~~(3)~~ years succeeding the end of the fiscal year for which assistance is claimed, whichever date is earlier.

SEC. 291. Section 23701t of the Revenue and Taxation Code is amended to read:

23701t. (a) A homeowners' association organized and operated to provide for the acquisition, construction, management, maintenance, and care of residential association property if all of the following apply:

(1) Sixty percent or more of the gross income of the organization for the taxable year consists solely of amounts received as membership dues, fees, and assessments from either of the following:

(A) Tenant-stockholders or owners of residential units, residences, or lots.

(B) Owners of ~~timeshare~~ *time-share* rights to use, or ~~timeshare~~ *time-share* ownership interests in, association property in the case of a ~~timeshare~~ *time-share* association.

(2) Ninety percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a ~~timeshare~~ *time-share* association, for activities provided to or on behalf of members of the association.

(3) No part of the net earnings inures (other than by providing management, maintenance, and care of association property or by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual.

(4) Amounts received as membership dues, fees, and assessments not expended for association purposes during the taxable year are transferred to and held in trust to provide for the management, maintenance, and care of association property and common areas.

(b) The term ''association property'' means:

(1) Property held by the organization.

(2) Property held in common by the members of the organization.

(3) Property within the organization privately held by the members of the organization.

In the case of a ~~timeshare~~ *time-share* association, ''association property'' includes property in which the ~~timeshare~~ *time-share* association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the ~~timeshare~~ *time-share* project.

(c) A homeowners' association shall be subject to tax under this part with respect to its ''homeowners' association taxable income,'' and that income shall be subject to tax as provided by Chapter 3 (commencing with Section 23501) ~~of this part~~.

(1) For purposes of this section, the term ''homeowners' association taxable income'' of any organization for any taxable year means an amount equal to the excess over one hundred dollars ($100) (if any) of—

(A) The gross income for the taxable year (excluding any exempt function income), over

(B) The deductions allowed by this part which are directly connected with the production of the gross income (excluding exempt function income).

(2) For purposes of this section, the term ''exempt function income'' means any amount received as membership fees, dues, and assessments from tenant-shareholders or owners of residential units, residences, or lots, or owners of ~~timeshare~~ *time-share* rights to use, or ~~timeshare~~ *time-share* ownership interests in, association property in the case of a ~~timeshare~~ *time-share* association.

(d) The term ''homeowners' association'' includes a condominium management association, a residential real estate management association, a ~~timeshare~~ *time-share* association, and a cooperative housing corporation.

(e) ''Cooperative housing corporation'' includes, but is not limited to, a limited-equity housing cooperative, as defined in Section 33007.5 of the Health and Safety Code, organized either as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, or a nonprofit mutual benefit corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(f) The term ~~''timeshare~~ ''*time-share* association'' means any organization (other than a condominium management association) organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property if any member thereof holds a ~~timeshare~~ *time-share* right to use, or a ~~timeshare~~ *time-share* ownership interest in, real property constituting association property.

(g) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

SEC. 292. Section 60361.5 of the Revenue and Taxation Code is amended to read:

60361.5. (a) Except in the case of a qualified highway vehicle operator, the backup tax imposed under Section 60058 and any applicable penalties and interest shall be immediately due and payable. The board shall forthwith ascertain as best it may the amount of diesel fuel sold, or delivered into the fuel tank of a diesel fuel-powered highway vehicle, or sold and delivered into the fuel tank of a diesel fuel-powered highway vehicle, and shall determine immediately the tax on the amount and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 60340. The determination shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the backup tax applies until the date of remittance to the state. The provisions of ~~Section~~ *Sections* 60331 and 60332 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

(b) A penalty of 25 percent of the amount of tax or five hundred dollars ($500), whichever is greater, shall be added to the tax.

(c) If more than one of the penalties specified in this section and Section 60105, 60106.3, or 60503.2 is otherwise applicable, only the penalty totaling the greatest amount shall be imposed, and~~,~~ the penalty specified in this section ~~shall~~ *may* be imposed only if the amount of penalty exceeds any other applicable penalty.

(d) Where the board determines that the sale, delivery into the fuel tank of a diesel fuel-powered highway vehicle, or sale and delivery into the fuel tank of a diesel fuel-powered highway vehicle of untaxed diesel fuel was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty. A person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the request for relief is based.

(e) All administrative provisions contained in this part that apply to a supplier shall also be applicable to a highway vehicle operator/fueler.

SEC. 293. Section 60401 of the Revenue and Taxation Code is amended to read:

60401. The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any person to deposit with it any security as it may determine appropriate. The amount of the security shall be fixed by the board but shall not be more than three times the estimated average monthly tax liability of the person. The total amount of security shall not be in excess of one million dollars ($1,000,000) where the person has established to the satisfaction of the board that this security, together with property to which the lien imposed by Section 60445 attaches, is sufficient security to ensure payment of taxes equivalent to three times the estimated average monthly tax liability of the person. The amount of the security may be increased or decreased by the board at any time. Any security in the form of cash or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for *in* this section and Section 60406. Any security in the form of a bond or bonds shall be duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.

SEC. 294. Section 216.5 of the Streets and Highways Code is amended to read:

216.5. (a) The department shall construct at least one demonstration noise attenuation barrier fabricated from rice straw upon meeting the conditions and requirements of this section.

(b) Prior to construction of the barrier specified in subdivision (a), the department shall identify an appropriate location, and shall develop separate cost estimates for constructing a barrier at that location using a standard noise attenuation barrier design and constructing the barrier using the rice straw design.

(c) If a noise barrier system fabricated from rice straw appears on the department's list of approved noise barrier systems, the department shall, within one year, identify a suitable regularly programmed transportation project that includes a noise barrier element for construction of the demonstration noise barrier system. In making its project selection, the department shall consider projected completion schedules for potential candidate projects with the intent of completing the demonstration project expeditiously.

(d) The department shall not be required to construct the rice straw barrier specified in subdivision (a) until all the following have occurred:

(1) A noise barrier system fabricated from rice straw is approved by the department and appears on the department's list of approved noise barrier systems.

(2) Funding has been secured and made available by the manufacturer of the selected rice straw system to offset any additional costs incurred by the department in using the rice straw barrier design based on the cost estimates prepared pursuant to subdivision (b).

(3) A location has been identified for construction of the rice straw barrier system that meets safety, environmental, and related project requirements, and sufficient funding has been programmed and is available for construction of the barrier based on the cost estimate for the standard noise barrier design.

(e) The department may select any approved rice straw barrier system for use in the demonstration project as long as the manufacturer of the selected system secures and provides the required funding specified in paragraph (2) of subdivision (d). ~~In the event that~~ *If* no manufacturer of an approved rice straw barrier system provides the required funding, the department shall not be required to complete the demonstration project.

(f) The department shall, on or before January 1, 2005, transmit to the Legislature a report regarding the implementation of this ~~bill~~ *section.*

SEC. 295. Section 390 of the Streets and Highways Code is amended to read:

390. (a) Route 90 is from Route 1 northwest of the Los Angeles International Airport to Route 91 in Santa Ana Canyon passing near La Habra.

(b) (1) Notwithstanding subdivision (a), the ~~Commission~~ *commission* may relinquish to the City of Yorba Linda the portion of Route 90 that is located within the city limits of that city, upon terms and conditions the commission finds to be in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the recordation by the ~~County Recorder~~ *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 90 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 90 relinquished under this subdivision may not be considered for future adoption under Section 81.

(c) The City of Yorba Linda shall ensure the continuity of traffic flow on the relinquished portion of Route 90, including any traffic signal progression.

(d) For relinquished portions of Route 90, the City of Yorba Linda shall maintain signs directing motorists to the continuation of Route 90.

SEC. 296. Section 27322 of the Streets and Highways Code is amended to read:

27322. If the board consents to the annexation after any bonded debt of this district has been authorized, the board of supervisors so applying for annexation shall call an election at which the proposition to join the district and assume the obligation of the bonds of the district along with the territory already included therein, shall be submitted to the electors of the county or portion thereof as one proposition. Unless the proposition receives two-thirds of the ~~vote~~ *votes* cast at the election the county or part thereof shall not be annexed to the district. If the proposition carries by two-thirds or more of the votes cast at the election the result of the election shall be certified to the Secretary of State by the county elections official and thereupon the Secretary of State shall give notice and call for protests in the same manner as upon the original incorporation of the district.

SEC. 297. Section 411 of the Unemployment Insurance Code is amended to read:

411. The appeals board, acting as a whole, may promulgate rules or amend or rescind rules pertaining to hearing appeals and other matters falling within its jurisdiction. All ~~such~~ *these* rules, amendments thereto, or repeals thereof, shall be made in accordance with the provisions of Chapter 3.5 (commencing with Section 11340)~~,~~ *of* Part 1~~,~~ *of* Division 3~~,~~ *of* Title 2 of the Government Code.

SEC. 298. Section 15051 of the Unemployment Insurance Code is amended to read:

15051. The department shall establish rules, regulations, and procedures necessary to govern the administration of the provisions of this division and to ~~assure~~ *ensure* that ~~the~~ *its* legislative purposes and intent are carried out. ~~The~~ *These* regulations shall include to the extent permitted by federal law:

(a) Standards and criteria for determining eligibility and services priorities pursuant to Section 15011. These shall include, but are not limited to, standards for ~~insuring~~ *ensuring* that a service delivery area plan gives appropriate priority to public assistance recipients.

(b) Standards for determining appropriate and allowable services and training activities, and entities providing services and training. These shall include, but are not limited to, ~~insuring~~ *ensuring* that all occupational skill training ~~correspond~~ *corresponds* to area labor market demand, ~~insuring~~ *ensuring* that any training entity providing services has a demonstrated record of past performances in training and placing persons in unsubsidized private sector employment or offers reasonable assurance that services provided will result in these placements, and prohibiting contracting with entities whose officers have been convicted of fraud or misappropriation of funds within the last two years.

(c) Standards and criteria to be used in developing plans. These shall include, but are not limited to, appropriate placement goals and requirements for adequate public notice and opportunity for public involvement in the development of service delivery area plans.

(d) Standards, criteria, and procedures to be used by the department in evaluating and approving service delivery area plans.

(e) Standards for ~~assuring~~ *ensuring* adequate, efficient service delivery area administration including standards for ~~assuring~~ *ensuring* efficient service delivery area management information and financial accounting systems.

(f) Standards and criteria for ~~assuring~~ *ensuring* effective coordination and linkages with other agencies that deliver training and employment-related services.

(g) Standards and criteria for ~~assuring~~ *ensuring* that no participant shall be employed or that no job opening shall be filled:

(1) When any other individual is on layoff from the same or any substantially equivalent job.

(2) When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized by the Workforce Investment Act of 1998 ~~(Public Law~~ *(P.L.* 105-220), the successor to the Job Training Partnership Act.

(3) When the employer has not rehired a seasonal employee who has a history of regular seasonal employment with the employer. This paragraph shall only apply to the construction industry.

SEC. 299. Section 5068 of the Vehicle Code is amended to read:

5068. (a) (1) Any veterans' organization may apply either individually or with other veterans' organizations to meet the ~~5,000~~ *7,500* application threshold set forth in Section 5060 for special interest plates. An organization that meets the ~~5,000~~ *7,500* minimum application requirement by applying with other organizations pursuant to this subdivision shall be issued a regular license plate bearing a distinctive design or decal approved pursuant to subdivision (a) of Section 5060.

(2) Special interest plates issued pursuant to this section may be issued in a combination of numbers or letters, or both, requested by the owner or lessee of the vehicle, to be displayed in addition to the design or decal authorized under paragraph (1), subject to Section 5105.

(b) In addition to the regular fees for an original registration, a renewal of registration, or a transfer of registration, the following fees shall be paid by individuals applying for a veterans' organization special interest license plate or decal:

(1) Thirty dollars ($30) for the initial issuance of the plates and decals. The plates shall be permanent and shall not be required to be replaced.

(2) Thirty dollars ($30) for each renewal of registration which includes the continued display of the plates or decals.

(3) Fifteen dollars ($15) for transfer of the plates to another vehicle.

(4) Thirty-five dollars ($35) for replacement plates, if they become damaged or unserviceable.

(5) Ten dollars ($10) for replacement decals, if they become damaged or unserviceable.

(6) Forty dollars ($40) for the personalization of the plates, as authorized under paragraph (2) of subdivision (a).

(c) This section shall become operative on July 1, 2002.

SEC. 300. Section 9250.19 of the Vehicle Code is amended to read:

9250.19. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution pursuant to this subdivision by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration, renewal, or supplemental application for apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(3) A resolution adopted pursuant to paragraph (1) shall include findings as to the purpose of, and the need for, imposing the additional registration fee, and shall identify the date after which the fee shall no longer be imposed.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller pursuant to subdivision (a) is continuously appropriated, without regard to fiscal years, for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county, or supplemental application for apportioned registration, and, upon appropriation by the Legislature, for the administrative costs of the Controller incurred under this section.

(c) Money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code, or any combination of those and other vehicle-related crimes, and other crimes committed while operating a motor vehicle.

(d) The data from any program funded pursuant to subdivision (c) shall be made available by the local law enforcement agency to any local public agency that is required by law to obtain a criminal history background of persons as a condition of employment with that local public agency. A local law enforcement agency that provides the data may charge a fee to cover its actual costs in providing that data.

(e) (1) No money collected pursuant to this section shall be used to offset a reduction in any other source of funds for the purposes authorized under this section.

(2) Funds collected pursuant to this section, upon recommendation of local or regional Remote Access Network Boards to the Board of Supervisors, shall be used exclusively for the purchase, by competitive bidding procedures, and the operation of equipment which is compatible with the Department of Justice's Cal-ID master plan, as described in Section 11112.2 of the Penal Code, and the equipment shall interface in a manner that

is in compliance with the requirement described in the Criminal Justice Information Services, Electronic Fingerprint Transmission Specification, prepared by the Federal Bureau of Investigation and dated August 24, 1995.

