SENATE BILL No. 1108

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

March 10, 2005

An act to amend Sections 1658, 6704.1, 8764, 8776.4, 19641.2, 24045.3, 24045.5, 24045.9, 24045.15, and 25658 of the Business and Professions Code, to amend Sections 798.25, 799.1.5, 1365.2.5, 1747.08, 1798.81.5, 1798.83, and 1936 of the Civil Code, to amend Sections 995.640, 1985.6, 2025.480, 2030.050, 2031.300, and 2033.220 of the Code of Civil Procedure, to amend Section 31109.1 of the Corporations Code, to amend Sections 1240, 17212.2, 17592.70, 17592.72, 17592.73, 22115, 22200, 33126, 41020.5, 41326.1, 41328, 41530, 44830.3, 48853, 49341, 49414.5, 51226.1, 51430, 52059, 52124, 56366, 56366.1, 56366.11, 56505, 59052, 66739.5, 71093, 89539.2, 94742.3, 94931, and 99235 of, and to amend and renumber Section 17463.6 of, the Education Code, to amend Section 9042 of the Elections Code, to amend Sections 299.3, 420, 2024.6, 3111, and 6341 of the Family Code, to amend Section 14252 of the Financial Code, to amend Sections 1053, 1363.5, and 8494 of the Fish and Game Code, to amend Sections 77253 and 77265 of the Food and Agricultural Code, to amend Sections 3309.5, 6254, 7072, 7076.2, 7099, 7110, 7113.5, 8592.4, 8875.10, 12599, 12715, 17555, 20281.5, 20610, 21224, 22860, 27393, 30061, 31492.1, 31725.65, 31755, 31781.2, 31831.2, 31874.6, 51283.4, 53080, 53635, 54954.5, 56700, 65053.5, 65351, 65460.1, 66907.7, 68085, 68115, 68927, 69927, 70367, 71622, 82036, 84602, and 90004 of, and to add the heading of Chapter 5 (commencing with Section 14557) to Part 5.3 of Division 3 of Title 2 of, the Government Code, to amend Sections 1179.2, 1351.2, 1596.792, 11571.1, 18070, 25395.110, 25395.65, 25395.67, 25395.93, 25395