(f) Every county that has authorized the collection of the fee pursuant to subdivision (a) shall issue a fiscal yearend report to the Controller on or before November 1 of each year, summarizing all of the following with respect to those fees:

(1) The total revenues received by the county for the fiscal year.

(2) The total expenditures and encumbered funds by the county for the fiscal year. For purposes of this subdivision, ''encumbered funds'' ~~shall mean~~ *means* funding that is scheduled to be spent pursuant to a determined schedule and for an identified purchase consistent with this section.

(3) Any unexpended or unencumbered fee revenues for the county for the fiscal year.

(4) The estimated annual cost of the purchase, operation, and maintenance of automated mobile and fixed location fingerprint equipment, related infrastructure, law enforcement enhancement programs, and personnel created or utilized in accordance with this section for the fiscal year. The listing shall detail the make and model number of the equipment, and include a succinct description of the related infrastructure items, law enforcement enhancement programs, and the classification or title of any personnel.

(5) How the use of the funds benefits the motoring public.

(g) For each county that fails to submit the report required pursuant to subdivision (f) by November 1 of each year, the Controller shall notify the Department of Motor Vehicles to suspend the fee for that county imposed pursuant to subdivision (a) for one year.

(h) If any funds received by a county pursuant to subdivision (a) are not expended or encumbered in accordance with this section by the close of the fiscal year in which the funds were received, the Controller shall notify the Department of Motor Vehicles to suspend the fee for that county imposed pursuant to subdivision (a) for one year. For purposes of this subdivision, ''encumbered funds'' ~~shall mean~~ *means* funding that is scheduled to be spent pursuant to a determined schedule and for an identified purchase consistent with this section.

(i) On or before January 1, 2004, and on January 1 annually thereafter, the Controller shall prepare and submit to the Legislature a revenue and expenditure summary based on the information provided pursuant to paragraphs (1) to (3), inclusive, of subdivision (f), for each county that has authorized the collection of the fee pursuant to subdivision (a). The Controller shall attach to the revenue and expenditure summary the documents provided by each county pursuant to paragraphs (4) and (5) of ~~subdivisions~~ *subdivision* (f).

(j) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date. No fee imposed pursuant to this section may be collected beyond that date.

SEC. 301. Section 9554 of the Vehicle Code is amended to read:

9554. (a) (1) The penalty shall be computed as provided in Sections 9406 and 9559 and shall be collected with the fee, except that the penalty for delinquency with respect to any transfer is ten dollars ($10) and applies only to the last transfer.

(2) A penalty shall be added on any application for renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(A) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period of more than 10 days to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(3) This subdivision applies to the renewal of registration for vehicles with expiration dates on or before December 31, 2002.

(b) Penalties specified in paragraphs (1), (2), and (3) of this subdivision shall be computed as provided in Section 9559 and

shall be collected with the fee, except that the penalty for delinquency with respect to any transfer is ten dollars ($10) and applies only to the last transfer. A penalty shall be added on any application for a renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due.

(1) (A) For a delinquency period of 10 days or less, the penalty is ten dollars ($10).

(B) For a delinquency period of more than 10 days, to and including 30 days, the penalty is fifteen dollars ($15).

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is thirty dollars ($30).

(D) For a delinquency period of more than one year, to and including two years, the penalty is fifty dollars ($50).

(E) For a delinquency period of more than two years, the penalty is one hundred dollars ($100).

(2) The penalty on the weight fee and the vehicle license fee shall be computed after the weight fee as provided in Section 9400 or 9400.1 plus the vehicle license fee specified in Section 10751 of the Revenue and Taxation Code have been added together as follows:

(A) For a delinquency period ~~or~~ *of* 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year, to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(3) Weight fees not reported and not paid within 20 days, as required by Section 9406, shall be assessed a penalty on the difference in the weight fee, as follows:

(A) For a delinquency period ~~or~~ *of* 10 days or less, the penalty is 10 percent of the fee.

(B) For a delinquency period exceeding 10 days, to and including 30 days, the penalty is 20 percent of the fee.

(C) For a delinquency period of more than 30 days, to and including one year, the penalty is 60 percent of the fee.

(D) For a delinquency period of more than one year, to and including two years, the penalty is 80 percent of the fee.

(E) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

(4) This subdivision applies to the renewal of registration for vehicles with expiration dates on or after January 1, 2003.

SEC. 302. Section 11614.1 of the Vehicle Code is amended to read:

11614.1. No lessor-retailer licensed under this chapter may do any of the following in connection with any activity for which this license is required:

(a) Use a picture in connection with any advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make, and model being offered for sale. The picture ~~shall~~ *may* not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

(b) Advertise a vehicle for sale that was used by the selling lessor-retailer in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement ~~shall~~ *may* not describe any of those vehicles as ''new.''

(c) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as ''used,'' ''previously owned,'' or a similar term that indicates that the vehicle is used, as defined in this code.

(d) Use the terms ''on approved credit'' or ''on credit approval'' in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

(e) Advertise an amount described by terms such as ''unpaid balance'' or ''balance can be financed'' unless the total sale price is clearly and conspicuously disclosed and is in close proximity to the advertised balance.

(f) Advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

(g) Advertise claims such as ‘‘everyone financed,’’ ‘‘no credit rejected,’’ or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

(h) Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. A statement such as ‘‘$____ ~~deliver,’’~~ *delivers,*’’ is an example of an advertised downpayment.

(i) Fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

SEC. 303. Section 11701 of the Vehicle Code is amended to read:

11701. Every manufacturer ~~of~~, ~~and~~ manufacturer branch, remanufacturer ~~of~~, ~~and~~ remanufacturer branch, distributor ~~of~~, ~~and~~ distributor branch, transporter ~~of~~, or dealer ~~in~~ *of* vehicles of a type subject to registration, or snowmobiles, motorcycles, or trailers of a type subject to identification, shall make application to the department for a license containing a general distinguishing number. The applicant shall submit proof of his or her status as a bona fide manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer as may reasonably be required by the department.

SEC. 304. Section 11711.3 of the Vehicle Code is amended to read:

11711.3. A person acting as a dealer, who was not licensed as a dealer as required by this article, or a person acting as a lessor-retailer, who was not licensed as a lessor-retailer as required by Chapter 3.5 (commencing with Section 11600), may not enforce any security interest or bring or maintain any action in law or equity to recover any money or property or obtain other relief from the purchaser or lessee of a vehicle in connection with a transaction in which the person was, at the time ~~at~~ *of* the transaction, required to be licensed as a dealer or a lessor-retailer.

SEC. 305. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over ~~and~~, has successfully completed an approved course in automobile driver education, and is taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years or over ~~and~~, is enrolled in an approved driver education course, and is at the same time or during the same semester enrolled in an approved driver training course.

(4) Is over the age of 17 years and 6 months.

(5) Is over the age of 16 years and is applying for a restricted driver's license pursuant to Section 12814.7.

(b) The applicant shall qualify for and be issued an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Except as provided in Section 12814.6, any person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), may operate a motor vehicle, other than a motorcycle or a motorized bicycle, when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) Any person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and any person, while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle or a motorized bicycle, except that the person shall not operate a motorcycle or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(f) Any person ~~while~~ having in his or her immediate possession a valid permit issued pursuant to paragraph (5) of subdivision (a)~~,~~ may only operate a government-owned motor vehicle, other than a motorcycle or a motorized bicycle, when taking the driver training instruction administered by the California National Guard as required by paragraph (2) of subdivision (a) of Section 21814.7.

(g) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(h) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 306. Section 21228 of the Vehicle Code is amended to read:

21228. ~~(a)~~ Any person operating a motorized scooter upon a highway at a speed less than the normal speed of traffic moving in the same direction at that time shall ride as close as practicable to the right-hand curb or right edge of the roadway, except under the following situations:

~~(1)~~

(a) When overtaking and passing another vehicle proceeding in the same direction.

~~(2)~~

(b) When preparing for a left turn, the operator shall stop and dismount as close as practicable to the right-hand curb or right edge of the roadway and complete the turn by crossing the roadway on foot, subject to the restrictions placed on pedestrians in Chapter 5 (commencing with Section 21950).

~~(3) (A)~~

(c) (1) When reasonably necessary to avoid conditions, including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes, which make it unsafe to continue along the right-hand curb or right edge of the roadway, subject to Section 21656.

~~(B)~~

(2) For the purposes of ~~subparagraph (A)~~ *paragraph (1)*, a ''substandard width lane'' is a lane that is too narrow for a motorized scooter and another vehicle to travel safely side by side within the lane.

~~(4)~~

(d) Any person operating a motorized scooter upon a highway that carries traffic in one direction only and has two or more marked traffic lanes may operate the motorized scooter as near the left-hand curb or left edge of that roadway as practicable.

However, when preparing for a right turn, the operator shall stop and dismount as close as practicable to the left-hand curb or left edge of the highway and complete the turn by crossing the roadway on foot, subject to the restrictions placed on pedestrians in Chapter 5 (commencing with Section 21950).

SEC. 307. Section 21655.3 of the Vehicle Code is amended to read:

21655.3. (a) A high-occupancy vehicle lane on a state highway ~~which~~ *that* has been given permanent operational status as a high-occupancy lane by the department on or after January 1, 1987, but before December 31, 1987, in conjunction with a transportation planning agency, and ~~which~~ *that* is operated as a high-occupancy vehicle lane on a 24-hour basis after that date, shall be separated from adjacent mixed-flow lanes by a buffer area of at least four feet in width.

(b) The transportation planning agency having within its area of jurisdiction a high-occupancy vehicle lane meeting the operational requirements of subdivision (a) and having no buffer or a buffer less than four feet in width shall, by July 1, 1988, do one of the following:

(1) Enter into an agreement with the department to provide a four-foot buffer between the high-occupancy vehicle lane and the adjacent lanes and agree to pay any costs for the buffer not programmed by the department.

(2) Submit to the department a written request that the ~~high-occupany~~ *high-occupancy* vehicle lane be changed to a mixed-flow lane.

(c) Upon receipt of notification by the transportation planning agency of its request that the high-occupancy vehicle lane become a mixed-flow lane, the department shall proceed with the work necessary to change the high-occupancy lane to a mixed-flow lane.

(d) The width of a buffer between a high-occupancy vehicle lane and adjacent lanes may be less than four feet at locations where a four-foot buffer would require the removal, relocation, or reconstruction of any existing bridge support structures or where part of the buffer space is required for enforcement refuge areas.

SEC. 308. Section 23109.2 of the Vehicle Code, as amended by Section 2 of Chapter 411 of the Statutes of 2002, is amended to read:

23109.2. (a) (1) Whenever a peace officer determines that a person was engaged in any of the activities set forth in paragraph (2), the peace officer may immediately arrest and take into custody that person and may cause the removal and seizure of the motor vehicle used in that contest in accordance with Chapter 10 (commencing with Section 22650). A motor vehicle so seized may be impounded for not more than 30 days.

(2) (A) A motor vehicle speed contest, as described in subdivision (a) of Section 23109.

(B) Reckless driving on a highway, as described in subdivision (a) of Section 23103.

(C) Reckless driving in any offstreet parking facility, as described in subdivision (b) of Section 23103.

(D) Exhibition of speed on a highway, as described in subdivision (c) of Section 23109.

(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 the storage in accordance with Section 22852.

(c) (1) Notwithstanding Chapter 10 (commencing with Section 22650) or any other provision of law, an impounding agency shall release a motor vehicle to the registered owner or his or her agent prior to the conclusion of the impoundment period described in subdivision (a) under any of the following circumstances:

(A) If the vehicle is a stolen vehicle.

(B) If the person alleged to have been engaged in the motor vehicle speed contest, as described in subdivision (a), was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense.

(C) If the registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation pursuant to subdivision (a), or was unaware that the driver was using the vehicle to engage in any of the activities described in subdivision (a).

(D) If the legal owner or registered owner of the vehicle is a rental car agency.

(E) If, prior to the conclusion of the impoundment period, a citation or notice is dismissed under Section 40500, criminal charges are not filed by the district attorney because of a lack of evidence, or the charges are otherwise dismissed by the court.

(2) A vehicle shall be released pursuant to this subdivision only if the registered owner or his or her agent presents a currently valid driver's license to operate the vehicle and proof of current vehicle registration, or if ordered by a court.

(3) If, pursuant to subparagraph ~~(D)~~ *(E)* of paragraph (1) a motor vehicle is released prior to the conclusion of the impoundment period, neither the person charged with a violation of subdivision (a) of Section 23109 nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges.

(d) A vehicle seized and removed under subdivision (a) shall be released to the legal owner of the vehicle, or the legal owner's agent, on or before the 30th day of 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 impoundment of the vehicle. No lien sale processing fees shall be charged to a legal owner who redeems the vehicle on or before the 15th day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

(e) (1) 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.

(2) Notwithstanding paragraph (1), if the person convicted of engaging in the activities set forth in paragraph (2) of subdivision (a) was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for any towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5 incurred by the registered owner to obtain possession of the vehicle, unless the court finds that the person convicted does not have the ability to pay all or part of those charges.

(3) If the vehicle is a rental vehicle, 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 possession of the vehicle.

(4) The owner ~~shall not be~~ *is not* liable for any towing and storage charges related to the impoundment if acquittal or dismissal occurs.

(5) The vehicle ~~shall~~ *may* not be sold prior to the defendant's conviction.

(6) The impounding agency is responsible for the actual costs incurred by the towing agency as a result of the impoundment should the registered owner be absolved of liability for those charges pursuant to paragraph (3) of subdivision (c) of Section

23109.2. Notwithstanding this provision, nothing shall prohibit impounding agencies from making prior payment arrangements to satisfy this requirement.

(f) 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 (h) of Section 23109.

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

SEC. 309. Section 42011 of the Vehicle Code is amended to read:

42011. (a) For any offense specified in subdivision (b) that is committed by the driver of a vehicle under either of the following conditions, the fine in a misdemeanor case shall be double the base amount otherwise prescribed, not including any penalty assessments or other fees or additions, and in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310, not including any penalty assessments or other fees or additions:

(1) When passing a school building or the grounds thereof, if the building or grounds are contiguous to a highway and posted with a standard ''SCHOOL'' warning sign and an accompanying sign notifying motorists that increased penalties apply for traffic violations that are committed within that school zone, and children are going to or leaving the school either during school hours or during the noon recess period.

(2) When passing any school grounds that are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children, and the highway is posted with a standard ''SCHOOL'' warning sign and an accompanying sign notifying motorists that increased penalties apply for traffic violations that are committed within that school zone.

(b) A violation of any of the following provisions is an offense that is subject to subdivision (a):

(1) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

(2) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(3) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(4) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(5) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(6) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(7) Section 23103, relating to reckless driving.

(8) Section 23104, relating to reckless driving which results in bodily injury to another.

(9) Section 23109, relating to speed contests.

(10) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(11) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(12) Section 23220, relating to drinking while driving.

(13) Section 23221, relating to drinking in a motor vehicle while on the highway.

(14) Section 23222, relating to driving while possessing marijuana or an open alcoholic beverage container.

(15) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(16) Section 23224, relating to being a driver or passenger under the age of 21 years possessing an open alcoholic beverage container.

(17) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(18) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) (1) This section applies only in Alameda County, Santa Barbara County, Ventura County, or in a city in any of these counties, and only if that jurisdiction has adopted this section by a vote of the city council or county board of supervisors, as appropriate.

(2) The increased fines authorized by subdivision (a) may only be imposed and collected once per offense ~~or~~ notwithstanding the

fact that the offense occurred within more than one jurisdiction all of which have adopted this section. Furthermore, no increased fine shall be imposed if an increased fine is imposed under Section 42009 or 42010 because the offense occurred within a highway construction or maintenance area or safety enhancement area.

(d) Any city or county that adopts this section shall promptly notify the California Highway Patrol and the law enforcement agency having the primary traffic investigative authority of that fact.

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

SEC. 310. Section 1013 of the Water Code is amended to read:

1013. (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the *California* Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Section 1 of ~~the act amending this section during the 2001–2002 Regular Session~~ *Chapter 617 of the Statutes of 2002*, ''land fallowing conservation measures'' means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of whether it occurs in the course of normal and customary agricultural production, if both of the following apply:

(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board's assessment of whether the proposed land fallowing conservation plan includes adequate measures to avoid or mitigate

unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land fallowing conservation measures to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement, if the Imperial Irrigation District utilizes land fallowing conservation measures that ensure compliance with the criteria of subdivision (c) of Section 2081.7 of the Fish and Game Code for the environmental impacts of a water transfer to implement the Quantification Settlement Agreement, no person or local agency, as defined in Section 21062 of the Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) Subdivisions (c), (d), and (e) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before December 31, 2002.

(g) This section may not be construed to exempt the Imperial Irrigation District from any requirement established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 311. Section 12949.6 of the Water Code is amended to read:

12949.6. (a) Not later ~~that~~ *than* July 1, 2004, the ~~Department of Water Resources~~ *department* shall report to the Legislature on potential opportunities for the use of seawater and brackish water desalination in California. The report shall evaluate impediments to the use of desalination technology and shall examine what role, if any, the state should play in furthering the use of desalination in California.

(b) The department shall convene a task force, to be known as the Water Desalination Task Force, to advise the department in implementation of subdivision (a), including making recommendations to the Legislature regarding the following:

(1) The need for research, development, and demonstration projects for more cost effective and technologically efficient desalination processes.

(2) The environmental impacts of brine disposal, energy use related to desalination, and large-scale ocean water desalination.

(3) An evaluation of the current regulatory framework of state and local rules, regulations, ordinances, and permits to identify the obstacles and methods to creating an efficient siting and permitting system.

(4) Determining a relationship between existing electricity generation facilities and potential desalination facilities, including an examination of issues related to the amounts of electricity required to maintain a desalination facility.

(5) Ensuring desalinated water meets state water quality standards.

(6) Impediments or constraints, other than water rights, to increasing the use of desalinated water both in coastal and inland regions.

(7) The economic impact and potential impacts of the desalination industry on state revenues.

(8) The role that the state should play in furthering the use of desalination technology in California.

(9) An evaluation of a potential relationship between desalination technology and alternative energy sources, including photovoltaic energy and desalination.

(c) (1) The task force shall be convened by the department and be comprised of one representative from each of the following agencies:

(A) The department.

(B) The California Coastal Commission.

(C) The State Energy Resources Conservation and Development Commission.

(D) The California Environmental Protection Agency.

(E) The State Department of Health Services.

(F) The Resources Agency.

(G) The State Water Resources Control Board.

(H) The CALFED Bay-Delta Program.

(I) The Department of Food and Agriculture.

(J) The University of California.

(K) The United States Department of Interior, if that agency wishes to participate.

(2) The task force shall also include, as determined by the department, one representative from a recognized environmental advocacy group, one representative from a consumer advocacy group, one representative of local agency health officers, one representative of a municipal water supply agency, one representative of urban water wholesalers, one representative from a regional water control board, one representative from a groundwater management entity, one representative of water districts, one representative from a nonprofit association of public and private members created to further the use of desalinated water, one representative of land development, and one representative of industrial interests.

(d) The sum of ~~$100,000~~ *one hundred thousand dollars ($100,000)* is hereby appropriated from the Bosco-Keene Renewable Resources Investment Fund to the department for the purpose of establishing the task force and preparing the report required in subdivision (a).

SEC. 312. Section 12994 of the Water Code is amended to read:

12994. (a) The Legislature finds and declares all of the following:

(1) The CALFED Bay-Delta Program has identified as a core action the need for emergency levee management planning for delta levees to improve system reliability.

(2) Even with active levee maintenance, the threat of delta levee failures from earthquake, flood, or poor levee foundation, will continue to exist.

(3) Because of this threat of failure, and the potential need to mobilize people and equipment in an emergency to protect delta levees and public benefits, the department needs authority that will enable it to act quickly.

(b) The department may do all of the following:

(1) In an emergency, as defined by Section 21060.3 of the Public Resources Code, that requires immediate levee work to protect public benefits in the delta, the department may use funds pursuant to this part without prior approval of a plan by the board or the Department of Fish and Game, in which case the requirements of Sections 12987 and 12314, and the memorandum of understanding pursuant to Section 12307, shall be carried out as soon as possible.

(A) The amount of funds that may be expended each year on emergency levee work under this section shall not be greater than two hundred thousand dollars ($200,000) and the amount that may be expended per emergency levee site shall not be greater than fifty thousand dollars ($50,000). The local agency shall fund 25 percent of the total costs of the emergency repair at a site or shall fund an appropriate share of the costs as approved by the board and based upon information of the local agency's ability to pay for the repairs.

(B) Department contracts executed for emergency levee work under this section shall be exempted from Department of General Services approval required under the Public Contract Code.

(C) As soon ~~a~~ *as* feasible after the emergency repair, the department shall submit a report to the board describing the levee work, costs incurred, and plans for future work at the site, including any necessary mitigation.

(D) This section is intended to supplement emergency services provided by the state or the United States. Nothing in this section overrides or supersedes the authority of the Director of the Office of Emergency Services under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) or the Disaster Assistance Act (Chapter 7.5 (commencing with Section 8680) of Division 1 of Title 2 of the Government Code).

(2) Prepare and submit to the board for adoption a delta emergency response plan for levee failures. The plan is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of

Division 3 of Title 2 of the Government Code. The plan may include recommendations of the multiagency response team established pursuant to paragraph (3) and may include, but not be limited to, the following:

(A) Standardized contracts for emergency levee work to be executed by the department, local agencies, or other appropriate entities.

(B) Criteria for eligible emergency levee work.

(C) Definition of an emergency levee site.

(D) Documentation requirements.

(E) Proposals for complying with the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) in an emergency.

(F) Stages of emergency response that may occur in various situations.

(3) Establish a multiagency emergency response team, consisting of representatives from the department, the board, the Department of Fish and Game, the California Conservation Corps, the Office of Emergency Services, the Federal Emergency Management Agency, the United States Army Corps of Engineers, and the United States Fish and Wildlife Service to advise on methods to ensure that levee emergencies will be resolved as quickly and safely as possible.

SEC. 313. Section 13307.1 of the Water Code is amended to read:

13307.1. (a) The state board and the regional boards shall not consider cleanup or site closure proposals from the primary or active responsible discharger, issue a closure letter, or make a determination that no further action is required with respect to a site subject to a cleanup or abatement order pursuant to Section 13304, unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the state board or regional board.

(b) The state board and regional boards shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

(c) In addition to the requirements of subdivision (a), if the state board or the regional board finds that the property is not suitable for unrestricted use and that a land use restriction is necessary for the protection of public health, safety, or the environment, then the state board and the regional boards may not issue a closure letter, or make a determination that no further action is required, with respect to a site that is subject to a cleanup or abatement order pursuant to Section 13304 and that is not an underground storage tank site, unless a land *use* restriction is recorded or required to be recorded pursuant to Section 1471 of the Civil Code.

SEC. 314. Section 22762 of the Water Code is amended to read:

22762. An action to determine the validity of the Quantification Settlement Agreement defined in subdivision (a) of Section 1 of ~~the act that added this section during the 2001–02 Regular Session~~ *Chapter 617 of the Statutes of 2002*, or any action regarding a contract entered into that implements, or is referenced in, that Quantification Settlement Agreement, may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 315. The heading of Article 1 (commencing with Section 71660) of Chapter 3 of Part 5 of Division 20 of the Water Code is amended to read:

Article 1. Recreation *and Electrical Power*

SEC. 316. Section 75480 of the Water Code is amended to read:

75480. (a) The North San Joaquin Water Conservation District, in addition to its other powers, may levy assessments as provided in this chapter.

(b) ''District,'' for the purposes of this chapter, means the North San Joaquin Water Conservation District.

(c) ''Collected water'' and ''water that is collected,'' for the purposes of this chapter, means the net acre-feet of water caused to be deposited onto land by the district. In determining the amount of collected water, both the amount of water entering the water system and the amount of water leaving the water system, having not been applied, shall be measured. The amount of water that leaves the system, having not been applied, shall be subtracted from the amount of water that enters the system. The difference

shall be reduced by the amount of water lost due to evaporation and further reduced for water subject to export from the district. The sum difference is the amount of collected water.

(d) ''Applied,'' for the purposes of this chapter, means that the water has been used for irrigation, recharge, in lieu *of* flooding, deposited into an area for storage, or held in an area for percolation purposes.

(e) ''System,'' for the purposes of this chapter, means all of the physical apparatus owned, operated, or maintained by the district for the purpose of moving or holding water.

SEC. 317. Section 79420 of the Water Code, as added by Chapter 955 of the Statutes of 2002, is amended to read:

79420. (a) The authority may exercise all of the following powers:

(1) Sue or be sued.

(2) Delegate administrative functions to the staff of the authority.

(3) Request reports from state, federal, and local government agencies on issues related to the implementation of the California Bay-Delta Program.

(4) Receive funds, including funds from private and local government sources, and contributions from public and private sources, as well as state and federal appropriations.

(5) Enter into contracts consistent with existing contracting practices of the Department of General Services.

(6) Disburse funds through grants, public assistance, loans, and contracts to entities, including federally recognized Indian tribes, within the Bay-Delta Program regions, as described in subdivision (e) of Section 79401, to carry out the Bay-Delta Program goals and objectives.

(7) Employ the services of other public, nonprofit, or private entities.

(8) Employ its own legal staff or contract with other state or federal agencies for legal services, or both. The authority may employ special legal counsel with the approval of the Attorney General.

(9) Adopt regulations as needed for the implementation of this division. A federal representative may decline to participate in actions described in this subdivision if he or she identifies a constitutional or statutory limitation on that participation. The

authority granted by this ~~subdivision~~ *paragraph* does not extend to the adoption of regulations to implement the program elements described in subdivisions (a) to (f), inclusive, and subdivision (h) of Section 79441.

(10) Obtain and hold regulatory permits and prepare environmental documents.

(11) Pursuant to Section 78684.8, the authority is hereby designated the successor to the Secretary of the Resources Agency for the purpose of carrying out the balancing and related procedures established pursuant to Section 78684.12.

(b) This section shall become operative only if this bill and Senate Bill 1653 of the 2001–02 Regular Session are both chaptered and become effective on or before January 1, 2003, and this bill is chaptered last, in which case this section shall prevail over Section 79420, as added by Senate Bill 1653.

SEC. 318. Section 79460 of the Water Code is amended to read:

79460. (a) The authority shall provide administrative support for the Bay-Delta Public Advisory Committee.

(b) The authority shall take any administrative actions necessary to maintain the Bay-Delta Public Advisory Committee's status as an advisory committee under the Federal Advisory Committee Act ~~(Public Law~~ *(P.L.* 92-463, as amended).

(c) The authority shall provide assistance to the Governor and Secretary of the Interior to ensure that the candidates for appointment to the Bay-Delta Public ~~Delta Public~~ Advisory Committee are representatives of federally recognized Indian tribes or "stakeholder" groups, reflect a geographic diversity and diversity of interests affected by the health of the bay-delta, and have expertise in the relevant fields as specified in the committee's federal charter. Appointment shall be made to ensure that the committee as a whole is both balanced and diverse.

(d) The Bay-Delta Public Advisory Committee shall advise and make recommendations to the authority and director on issues related to the California Bay-Delta Program and any of the processes, projects, or programs required by this division.

(e) The members of the Bay-Delta Public Advisory Committee may receive reimbursement for necessary travel expenses incurred by the members in the performance of the members' duties, consistent with state per diem rates.

SEC. 319. Section 225.05 of the Welfare and Institutions Code is amended to read:

225.05. (a) The Department of the Youth Authority shall convene a task force to identify and recommend methods of achieving better coordination of, and savings~~,~~ in, the continuum of correctional, rehabilitative, and preventive services for youthful offenders, including status offenders adjudicated pursuant to Section 601 and delinquents adjudicated pursuant to Sections 602 and 707. The department shall report on the findings and recommendations of the task force to the Legislature no later than January 15, 1992.

(b) The task force shall develop recommendations for achieving the following:

(1) The use of local community corrections options, including innovative methods of providing delinquency prevention and treatment programs.

(2) Innovative, intensive programs for wards committed to the Department of the Youth Authority facilities.

(3) Coordination with state and local programs which provide treatment and services to youthful offenders.

(4) Restructuring current state and local juvenile justice funding mechanisms in order to provide fiscal and program incentives for the utilization of local juvenile justice treatment and services, including, but not limited to, the utilization of a negotiated net amount or rate model pursuant to ~~Section~~ Article 3 (commencing with Section 5700) of Chapter 2 of Part 1, for payment of costs associated with commitment of wards to the Department of the Youth Authority facilities.

(5) (A) Appropriate funding of juvenile justice programs contained in county realignment under Section 17602, including all of the following provisions:

(i) Article 25.4 (commencing with Section 894) of Chapter 2 of Division 2.

(ii) Article 5.5 (commencing with Section 1790) of Chapter 1 of Division 2.5.

(iii) Article 7 (commencing with Section 1805) of Chapter 1 of Division 2.5.

(iv) Article 10 (commencing with Section 1900) of Chapter 1 of Division 2.5.

(B) The task force shall recommend both short-term and long-term funding solutions for the programs specified in subparagraph (A), including recommendations for appropriate state and local agency responsibility for determining funding levels, program administration, oversight, and evaluation.

(c) The task force shall be composed of persons knowledgeable in delinquency prevention programs, juvenile justice issues, and alternative juvenile justice models, including representatives of the Department of the Youth Authority, the State Department of Social Services, the Chief Probation Officers Association, the County Supervisors Association of California, the County Welfare Directors Association, the Juvenile Court Judges of California, and county and private nonprofit agencies involved with juvenile justice services. In developing its recommendations, the task force shall consult with representatives of providers of group home care for delinquent minors.

SEC. 320. Section 366.4 of the Welfare and Institutions Code is amended to read:

366.4. (a) Any minor for whom a guardianship has been established resulting from the selection or implementation of a ~~permanent~~ *permanency* plan pursuant to Section 366.26 is within the jurisdiction of the juvenile court. For those minors, Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, relating to guardianship, shall not apply. If no specific provision of this code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) of Division 4 of the Probate Code govern so far as they are applicable to like situations.

(b) Nonrelated legal guardians of the person of a minor established as a result of a ~~permanent~~ *permanency* plan selected pursuant to Section 366.26 shall be exempt from the provisions of Sections 2850 and 2851 of the Probate Code.

SEC. 321. Section 1719 of the Welfare and Institutions Code is amended to read:

1719. The following powers and duties shall be exercised and performed by the Youthful Offender Parole Board as such, or may be delegated to a panel, member, or case hearing representative as provided in Section 1721: return of persons to the court of commitment for redisposition by the court, discharge of

commitment, orders to parole and conditions thereof, revocation or suspension of parole, recommendation for treatment program, determination of the date of next appearance, *and* return of nonresident persons to the jurisdiction of the state of legal residence.

SEC. 322. 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 ~~(b)~~ *(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) 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) 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.

SEC. 323. Section 4094 of the Welfare and Institutions Code is amended to read:

4094. (a) The State Department of Mental Health shall establish, by regulations adopted at the earliest possible date, but no later than December 31, 1994, program standards for any facility licensed as a community treatment facility. This section shall apply only to community treatment facilities described in this subdivision.

(b) A certification of compliance issued by the State Department of Mental Health shall be a condition of licensure for the community treatment facility by the State Department of Social Services. The department may, upon the request of a county, delegate the certification and supervision of a community treatment facility to the county department of mental health.

(c) The State Department of Mental Health shall adopt regulations to include, but not be limited to, the following:

(1) Procedures by which the Director of Mental Health shall certify that a facility requesting licensure as a community treatment facility pursuant to Section 1502 of the Health and Safety Code is in compliance with program standards established pursuant to this section.

(2) Procedures by which the Director of Mental Health shall deny a certification to a facility or decertify a facility licensed as a community treatment facility pursuant to Section 1502 of the Health and Safety Code, but no longer complying with program standards established pursuant to this section, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program standards established pursuant to this section.

(4) Provisions for the community care licensing staff of the State Department of Social Services to report to the State Department of Mental Health when there is reasonable cause to believe that a community treatment facility is not in compliance with program standards established pursuant to this section.

(5) Provisions for the State Department of Mental Health to provide consultation and documentation to the State Department of Social Services in any administrative proceeding regarding denial, suspension, or revocation of a community treatment facility license.

(d) The standards adopted by regulations pursuant to subdivision (a) shall include, but not be limited to, standards for treatment staffing and for the use of psychotropic medication, discipline, and ~~restraint~~ *restraints* in the facilities. The standards shall also meet the requirements of Section 4094.5.

(e) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Mental Health shall be presented simultaneously.

(f) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following conditions is met:

(1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.

(2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.

(g) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in In re Roger S. (1977) 19 Cal. 3d 921. Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including In re Michael E. (1975) 15 Cal. 3d 183. Regulations adopted pursuant to Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.

(h) Notwithstanding Section 13340 of the Government Code, the sum of forty-five thousand dollars ($45,000) is hereby appropriated annually from the General Fund to the State Department of Mental Health for one personnel year to carry out the provisions of this section.

SEC. 324. Section 4503 of the Welfare and Institutions Code is amended to read:

4503. Each person with developmental disabilities who has been admitted or committed to a state hospital, community care facility as defined in Section 1502 of the Health and Safety Code, or a health facility as defined in Section 1250 of the Health and Safety Code shall have the following rights, a list of which shall

be prominently posted in English, Spanish, and other appropriate languages, in all facilities providing those services and otherwise brought to his or her attention by any additional means as the Director of Developmental Services may designate by regulation:

(a) To wear his or her own clothes, to keep and use his or her own personal possessions including his or her toilet articles, and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

(b) To have access to individual storage space for his or her private use.

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls.

(e) To have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse electroconvulsive therapy.

(g) To refuse behavior modification techniques which cause pain or trauma.

(h) To refuse psychosurgery notwithstanding the provisions of ~~Section~~ *Sections* 5325, 5326, and 5326.3. Psychosurgery means those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for any of the following purposes:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.

(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, action, or behavior.

(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions, or behavior when the abnormality is not an established cause for those thoughts, feelings, ~~action~~ *actions*, or behavior.

(i) To make choices in areas including, but not limited to, his or her daily living routines, choice of companions, leisure and social activities, and program planning and implementation.

(j) Other rights, as specified by regulation.

SEC. 325. Section 5205 of the Welfare and Institutions Code is amended to read:

5205. The petition shall be in substantially the following form:

In the Superior Court of the State of California
for the County of _____

_____

The People of the State of California — No. _____
Concerning — Petition for
_____ and — Evaluation
_____
Respondents
_____

_____, residing at _____ (tel. ____), being duly sworn, alleges: That there is now in the county, in the City or Town of _____, a person named _____, who resides at _____, and who is, as a result of mental disorder:

(1) A danger to others.

(2) A danger to himself *or herself*.

(3) Gravely disabled as defined in subdivision (h) of Section 5008 of the Welfare and Institutions Code (Strike out all inapplicable classifications).

That the person is ____ years of age; that __ the person is ____(sex); and that __ the person is _____ (single, married, widowed, or divorced); and that _____ occupation is _____.

That the facts upon which the allegations of the petition are based are as follows: That __ the person, at _____ in the county, on the _____ day of _____, 20__, _____
_____
_____

That petitioner's interest in the case is _____
_____

That the person responsible for the care, support, and maintenance of the person, and their relationship to the person are, so far as known to the petitioner, as follows: (Give names, addresses, and relationship of persons named as respondents)

Wherefore, petitioner prays that evaluation be made to determine the condition of ____, alleged, as a result of mental disorder, to be a danger to others, or to himself *or herself*, or to be gravely disabled.

_____
Petitioner

Subscribed and sworn to before me this ____ day of _____ 20__.

_____, Clerk of the Court

By _____ Deputy

SEC. 326. Section 5346 of the Welfare and Institutions Code is amended to read:

5346. (a) In any county in which services are available as provided in Section 5348, a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment if the court finds, by clear and convincing evidence, that the facts stated in the verified petition filed in accordance with this section are true and establish that all of the requisite criteria set forth in this section are met, including, but not limited to, each of the following:

(1) The person is 18 years of age or older.

(2) The person is suffering from a mental illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3.

(3) There has been a clinical determination that the person is unlikely to survive safely in the community without supervision.

(4) The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true:

(A) The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(B) The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(5) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health

department, or his or her designee, provided the treatment plan includes all of the services described in Section 5348, and the person continues to fail to engage in treatment.

(6) The person's condition is substantially deteriorating.

(7) Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability.

(8) In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others, as defined in Section 5150.

(9) It is likely that the person will benefit from assisted outpatient treatment.

(b) (1) A petition for an order authorizing assisted outpatient treatment may be filed by the county mental health director, or his or her designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present.

(2) A request may be made only by any of the following persons to the county mental health department for the filing of a petition to obtain an order authorizing assisted outpatient treatment:

(A) Any person 18 years of age or older with whom the person who is the subject of the petition resides.

(B) Any person who is the parent, spouse, or sibling or child 18 years of age or older of the person who is the subject of the petition.

(C) The director of any public or private agency, treatment facility, charitable organization, or licensed residential care facility providing mental health services to the person who is the subject of the petition in whose institution the subject of the petition resides.

(D) The director of a hospital in which the person who is the subject of the petition is hospitalized.

(E) A licensed mental health treatment provider who is either supervising the treatment of, or treating for a mental illness, the person who is the subject of the petition.

(F) A peace officer, parole officer, or probation officer assigned to supervise the person who is the subject of the petition.

(3) Upon receiving a request pursuant to paragraph (2), the county mental health director shall conduct an investigation into the appropriateness of the filing of the petition. The director shall file the petition only if he or she determines that there is a reasonable likelihood that all the necessary elements to sustain the petition can be proven in a court of law by clear and convincing evidence.

(4) The petition shall state all of the following:

(A) Each of the criteria for assisted outpatient treatment as set forth in subdivision (a).

(B) Facts that support the petitioner's belief that the person who is the subject of the petition meets each criterion, provided that the hearing on the petition shall be limited to the stated facts in the verified petition, and the petition contains all the grounds on which the petition is based, in order to ensure adequate notice to the person who is the subject of the petition and his or her counsel.

(C) That the person who is the subject of the petition is present, or is reasonably believed to be present, within the county where the petition is filed.

(D) That the person who is the subject of the petition has the right to be represented by counsel in all stages of the proceeding under the petition, in accordance with subdivision (c).

(5) The petition shall be accompanied by an affidavit of a licensed mental health treatment provider designated by the local mental health director who shall state, if applicable, either of the following:

(A) That the licensed mental health treatment provider has personally examined the person who is the subject of the petition no more than 10 days prior to the submission of the petition, the facts and reasons why the person who is the subject of the petition meets the criteria in subdivision (a), that the licensed mental health treatment provider recommends assisted outpatient treatment for the person who is the subject of the petition, and that the licensed mental health treatment provider is willing and able to testify at the hearing on the petition.

(B) That no more than 10 days prior to the filing of the petition, the licensed mental health treatment provider, or his or her designee, has made appropriate attempts to elicit the cooperation of the person who is the subject of the petition, but has not been successful in persuading that person to submit to an examination,

that the licensed mental health treatment provider has reason to believe that the person who is the subject of the petition meets the criteria for assisted outpatient treatment, and that the licensed mental health treatment provider is willing and able to examine the person who is the subject of the petition and testify at the hearing on the petition.

(c) The person who is the subject of the petition shall have the right to be represented by counsel at all stages of a proceeding commenced under this section. If the person so elects, the court shall immediately appoint the public defender or other attorney to assist the person in all stages of the proceedings. The person shall pay the cost of the legal services if he or she is able.

(d) (1) Upon receipt by the court of a petition submitted pursuant to subdivision (b), the court shall fix the date for a hearing at a time not later than five days from the date the petition is received by the court, excluding Saturdays, Sundays, and holidays. The petitioner shall promptly cause service of a copy of the petition, together with written notice of the hearing date, to be made personally on the person who is the subject of the petition, and shall send a copy of the petition and notice to the county office of patient rights, and to the current health care provider appointed for the person who is the subject of the petition, if any such provider is known to the petitioner. Continuances shall be permitted only for good cause shown. In granting continuances, the court shall consider the need for further examination by a physician or the potential need to provide expeditiously assisted outpatient treatment. Upon the hearing date, or upon any other date or dates to which the proceeding may be continued, the court shall hear testimony. If it is deemed advisable by the court, and if the person who is the subject of the petition is available and has received notice pursuant to this section, the court may examine in or out of court the person who is the subject of the petition who is alleged to be in need of assisted outpatient treatment. If the person who is the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the person have failed, the court may conduct the hearing in the person's absence. If the hearing is conducted without the person present, the court shall set forth the factual basis for conducting the hearing without the person's presence.

(2) The court shall not order assisted outpatient treatment unless an examining licensed mental health treatment provider, who has personally examined, and has reviewed the available treatment history of, the person who is the subject of the petition within the time period commencing 10 days before the filing of the petition, testifies in person at the hearing.

(3) If the person who is the subject of the petition has refused to be examined by a licensed mental health treatment provider, the court may request that the person consent to an examination by a licensed mental health treatment provider appointed by the court. If the person who is the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order any person designated under Section 5150 to take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital for examination by a licensed mental health treatment provider as soon as is practicable. Detention of the person who is the subject of the petition under the order may not exceed 72 hours. If the examination is performed by another licensed mental health treatment provider, the examining licensed mental health treatment provider may consult with the licensed mental health treatment provider whose affirmation or affidavit accompanied the petition regarding the issues of whether the allegations in the petition are true and whether the person meets the criteria for assisted outpatient treatment.

(4) The person who is the subject of the petition shall have all of the following rights:

(A) To adequate notice of the hearings to the person who is the subject of the petition, as well as to parties designated by the person who is the subject of the petition.

(B) To receive a copy of the court-ordered evaluation.

(C) To counsel. If the person has not retained counsel, the court shall appoint a public defender.

(D) To be informed of his or her right to judicial review by habeas corpus.

(E) To be present at the hearing unless he or she waives the right to be present.

(F) To present evidence.

(G) To call witnesses on his or her behalf.

(H) To cross-examine witnesses.

(I) To appeal decisions, and to be informed of his or her right to appeal.

(5) (A) If after hearing all relevant evidence, the court finds that the person who is the subject of the petition does not meet the criteria for assisted outpatient treatment, the court shall dismiss the petition.

(B) If after hearing all relevant evidence, the court finds that the person who is the subject of the petition meets the criteria for assisted outpatient treatment, and there is no appropriate and feasible less restrictive alternative, the court may order the person who is the subject of the petition to receive assisted outpatient treatment for an initial period not to exceed six months. In fashioning the order, the court shall specify that the proposed treatment is the least restrictive treatment appropriate and feasible for the person who is the subject of the petition. The order shall state the categories of assisted outpatient treatment, as set forth in Section 5348, that the person who is the subject of the petition is to receive, and the court may not order treatment that has not been recommended by the examining licensed mental health treatment provider and included in the written treatment plan for assisted outpatient treatment as required by subdivision (e). If the person has executed an advance health care directive pursuant to Chapter 2 (commencing with Section 4650) of Part 1 of Division 4.7 of the Probate Code, any directions included in the advance health care directive shall be considered in formulating the written treatment plan.

(6) If the person who is the subject of a petition for an order for assisted outpatient treatment pursuant to subparagraph (B) of paragraph (5) of subdivision (d) refuses to participate in the assisted outpatient treatment program, the court may order the person to meet with the assisted outpatient treatment team designated by the director of the assisted outpatient treatment program. The treatment team shall attempt to gain the person's cooperation with treatment ordered by the court. The person may be subject to a 72-hour hold pursuant to subdivision (f) only after the treatment team has attempted to gain the person's cooperation with treatment ordered by the court, and has been unable to do so.

(e) Assisted outpatient treatment shall not be ordered unless the licensed mental health treatment provider recommending assisted outpatient treatment to the court has submitted to the court a

written treatment plan that includes services as set forth in Section 5348, and the court finds, in consultation with the county mental health director, or his or her designee, all of the following:

(1) That the services are available from the county, or a provider approved by the county, for the duration of the court order.

(2) That the services have been offered to the person by the local director of mental health, or his or her designee, and the person has been given an opportunity to participate on a voluntary basis, and the person has failed to engage in, or has refused, treatment.

(3) That all of *the* elements of the petition required by this article have been met.

(4) That the treatment plan will be delivered to the county director of mental health, or to his or her appropriate designee.

(f) If, in the clinical judgment of a licensed mental health treatment provider, the person who is the subject of the petition has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the licensed mental health treatment provider, efforts were made to solicit compliance, and, in the clinical judgment of the licensed mental health treatment provider, the person may be in need of involuntary admission to a hospital for evaluation, the provider may request that persons designated under Section 5150 take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital, to be held up to 72 hours for examination by a licensed mental health treatment provider to determine if the person is in need of treatment pursuant to Section 5150. Any continued involuntary retention in a hospital beyond the initial 72-hour period shall be pursuant to Section 5150. If at any time during the 72-hour period the person is determined not to meet the criteria of Section 5150, and does not agree to stay in the hospital as a voluntary patient, he or she shall be released and any subsequent involuntary detention in a hospital shall be pursuant to Section 5150. Failure to comply with an order of assisted outpatient treatment alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court.

(g) If the director of the assisted outpatient treatment program determines that the condition of the patient requires further

assisted outpatient treatment, the director shall apply to the court, prior to the expiration of the period of the initial assisted outpatient treatment order, for an order authorizing continued assisted outpatient treatment for a period not to exceed 180 days from the date of the order. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with subdivisions (a) to (f), inclusive. The period for further involuntary outpatient treatment authorized by any subsequent order under this subdivision may not exceed 180 days from the date of the order.

(h) At intervals of not less than 60 days during an assisted outpatient treatment order, the director of the outpatient treatment program shall file an affidavit with the court that ordered the outpatient treatment affirming that the person who is the subject of the order continues to meet the criteria for assisted outpatient treatment. At these times, the person who is the subject of the order shall have the right to a hearing on whether or not he or she still meets the criteria for assisted outpatient treatment if he or she disagrees with the director's affidavit. The burden of proof shall be on the director.

(i) During each 60-day period specified in subdivision (h), if the person who is the subject of the order believes that he or she is being wrongfully retained in the assisted outpatient treatment program against his or her wishes, he or she may file a petition for a writ of habeas corpus, thus requiring the director of the assisted outpatient treatment program to prove that the person who is the subject of the order continues to meet the criteria for assisted outpatient treatment.

(j) Any person ordered to undergo assisted outpatient treatment pursuant to this article, who was not present at the hearing at which the order was issued, may immediately petition the court for a writ of habeas corpus. Treatment under the order for assisted outpatient treatment may not commence until the resolution of that petition.

SEC. 327. Section 5405 of the Welfare and Institutions Code is amended to read:

5405. (a) This section shall apply to each facility licensed by the State Department of Mental Health, or its delegated agent, on or after January 1, 2003. For purposes of this section, ''facility'' includes psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, licensed pursuant to Chapter 9 (commencing with Section 77001) of Division 5 of Title 22 of the

California Code of Regulations and mental health rehabilitation centers licensed pursuant to Chapter 3.5 (commencing with Section 781.00) of Division 1 of Title 9 of the California Code of Regulations.

(b) (1) (A) Prior to the initial licensure or first renewal of a license on or after January 1, 2003, of any person to operate or manage a facility specified in subdivision (a), the department shall submit fingerprint images and related information pertaining to the applicant or licensee to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the applicant or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the applicant or licensee has ever been convicted of a crime specified in subdivision (c). The department shall submit fingerprint images and related information each time the position of administrator, manager, program director, or fiscal officer of a facility is filled and prior to actual employment for initial licensure or an individual who is initially hired on or after January 1, 2003. For purposes of this subdivision, ''applicant'' and ''licensee'' ~~includes~~ *include* the administrator, manager, program director, or fiscal officer of a facility.

(B) Commencing January 1, 2003, upon the employment of any direct care staff the department shall submit fingerprint images and related information pertaining to the direct care staff person to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the direct care staff person or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the direct care staff person has ever been convicted of a crime specified in subdivision (c). The department shall notify the licensee of these results.

(C) Commencing January 1, 2003, any contract for services provided directly to patients or residents shall contain provisions to ensure that the direct services contractor submits to the department fingerprint images and related information pertaining to the direct services contractor for submission to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the direct services contractor or licensee. The Department of Justice shall provide the results of the

criminal record check to the department. The department shall determine whether the direct services contractor has ever been convicted of a crime specified in subdivision (c). The department shall notify the licensee of these results.

(2) If the applicant, licensee, direct care staff person, or direct services contractor specified in paragraph (1) has resided in California for at least the previous seven years, the department shall only require the submission of one set of fingerprint images and related information. The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the fingerprint submission. Fingerprints submitted pursuant to this subdivision include fingerprints taken by the use of live scan technology. When requested, the Department of Justice shall forward one set of fingerprint images to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions or arrests pending adjudication of the applicant, licensee, direct care staff person, or direct services contractor. The results of a criminal record check provided by the Department of Justice shall contain every conviction rendered against an applicant, licensee, direct care staff person, or direct services contractor, and every offense for which the applicant, licensee, direct care staff person, or direct services contractor is presently awaiting trial, whether the person is incarcerated or has been released on bail or on his or her own recognizance pending trial. The department shall request subsequent arrest notification from the Department of Justice pursuant to Section 11105.2 of the Penal Code.

(c) (1) The department shall deny any application for any license, suspend or revoke any existing license, and disapprove or revoke any employment or contract for direct services, if the applicant, licensee, employee, or direct services contractor has been convicted of, or incarcerated for, a felony defined in subdivision (c) of Section 667.5 of, or subdivision (c) of Section 1192.7 of, the Penal Code, within the preceding 10 years.

(2) The application for licensure or renewal of any license shall be denied, and any employment or contract to provide direct services shall be disapproved or revoked, if the criminal record of the person includes a conviction in another jurisdiction for an offense that, if committed or attempted in this state, would have

been punishable as one or more of the offenses referred to in paragraph (1).

(d) (1) The department may approve an application for, or renewal of, a license, or continue any employment or contract for direct services, if the person has been convicted of a misdemeanor offense that is not a crime upon the person of another, the nature of which has no bearing upon the duties for which the person will perform as a licensee, direct care staff person, or direct services contractor. In determining whether to approve the application, employment, or contract for direct services, the department shall take into consideration the factors enumerated in paragraph (2).

(2) Notwithstanding subdivision (c), if the criminal record of a person indicates any conviction other than a minor traffic violation, the department may deny the application for license or renewal, and may disapprove or revoke any employment or contract for direct services. In determining whether or not to deny the application for licensure or renewal, or to disapprove or revoke any employment or contract for direct services, the department shall take into consideration the following factors:

(A) The nature and seriousness of the offense under consideration and its relationship to the person's employment, duties, and responsibilities.

(B) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(C) The time that has elapsed since the commission of the conduct or offense and the number of offenses.

(D) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(E) Any rehabilitation evidence, including character references, submitted by the person.

(F) Employment history and current employer recommendations.

(G) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(H) The granting by the Governor of a full and unconditional pardon.

(I) A certificate of rehabilitation from a superior court.

(e) Denial, suspension, or revocation of a license, or disapproval or revocation of any employment or contract for direct services specified in subdivision (c) and paragraph (2) of subdivision (d) are not subject to appeal, except as provided in subdivision (f).

(f) After a review of the record, the director may grant an exemption from denial, suspension, or revocation of any license, or disapproval of any employment or contract for direct services, if the crime for which the person was convicted was a property crime that did not involve injury to any person and the director has substantial and convincing evidence to support a reasonable belief that the person is of such good character as to justify issuance or renewal of the license or approval of the employment or contract.

(g) A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this section. The department may deny any application, or deny, suspend, or revoke a license, or disapprove or revoke any employment or contract for direct services based on a conviction specified in subdivision (c) when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(h) (1) For purposes of this section, ‘‘direct care staff’’ means any person who is an employee, contractor, or volunteer who has contact with other patients or residents in the provision of services. Administrative and licensed personnel shall be considered direct care staff when directly providing program services to participants.

(2) An additional background check shall not be required pursuant to this section if the direct care staff or licensee has received a prior criminal history background check while working in a mental health rehabilitation center or psychiatric health facility licensed by the department, and provided the department has maintained continuous subsequent arrest notification on the individual from the Department of Justice since the prior criminal background check was initiated.

(3) When an application is denied on the basis of a conviction pursuant to this section, the department shall provide the individual whose application was denied with notice, in writing, of the specific grounds for the proposed denial.

SEC. 328. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) (1) Aid shall be paid for each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter. In determining the amount of aid paid, and notwithstanding the minimum basic standards of adequate care specified in Section 11452, the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1, averaged for the prospective quarter pursuant to Sections 11265.2 and 11265.3, and then calculated pursuant to Section 11451.5, shall be deducted from the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2). In no case shall the amount of aid paid for each month exceed the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2), plus any special needs, as specified in subdivisions (c), (e), and (f):

Number of eligible needy persons in the same home	Maximum aid
1	$ 326
2	535
3	663
4	788
5	899
6	1,010
7	1,109
8	1,209
9	1,306
10 or more	1,403

If, when, and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased

or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(2) The sums specified in paragraph (1) shall not be adjusted for cost of living for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, nor shall that amount be included in the base for calculating any cost-of-living increases for any fiscal year thereafter. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother for the month in which the birth is anticipated and for the three-month period immediately prior to the month in which the birth is anticipated in the amount ~~which~~ *that* would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child, if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision. Aid shall also be paid to a pregnant woman with no other children in the amount which would otherwise be paid to one person under subdivision (a) at any time after verification of pregnancy if the pregnant woman is also eligible for the Cal-Learn Program described in Article 3.5 (commencing with Section 11331) and if the mother, and child, if born, would have qualified for aid under this chapter.

(c) The amount of forty-seven dollars ($47) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which

delivery is anticipated, if the mother, and the child, if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant or which is otherwise available to the county welfare department and the information provided on the application documents indicate that there would be eligibility for

aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(A) (i) A nonrecurring special need of forty dollars ($40) a day shall be available to families for the costs of temporary shelter, subject to the requirements of this paragraph. County welfare departments may increase the daily amount available for temporary shelter to large families as necessary to secure the additional bed space needed by the family.

(ii) This special need shall be granted or denied immediately upon the family's application for homeless assistance, and benefits shall be available for up to three working days. The county welfare department shall verify the family's homelessness within the first three working days and if the family meets the criteria of questionable homelessness established by the department, the county welfare department shall refer the family to its early fraud prevention and detection unit, if the county has such a unit, for assistance in the verification of homelessness within this period.

(iii) After homelessness has been verified, the three-day limit shall be extended for a period of time which, when added to the initial benefits provided, does not exceed a total of 16 calendar days. This extension of benefits shall be done in increments of one week and shall be based upon searching for permanent housing which shall be documented on a housing search form; good cause; or other circumstances defined by the department. Documentation of housing search shall be required for the initial extension of benefits beyond the three-day limit and on a weekly basis thereafter as long as the family is receiving temporary shelter benefits. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but

unsuccessful effort to secure permanent housing while receiving temporary shelter benefits.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence.

The last month's rent portion of the payment (1) shall not exceed 80 percent of the family's maximum aid payment without special needs for a family of that size and (2) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's maximum aid payment without special needs for a family of that size, in accordance with the maximum aid schedule specified in subdivision (a).

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (2) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) (i) Except as provided in clauses (ii) and (iii), eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to this paragraph shall be limited to one period of up to 16 consecutive calendar days of temporary assistance and one payment of permanent assistance. Any family that includes a parent or nonparent caretaker relative living in the home who has

previously received temporary or permanent homeless assistance at any time on behalf of an eligible child shall not be eligible for further homeless assistance. Any person who applies for homeless assistance benefits shall be informed that the temporary shelter benefit of up to 16 consecutive days is available only once in a lifetime, with certain exceptions, and that a break in the consecutive use of the benefit constitutes permanent exhaustion of the temporary benefit.

(ii) A family that becomes homeless as a direct and primary result of a state or federally declared natural disaster shall be eligible for temporary and permanent homeless assistance.

(iii) A family shall be eligible for temporary and permanent homeless assistance when homelessness is a direct result of domestic violence by a spouse, partner, or roommate; physical or mental illness that is medically verified that shall not include a diagnosis of alcoholism, drug addiction, or psychological stress; or, the uninhabitability of the former residence caused by sudden and unusual circumstances beyond the control of the family including natural catastrophe, fire, or condemnation. These circumstances shall be verified by a third-party governmental or private health and human services agency and homeless assistance payments based on these specific circumstances may not be received more often than once in any 12-month period. A county may require that a recipient of homeless assistance benefits who qualifies under this paragraph for a second time in a 24-month period participate in a homelessness avoidance case plan as a condition of eligibility for homeless assistance benefits.

(iv) The county welfare department shall report to the department through a statewide homeless assistance payment indicator system, necessary data, as requested by the department, regarding all recipients of aid under this paragraph.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(I) No payment shall be made pursuant to this paragraph unless the provider of housing is a commercial establishment, shelter, or person in the business of renting properties who has a history of renting properties.

(g) The department shall establish rules and regulations assuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

(j) For children receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) of Chapter 2, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month, which, when added to the child's income, is equal to the rate specified in Section 11364.

SEC. 329. Section 11451.5 of the Welfare and Institutions Code is amended to read:

11451.5. (a) Except as provided by subdivision (f) of Section 11322.6, the following income, averaged over the quarter pursuant to Sections 11265.2 and 11265.3, ~~and~~ shall be exempt from the calculation of the income of the family for purposes of subdivision (a) of Section 11450:

(1) If disability-based unearned income does not exceed two hundred twenty-five dollars ($225), both of the following amounts:

(A) All disability-based unearned income plus any amount of not otherwise exempt earned income equal to the amount of the

difference between the amount of disability-based unearned income and two hundred twenty-five dollars ($225).

(B) Fifty percent of all not otherwise exempt earned income in excess of the amount applied to meet the differential applied in subparagraph (A).

(2) If disability-based unearned income exceeds two hundred twenty-five dollars ($225), both of the following amounts:

(A) All of the first two hundred twenty-five dollars ($225) in disability-based unearned income.

(B) Fifty percent of all earned income.

(b) For purposes of this section:

(1) Earned income means gross income received as wages, salary, employer provided sick leave benefits, commissions, or profits from activities such as a business enterprise or farming in which the recipient is engaged as a self-employed individual or as an employee.

(2) Disability-based unearned income means ~~State Disability Insurance~~ *state disability insurance* benefits, private disability insurance benefits, ~~Temporary Workers' Compensation~~ *temporary workers' compensation* benefits, and social security disability benefits.

(3) Unearned income means any income not described in paragraph (1) or (2).

SEC. 330. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, ‘‘The Classification of Group Home Programs under the Standardized Schedule of Rates System,’’ prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each rate classification level (RCL) has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, ‘‘standardized schedule of rates’’ means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department’s issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care

and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the field work portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under the provisions of Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home

provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for

any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for fiscal year 2002–03 is:

Rate Classification Level	Point Ranges	FY 2002–03 Standard Rate
1	Under 60	$1,454
2	60–89	1,835
3	90–119	2,210
4	120–149	2,589
5	150–179	2,966
6	180–209	3,344
7	210–239	3,723
8	240–269	4,102
9	270–299	4,479
10	300–329	4,858
11	330–359	5,234
12	360–389	5,613
13	390–419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03 fiscal year, the adjusted RCL point ranges below shall be used in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for 2002–03
1	Under 54
2	54–81
3	82–110
4	111–138
5	139–167
6	168–195
7	196–224
8	225–253
9	254–281
10	282–310
11	311–338
12	339–367
13	368–395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03 fiscal year shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, ''program change'' means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 2000, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3) (A) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the conditions specified in this paragraph are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if (i) the licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program, and (ii) the new program or program

change will result in a reduction of referrals to state hospitals during the 1998–99 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 *of* each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care which may have significant fiscal impact on providers of group ~~homes~~ *home* care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

SEC. 331. Section 14105.95 of the Welfare and Institutions Code is amended to read:

14105.95. (a) Each eligible facility, as described in subdivision (b), may, in addition to the rate of payment that the facility would otherwise receive for adult day health services, receive supplemental Medi-Cal reimbursement to the extent provided in this section.

(b) A facility shall be eligible for supplemental reimbursement only if the facility has all of the following characteristics continuously during a state fiscal year commencing with the 2002 fiscal year, and thereafter:

(1) Provides services to Medi-Cal beneficiaries.

(2) Is an adult day health center, licensed pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety Code.

(3) Is owned or operated by a county, city, city ~~or~~ *and* county, or health care district organized pursuant to Chapter 1 (commencing with Section 32000) of Division 23 of the Health and Safety Code.

(c) An eligible facility's supplemental reimbursement pursuant to this section shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible facility, as described in subdivision (b), shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (g).

(2) In no instance shall the amount certified pursuant to paragraph (1) of subdivision (e), when combined with the amount received from all other sources of reimbursement from the Medi-Cal program, exceed 100 percent of projected costs, as determined pursuant to the Medi-Cal State Plan, for adult day health services at each facility.

(3) The supplemental Medi-Cal reimbursement provided by this section shall be distributed under a payment methodology based on adult day health services provided to Medi-Cal patients at the eligible facility, either on a per-visit basis or any other federally permissible basis. The department shall seek approval from the federal Centers for Medicare and Medicaid Services for the payment methodology to be utilized, and may not make any payment pursuant to this section prior to obtaining that approval.

(d) (1) It is the Legislature's intent in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the General Fund.

(2) The state share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in paragraph (3) of subdivision (b) and certified to the state as provided in subdivision (e).

(e) A particular governmental entity described in paragraph (3) of subdivision (b), on behalf of any eligible facility owned or operated by the entity shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for outpatient services are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(4) Keep, maintain, and have readily retrievable, any records specified by the department to fully disclose reimbursement amounts to which the eligible facility is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(f) An eligible facility as described in subdivision (b), as a condition of receiving supplemental reimbursement under this section, shall enter into, and maintain, a contract with the department for the purpose of implementing this section, and to reimburse the department for its administrative costs of implementing this section.

(g) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. If necessary to obtain federal approval, the department may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code). If federal approval is not obtained for implementation of this section, this section shall become inoperative.

(2) The department shall submit claims for federal financial participation for the expenditures for the services described in subdivision (e) that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(h) All funds expended pursuant to this section are subject to review and audit by the department.

(i) This section shall become inoperative in the event, and on the date, of a final judicial determination by any court of appellate jurisdiction or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services that the supplemental reimbursement provided in this section must be made to any facility not described in this section.

SEC. 332. Section 14105.96 of the Welfare and Institutions Code is amended to read:

14105.96. (a) Each eligible facility, as described in subdivision (b), may, in addition to the rate of payment that the

facility would otherwise receive for Medi-Cal outpatient services, receive supplemental Medi-Cal reimbursement to the extent provided in this section.

(b) A facility shall be eligible for supplemental reimbursement only if the facility has all of the following characteristics continuously during a state fiscal year commencing with the 2002 fiscal year, and thereafter:

(1) Provides services to Medi-Cal beneficiaries.

(2) Is an acute care hospital providing outpatient hospital services. For purposes of this paragraph, ''acute care hospital'' means the facilities described by subdivision (a) or (b), or both, of Section 1250 of the Health and Safety Code.

(3) Is owned or operated by a county, city, city and county, the University of California, or health care district organized pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code.

(c) An eligible facility's supplemental reimbursement pursuant to this section shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible facility, as described in subdivision (b), shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (g).

(2) In no instance shall the amount certified pursuant to paragraph (1) of subdivision (e), when combined with the amount received from all other sources of reimbursement from the Medi-Cal program, exceed 100 percent of projected costs, as determined pursuant to the Medi-Cal State Plan, for outpatient services at each facility.

(3) The supplemental Medi-Cal reimbursement provided by this section shall be distributed under a payment methodology based on outpatient services provided to Medi-Cal patients at the eligible facility, either on a per-visit basis, per-procedure basis, or any other federally permissible basis. The department shall seek approval from the federal Centers for Medicare and Medicaid Services for the payment methodology to be utilized, and may not make any payment pursuant to this section prior to obtaining that approval.

(d) (1) It is the Legislature's intent in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the General Fund.

(2) The state share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in paragraph (3) of subdivision (b) and certified to the state as provided in subdivision (e).

(e) A particular governmental entity, described in paragraph (3) of subdivision (b), on behalf of any eligible facility owned or operated by the entity, shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the outpatient services are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(4) Keep, maintain, and have readily retrievable, any records specified by the department to fully disclose reimbursement amounts to which the eligible facility is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(f) An eligible facility as described in subdivision (b), as a condition of receiving supplemental reimbursement under this section, shall enter into~~,~~ and maintain~~,~~ a contract with the department for the purpose of implementing this section, and to reimburse the department for its administrative costs of operating this program.

(g) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. If necessary to obtain federal approval, the department may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code). If federal approval is not obtained for implementation of this section, this section shall become inoperative.

(2) The department shall submit claims for federal financial participation for the expenditures for the services described in subdivision (e) that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(h) This section shall become inoperative in the event, and on the date, of a final judicial determination by any court of appellate jurisdiction or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services that the supplemental reimbursement provided in this section must be made to any facility not described in this section.

SEC. 333. Section 14172 of the Welfare and Institutions Code is amended to read:

14172. (a) Except as provided in subdivision (b), if any amount is due and payable and unpaid as the result of an overpayment to a provider of health care services, durable medical equipment, or incontinence supplies identified through an audit or examination conducted by or on behalf of the director, and the findings of the audit or examination are completed and no appeal is taken or the director has issued a final decision on the appeal pursuant to Section 14171, and 90 days ~~has~~ *have* elapsed from the completion of that audit or examination or issuance of that final decision on appeal, the director may, not later than three years after the payment became due and owing, file in the office of the Clerk of the Superior Court of Sacramento County, and with the clerk of the superior court of the county in which the provider has its principal place of business, a certificate containing the following:

(1) Interest, as prescribed by Section 14171.

(2) A statement that the director has complied with this article prior to the filing of the certificate.

(3) A request that judgment be entered against the provider in the amount set forth in the certificate.

The clerk immediately upon the filing of the certificate shall enter a judgment for the State of California against the provider in the amount set forth in the certificate. The judgment may be filed by the clerk in a looseleaf book entitled ‘‘Health Care Overpayment Recovery Judgments.’’

(b) If the provider seeks judicial review of the final decision of the director pursuant to subdivision (k) of Section 14171 and notice of that action is properly served on the director within 90 days of the issuance of the final decision of the director, the director shall not file any certificate as provided in subdivision (a).

If the provider does not seek judicial review of the final decision of the director pursuant to subdivision (k) of Section 14171 and does not properly serve notice within 90 days from the date of the final decision of the director, the director may file the certificate provided in subdivision (a). If the provider seeks judicial review of the final decision of the director more than 90 days from the date of the decision in accordance with subdivision (k) of Section 14171, the director shall within 10 days after receiving notice of that action release any lien imposed pursuant to this article and any judgment entered is for all purposes null and void.

SEC. 334. Section 15610.37 of the Welfare and Institutions Code is amended to read:

15610.37. ''Health practitioner'' means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker or associate ~~clincial~~ *clinical* social worker, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family, and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family, and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, or a coroner.

SEC. 335. Section 18969 of the Welfare and Institutions Code is amended to read:

18969. (a) There is hereby created in the State Treasury a fund which shall be known as the State Children's Trust Fund. The fund shall consist of funds received from a county pursuant to Section 18968, funds collected by the state and transferred to the

fund pursuant to subdivision (b) of Section 103625 of the Health and Safety Code and Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, grants, gifts, or bequests made to the state from private sources to be used for innovative and distinctive child abuse and neglect prevention and intervention projects and money appropriated to the fund for this purpose by the Legislature. The State Registrar may retain a percentage of the fees collected pursuant to Section 10605 of the Health and Safety Code, not to exceed 10 percent, in order to defray the costs of collection.

(b) ~~Notwithstanding Section 13340 of the Government Code, money~~ *Money* in the State Children's Trust Fund, upon appropriation by the Legislature, shall be allocated to the State Department of Social Services for the purpose of funding child abuse and neglect prevention and intervention programs. The department may not supplant any federal, state, or county funds with any funds made available through the State Children's Trust Fund.

(c) The department may establish positions as needed for the purpose of implementing and administering child abuse and neglect prevention and intervention programs that are funded by the State Children's Trust Fund. However, the department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(d) No ~~children's trust fund~~ *State Children's Trust Fund* money shall be used to supplant state General Fund money for any purpose.

(e) It is the intent of the Legislature that the State Children's Trust Fund provide for all of the following:

(1) The development of a public-private partnership by encouraging consistent outreach to the private foundation and corporate community.

(2) Funds for large-scale dissemination of information that will promote public awareness regarding the nature and incidence of child abuse and the availability of services for intervention. These public awareness activities shall include, but not be limited to, the production of public service announcements, well designed posters, pamphlets, booklets, videos, and other media tools.

(3) Research and demonstration projects that explore the nature and incidence and the development of long-term solutions to the problem of child abuse.

(4) The development of a mechanism to provide ongoing public awareness through activities that will promote the charitable tax deduction for the trust fund and seek continued contributions. These activities may include convening a philanthropic roundtable, developing literature for use by the State Bar for dissemination, and whatever other activities are deemed necessary and appropriate to promote the trust fund.

SEC. 336. Section 12.5 of Chapter 1449 of the Statutes of 1951 is amended to read:

Sec. 12.5. (a) Whenever the board initiates a project for single zone or a joint project for two or more zones, the board may appoint, for each zone, at the time of the adoption of its resolution of intent, an advisory committee of three persons who are property owners residing in the zone for which they are appointed, to represent before the board the residents and property owners of that zone. If the project involves property located within the jurisdiction of a city within the district, any advisory committee appointed pursuant to this section shall include at least one representative from the city appointed by the governing board of the city unless after notice to the city, the governing board of the city declines to be so represented.

(b) Vacancies in any advisory committee appointed pursuant to this section shall be filled by appointment by the board or, in the case of city representatives, by the city. The board shall comply with the requirements of Chapter 11 (commencing with Section 54970) of Part 1 of Division 2 of Title 5~~,~~ of the Government Code in connection with appointments to the advisory committees.

(c) An advisory committee appointed pursuant to this section shall cease to exist if the zone project is not approved by the board, if the project is disapproved by the qualified electors of the zone, or if all zones involved with the project are dissolved in accordance with Section 37.

SEC. 337. Section 13 of Chapter 1449 of the Statutes of 1951 is amended to read:

Sec. 13. The board shall have all of the following powers, in any year:

(a) Subject to Article XIII A and Article XIII C of the California Constitution, to levy special taxes pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code, in each or any of the zones and participating zones to pay the cost and expenses of carrying out, constructing, maintaining, operating, extending, repairing or otherwise improving, carrying out, or completing any project established or to be established within or on behalf of the respective zones.

(b) Subject to Article XIII A and Article XIII C of the California Constitution, if as part of cooperation with any of the governmental bodies, as authorized in paragraph (7) of Section 5, a contract is entered into with any governmental body for the purposes set forth in that paragraph by the terms of which a project or any portion thereof is agreed to be performed by any governmental body in any specified zone or participating zones for the particular benefit thereof and in the contract it is agreed that the district is to pay the governmental body a sum of money for the performance of the project by the governmental body, the board may levy and collect a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code, including a special tax upon the property in the zone or participating zones to raise funds to enable the district to make the payment, in addition to any other taxes or assessments authorized by this act.

(c) (1) Subject to Article XIII D of the California Constitution, to levy assessments pursuant to Section ~~53735~~ *53753* of the Government Code, upon all property in each or any zones, according to the benefits derived or to be derived by the specific properties assessed, to pay the cost and expenses of a project or projects carrying out any of the objects or purposes of this act of particular benefit to the zone or zones.

(2) For purposes of this subdivision, all of the following apply:

(A) The particular benefit conferred by drainage or flood control projects, including the maintenance thereof on the property so assessed as compared to all property within the district may be determined, in the discretion of the board in regard to each project and affected zone, by any reasonable method including, but not limited to, the proportionate stormwater runoff from the assessed property in light of the actual use and state of

improvement of the property at the time of the assessment. However, no assessment based solely on proportionate stormwater runoff shall be levied on any property which exists and is used only as unimproved open space. If the project provides protection against flooding in a floodway or floodplain designated in a general or specific plan of the County of Napa or any city therein or a floodplain area or flood-risk zone established by the Secretary of Housing and Urban Development of the United States pursuant to Section 4101, et seq. of Title 42 of the United States Code, the fact that a lot or parcel of property is located within the floodway, floodplain, or flood-risk area shall be conclusive evidence that it will derive special benefit from the project as compared to properties in participating zones which are not located in those areas. Assessments based on the special benefit may be levied on lots and parcels of property in the specially benefited zone, in addition to assessments determined on the basis of proportionate stormwater runoff that may be levied in each of the participating zones.

(B) (i) The power of the board to levy assessments under this subdivision expressly includes, but is not limited to, the power to levy assessments in accordance with the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code) and the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code) and to issue bonds under the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code) and the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code). Those acts, or any of them, may be used in the discretion of the board to generate revenue to pay for the costs, including financing and interest costs, of any project under this act, and for the issuance of bonds to pay for the costs of such project.

(ii) Division 4 (commencing with Section 2800) and Division 4.5 (commencing with Section 3100) of the Streets and Highways Code do not apply to proceedings taken by the district under this subparagraph, except that Division 4.5 may be applied to any proceedings in the discretion of the board.

(iii) Any diagram prepared for purposes of any action taken under the acts described in this subparagraph may refer to the county assessor's maps for a detailed description of the lines and

dimensions of any lots or parcels, in which case, those maps shall govern for all details concerning the lines and dimensions of such lots or parcels.

(C) Assessments levied to pay the annual costs of nonbonded obligations of the district for specific zone projects or for maintenance of joint projects whose construction was funded by bonds issued by another participating governmental entity shall be levied only in accordance with Section 13.5.

(d) Subject to Article XIII D of the California Constitution, to fix by resolution and to collect fees or charges for any services that the district is authorized to provide under this act that specifically benefit the person, entity, or property charged. These services include, but are not limited to, investigations or studies conducted in connection with the processing by any public entity of a public or private development project or land division, or for copies of any public records. However, the fees or charges shall not exceed the reasonable cost to the district of providing the service and the service shall be provided by the district either upon request by the person, entity, or property owner charged or shall be provided to, and at the request of, a public entity, other than the district, for use in connection with the evaluation by that public entity of a request for development or other entitlement for use of land that has been made by the person, entity, or property owner that is charged the fee or charge.

(e) All special taxes and assessments shall be levied and collected together with, and not separately from, taxes for county purposes, and the revenues derived from the special taxes or assessments shall be paid into the county treasury to the credit of the district, or the respective zones thereof, and the board shall have the power to control and order the expenditure thereof for those purposes. However, no revenues, or portions thereof, derived in any of the several zones from the special taxes or assessments shall be expended for projects located in, or conferring benefit upon, any other zone, except in the case of joint projects, or for projects authorized or established outside the zone, or zones, but for the benefit thereof.

SEC. 338. Section 13.5 of Chapter 1449 of the Statutes of 1951 is amended to read:

Sec. 13.5. (a) All assessments levied to fund the nonbonded portion of any project that has been approved for a zone or

participating zones in accordance with Section 12 shall be levied annually in accordance with the following procedures, if the assessment and methodology were approved prior to July 1, 1997:

(1) For each fiscal year in which an assessment is to be imposed under this section, the board shall first cause a written report to be prepared in compliance with Section 10 and filed with the secretary of the district for submission to the board for approval.

(2) Upon receipt, the secretary of the district shall cause notice of the filing of the report and of a time, date, and place of hearing thereon to be published pursuant to Section 6066 of the Government Code, posted in at least three public places within the affected zones and participating zones, and mailed or otherwise delivered to any city located within or partially within the zones and participating zones.

(3) Following the public hearing on the report, the board shall approve, approve with modifications, or reject the report. If the report is rejected, the board may, in its discretion, abandon the assessment process for that fiscal year or may return the report to the engineer or district staff for further work.

(4) After approval of the report, either as filed or as modified, the board shall adopt a resolution of intention to levy assessments under this section. The resolution of intention shall include all of the following:

(A) Declare the intention of the board to levy and collect assessments within the designated zones for the fiscal year therein stated, except that it shall not impose an assessment upon a federal or state governmental agency or another local agency except with the consent of that agency.

(B) Generally describe the project. If the project was previously approved by the board, existing components shall be described.

(C) Refer to the affected zone or participating zones by their distinctive designations and indicate the general location of such zone or zones.

(D) Refer to the report of the engineer prepared and filed under this section for a full and detailed description of the project, the location of the benefitted zones, and the proposed assessments on assessable property within the district.

(E) Set the date, time, and place for hearing by the board on the levy of the proposed assessments and, if the assessments are to be

increased from the previous year. Also set the date, time, and place for a public meeting to be held on the proposed assessments prior to the public hearing.

(F) If the assessment is for an existing project, state whether the assessment will be increased from the previous year.

(5) Notice of the hearing on the levy of the assessments shall include a copy of the resolution of intention and shall indicate the right of registered voters residing within and landowners owning assessable property within the affected zones to file written protests prior to or at the hearing. The notice shall be given as follows:

(A) If the assessments are to be levied in the same or lesser amounts than in any previous year, the secretary of the district shall give notice of the hearing by causing the resolution of intention to be published pursuant to Section 6061 of the Government Code.

(B) If assessments are to be increased from the previous year, notice of the public meeting and public hearing required by Section 54954.6 of the Government Code shall be mailed as provided in subdivision (c) of that section.

(C) If the projects for which the assessments are to be levied or any of the assessable property is located within a city or town within the district, notice of the public hearing and, if applicable, the public meeting held under subdivision (c) of Section 54954.6 of the Government Code, shall also be mailed or personally delivered to the chief administrative officer of the city at least 10 days prior to the public hearing.

(6) (A) If, at the conclusion of the public hearing, the board finds that written protests filed at or before the time of the hearing are signed by more than 25 percent of the registered voters residing within the affected zone or the owners of more than 25 percent of the area of land subject to assessment located in each affected zone, based upon those acreages shown on the latest county assessment records, and the protests have not been withdrawn prior to the time of closure of the public hearing so as to reduce the protest in each zone below that percentage, then the board shall either abandon the proceedings, or by duly adopted resolution, submit the proposed assessments to the qualified electors in the zone from which the protest was received and not so reduced. The board shall not proceed further with the proceedings as to that zone unless a majority of the votes cast at the election in the zone are in favor of

the levy of the assessments. The election shall be held in accordance with the Uniform District Election Law~~, Part~~ *(Part* 4 (commencing with Section 10500) of Division 10 of the Elections ~~Code~~ *Code)*.

(B) The board may approve the assessment unless the board finds that written protests filed at or before the time of the hearing are signed by more than 25 percent of the registered voters residing within the affected zone, or the owners of more than 25 percent of the real property subject to assessment located in the affected zone, based upon those averages shown on the latest county assessment records, and those protests have not been withdrawn prior to the time of closure of the public hearing so as to reduce the protest in each zone below that percentage. If a protest is received and not withdrawn, the assessment shall be withdrawn. The board may, at its discretion, reduce the amount of the assessments or abandon the proceedings.

(7) If the board abandons the proceedings rather than call an election, or if the proposition fails passage, the board shall not initiate similar proceedings within a period of six months from the date of adoption of the resolution ordering abandonment or the date of the election.

(8) If the proposed levy is not abandoned by the board voluntarily, or, as a result of receipt of a qualified 25 percent protest under paragraph (6), or, if the matter is set for election, by receipt of less than majority approval by the voters, the board shall, by resolution adopted following the public hearing or, if the proposition is approved at an election, by resolution adopted by the board upon certification of the election results, approve, impose, and levy the assessments for the next fiscal year.

(9) Following the approval of the resolution levying the assessments, the board may order any particular assessment levied under this section to be corrected, canceled, or refunded if the assessment was imposed in error and the nature of the error could not have been reasonably ascertained by the board or the property owner prior to the action of the board imposing the assessment. Application for correction, cancellation, or refund under this paragraph shall be made in accordance with those procedures for appeal prescribed by resolution of the board, except that the time period prescribed by that resolution for filing a notice of appeal shall commence to run no earlier than the first date when the

property owner reasonably could have known that the assessment was imposed in error.

(b) The imposition of an assessment pursuant to a methodology approved on or after July 1, 1997, for the purpose of funding a project pursuant to Section 12 shall be approved in accordance with Article XIII D of the California Constitution, and Section 53753 of the Government Code.

SEC. 339. Section 14 of Chapter 1449 of the Statutes of 1951 is amended to read:

Sec. 14. (a) Whenever the board determines that a bonded indebtedness should be incurred to pay the cost of any project in any zone or zones, and the board does not choose to finance the project in accordance with the procedures set forth in any of the acts, the board may by resolution determine and declare the respective amounts of bonds necessary to be issued in each zone in order to raise the amount of money necessary for each project and the denomination and maximum rate of interest of the bonds. The board shall cause a copy of the resolution, duly certified by the clerk, to be filed for record in the office of the recorder of Napa County within five days after its issuance.

(b) After the filing for record of the certified copy of the resolution specified in subdivision (a), the board may call a special bond election in the zone or participating zones at which shall be submitted to the qualified electors of the zone or participating zones the question whether or not bonds shall be issued in the amount or amounts determined in the resolution and for the purpose or purposes therein stated. The bonds and the interest thereon shall be paid from revenue derived from taxes levied as provided in this act.

(c) The board shall call the special bond election by ordinance and submit to the qualified electors of the zone or participating zones the preparation of incurring a bonded debt in the zone or participating zones in the amount and for the purposes stated in the resolution and shall recite therein the objects and purposes for which the indebtedness is proposed to be incurred. It shall be sufficient to give a brief, general description of the objects and purposes and refer to the recorded copy of the resolution for particulars. The ordinance shall also state the estimated cost of the proposed project, the amount of the principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid

on the indebtedness, and shall fix the date on which the election shall be held and the form and contents of the ballot to be used. For the purposes of the election, the board shall in the ordinance establish special bond election precincts within the boundaries of each zone and participating zones and may form election precincts by consolidating the precincts established for general elections in the district to a number not exceeding six general precincts for each special bond election precinct, and shall designate a polling place and appoint one inspector, one judge, and one clerk for each of the special bond election precincts.

(d) In all particulars not recited in the ordinance, the bond election shall be held as nearly as practicable in accordance with the Uniformed District Election Law~~, Part~~ *(Part* 4 (commencing with Section 10500) of Division 10 of the Elections ~~Code~~ *Code)*.

(e) The board shall cause a map or maps to be prepared generally describing the project and showing the location of the proposed project and area to be benefited thereby and shall cause the map to be posted in a prominent public place in the county seat of the County of Napa for public inspection for at least 30 days before the date fixed for the election.

(f) The ordinance calling for the bond election shall, prior to the date set for the election, be published pursuant to Section 6066 of the Government Code in a newspaper of general circulation circulated in each zone and participating zones affected. The last publication of the ordinance shall be at least 14 days before the election. If there is no newspaper, then the ordinance shall be posted in five public places designated by the board in each zone and participating zones for at least 30 days before the date fixed for the election.

(g) Any defect or irregularity in the proceedings prior to the calling of the special bond election shall not affect the validity of the bonds authorized by the election. Where a project affects a single zone only, if at the election two-thirds of the votes cast in the zone on the proposition of incurring a bonded indebtedness are in favor thereof, then bonds for the zone for the amounts stated in the proceedings shall be issued and sold as provided in this act. Where the incurring of a bonded indebtedness by participating zones is to be determined at the election, no bonds for any of the participating zones shall be issued or sold unless two-thirds of the

votes cast on the proposition in each participating zone are in favor of incurring a bonded indebtedness to be undertaken by the zone.

SEC. 340. Section 1 of Chapter 483 of the Statutes of 2002 is amended to read:

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

(1) Many different state, district, city, county, municipal, and public agency governmental entities purchase prescription drugs for individuals served by those entities.

(2) Currently, the Department of General Services uses the bid process to develop contracts with drug manufacturers on behalf of some state, local, and public agencies. However, many state, district, county, city, municipal, and public agencies are not included in this current purchasing process.

(3) The Department of General Services does not have sufficient direction from the Legislature to maximize savings.

(4) By better coordinating bulk purchasing contracts and providing purchasing procedures and options, the Department of General Services may be able to negotiate better prices for drugs on behalf of participating governmental entities.

(b) It is the intent of the Legislature in enacting this act to coordinate bulk purchasing of prescription drugs, and authorize the Department of General Services to investigate and implement other options and strategies to achieve the greatest savings on prescription drugs with prescription drug manufacturers and wholesalers.

SEC. 341. Section 1 of Chapter 575 of the Statutes of 2002 is amended to read:

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

(a) It is the policy of the state to protect human health and environmental well-being.

(b) The purpose of environmentally preferable purchasing is to protect human health and environmental well-being by reducing the procurement of goods and services that result in larger volumes of waste and pollutants.

(c) Goods and services, that result in reduced volumes of waste and pollutants, have additional value when considering future environmental and health costs.

(d) The state, through environmentally preferable purchasing, has the ability to ~~to~~ protect human health and environmental

well-being by promoting goods and services that result in reduced waste and pollutants.

(e) The Legislature declares that the responsibility of environmentally preferable purchasing shall be that of any agency that does procuring on behalf of the state.

(f) It is the intent of the Legislature, whenever economically feasible and as markets allow, to continually expand the policies of environmentally preferable purchasing in the daily operations of the state.

SEC. 342. Section 1 of Chapter 583 of the Statutes of 2002 is amended to read:

Sec. 1. The sum of one million three hundred sixty thousand seven hundred two dollars and seventy-four cents ($1,360,702.74) is hereby appropriated from the General Fund to the Attorney General for allocation to pay the following judgments and settlement claims pursuant to the following schedule:

(a) Nine hundred ninety-nine thousand eighty-five dollars and forty-five cents ($999,085.45) for the judgment in the case of Jesus Doe, et al. v. Regents of the University of California, et al. (San Francisco Superior Court No. 965090).

(b) Three hundred sixty-one thousand six hundred seventeen dollars and twenty-nine cents ($361,617.29) for the judgment in the case of Gregorio T., et al. v. Wilson, et al. and Ayala, et al. v. Wilson, et al. (D.C., C.D. Cal. No. 94-7652 MRP).

SEC. 343. Section 1 of Chapter 697 of the Statutes of 2002 is amended to read:

Sec. 1. (a) In light of the events of September 11, 2001, it is very clear that a high-speed passenger train network as described in the High-Speed Rail Authority's Business Plan is essential for the transportation needs of the growing population and economic activity of this state.

(b) The initial high-speed train network linking San Francisco and the Bay Area to Los Angeles will serve as the backbone of what will become an extensive 700-mile system that will link all of the state's major population centers, including Sacramento, the Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego, and address the needs of the state.

(c) The initial network from San Francisco and the Bay Area ~~Bay Area~~ to Southern California could be in limited operation by 2008.

(d) The high-speed passenger train bond funds are intended to encourage the federal government and the private sector to make a significant contribution toward the construction of the high-speed train network.

(e) The initial segments shall be built in a manner that yields maximum benefit consistent with available revenues.

(f) After the initial investment from the state, operating revenues from the initial segments and funds from the federal government and the private sector will be used to pay for expansion of the system. It is the intent of the Legislature that the entire high-speed train system shall be constructed as quickly as possible in order to maximize ridership and the mobility of Californians.

(g) At a minimum, the entire 700-mile system described in the High-Speed Rail Authority's Business Plan should be constructed and in revenue service by 2020.

SEC. 344. Section 5 of Chapter 1020 of the Statutes of 2002 is amended to read:

Sec. 5. (a) The funds appropriated by Schedule ~~4~~ *(4)* of Item 6110-123-0001 of Section 2.00 of the Budget Act of 2002 for purposes of corrective actions undertaken at schools in need of improvement, and the amount of twenty-nine million eighty-six thousand dollars ($29,086,000), from the funds appropriated by Schedule ~~1~~ *(1)* of Item 6110-136-0890 of Section 2.00 of the Budget Act of 2002 for purposes of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), shall be allocated by the State Department of Education, to school districts and county offices of education for expenditure during the 2002–03 fiscal year, as follows:

(1) The amount of one hundred fifty dollars ($150) per pupil for each pupil in a school that is required to enter into a contract with a school assistance and intervention team pursuant to subdivision (a) of Section 52055.51 of the Education Code, for purposes of implementing any recommendations made by the school assistance and intervention team in the report prepared by the team pursuant to subdivision (d) of Section 52055.51 of the Education Code. School districts that receive funds under this paragraph shall provide an in-kind match of services, or a match of school district funds in an amount equal to the amount received by the local education agency pursuant to this paragraph.

(2) (A) The amount of one hundred fifty dollars ($150) per pupil for each pupil in a school that is managed in accordance with ~~of~~ paragraph (3) of subdivision (b) of Section 52055.5 of the Education Code, for purposes of improving the academic performance of that school. School districts that receive funds under this paragraph shall provide an in-kind match of services, or a match of school district funds in an amount equal to the amount received by the local education agency pursuant to this paragraph.

(B) The Department of Finance and the State Department of Education shall provide funding for the support of each entity that is assigned to manage a school pursuant to paragraph (3) of subdivision (b) of Section 52055.5 of the Education Code.

(3) Funding for the support of each school assistance and intervention team that enters into a contract with a school district pursuant to subdivision (a) of Section 52055.51 of the Education Code shall be allocated as follows:

(A) Seventy-five thousand dollars ($75,000) for each school assistance and intervention team assigned to an elementary or middle school.

(B) One hundred thousand dollars ($100,000) for each school assistance and intervention team assigned to a high school.

(C) If a school district determines that it needs more than the amounts specified in ~~subparagraphs~~ *subparagraph* (A) or (B), the school district may apply to the State Department of Education for additional funding. The application shall include justification for the requested increase. The State Department of Education and the Department of Finance shall review any applications and may provide funding up to a total funding level of one hundred twenty-five thousand dollars ($125,000), including the amount provided pursuant to subparagraph (A) or (B).

(D) As a condition of receipt of funds, a school district shall provide an in-kind match of services, or a match of school district funds, in an amount equal to one dollar ($1) for every two dollars ($2) provided pursuant to ~~subparagraphs~~ *subparagraph* (A), (B), or (C).

(4) The amount of seven million five hundred thousand dollars ($7,500,000) shall be available for use by the State Department of Education for the purposes of the Statewide System of School Support established by Article 4.2 (commencing with Section 52059) of Chapter 6.1 of Part 28 of the Education Code.

(5) The State Department of Education shall provide seventy-five thousand dollars ($75,000) to each regional consortium that has at least one school that has been identified as being in need of corrective action pursuant to subsection (b) of Section 6316 of Title 20 of the United States Code. These funds shall be used to establish a team to assist these schools improve pupil performance. Team members shall possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies, and shall have proven successful expertise specific to the challenges inherent in improving the performance of schools. A consortium with many schools identified as being in need of corrective action may apply to the State Department of Education for additional funding for the establishment of a team. The State Department of Education and the Department of Finance shall review any applications for additional funding and may provide up to an additional fifty thousand dollars ($50,000) to a consortium that justifies the need.

(b) Of the funds appropriated in Schedule ~~1~~ *(1)* of Item 6110-123-0890 of Section 2.00 of the Budget Act of 2002, up to one million five hundred thousand dollars ($1,500,000) shall be transferred to Item 6110-001-0890 of Section 2.00 of the Budget Act of 2002 for state operations costs related to this measure, based on the expenditure plan jointly developed by the Department of Finance and the State Department of Education.

(c) Funding for the purposes described in this section shall only be provided for three years.

(d) The Department of Finance and the Superintendent of Public Instruction shall review and recommend any changes to the funding allocated pursuant to subdivision (a) to the Governor and the Legislature by no later than April 15, 2004.

(e) The State Board of Education and the Superintendent of Public Instruction shall notify the chairs of the fiscal and policy committees that consider education and appropriations in each house of the Legislature of any plan for the expenditure of funds pursuant to subdivision (a), within 30 days of adopting the plan.

SEC. 345. Section 1 of Chapter 1060 of the Statutes of 2002 is amended to read:

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

(a) The year 2002 marks the 30th anniversary of the enactment of Title IX of the Education Amendments of 1972 (20 U.S.C. ~~Secs.~~ *Sec.* 1681 et seq.), a federal statute that prohibits sex discrimination in schools and other educational programs receiving federal funds. Title IX applies to all aspects of educational opportunities, but is especially well known for its success in opening the door to athletics for women and girls.

(b) Title IX requires affected schools and programs to do the following: offer male and female students equal opportunities to play sports; treat male and female athletes fairly; and give male and female athletes their fair share of athletic scholarship money.

(c) Prior to the enactment of Title IX, only one in 27 girls participated in high school sports, compared to one in two boys.

(d) In 2000–01, 2,784,154 girls or 41.5 percent of the total number of participants and 3,921,069 boys or 58.5 percent of the total number of participants played high school sports in this country according to the National Federation of State High School Associations. In 1972, there were only 294,015 girls participating on athletic teams in the whole country.

(e) In California, there were 271,203 girls or 41.3 percent of the total number of participants and 386,037 boys or 58.7 percent of the total number of participants competing in interscholastic sports in 2000–01.

(f) At California's 103 community colleges with athletic programs, there were 7,623 female athletes or 36 percent of the total number of participants and 13,529 male athletes or 64 percent of the total number of participants in 2000–01 according to the Commission on Athletics.

(g) In 1972, there were only 31,852 women on athletic teams at the college level in the whole country. By 2002, that number had jumped to 146,617. In 1972, no women received athletic scholarships. By 2002, one hundred eighty million dollars ($180,000,000) was received by women athletes, according to the National Collegiate Athletic Association.

(h) An athletic program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender.

(i) The benefits of athletic activity for girls and women are irrefutable. High school girls who play sports are less likely to be involved in an unwanted pregnancy, may reduce a teenage girl's risk of breast cancer by 60 percent, and helps to strengthen bone mass, thereby reducing the risk of osteoporosis. Girls and women who play sports have higher levels of confidence, lower levels of depression, a more positive body image, and experience *a* higher state of psychological well-being. Athletics also teaches girls and women teamwork, goal-setting, and the pursuit of excellence.

(j) While many educational institutions have made a conscientious effort to provide an athletic program that is equitable to both male and female students, others have not exhibited the same level of effort or have intentionally chosen to continue discriminatory practices.

(k) In late January 2002, the Orange County Register ran a series of articles following an extensive investigation of athletic equity issues at California's community colleges. Many areas of concern were brought to light in that series. In response, some colleges are taking their responsibilities regarding athletic equity much more seriously.

(*l*) While significant progress has been made since the passage of Title IX in 1972, the numbers indicate that female athletes are still not provided equal athletic opportunity at many high schools, colleges, and universities throughout the state. A survey report, pinpointing areas of weakness and recommending strategies to improve the various components of athletic equity, will allow California to assume a leadership role in compliance with this 30-year-old federal statute.

(m) As used in this act, ''Title IX'' refers to Title IX of the Education Amendments of 1972 (20 U.S.C. ~~Secs.~~ *Sec.* 1681 et seq.).

SEC. 346. Any section of any act enacted by the Legislature during the 2003 calendar year that takes effect on or before January 1, 2004, 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 2003 calendar year and takes effect on or before January 1, 2004, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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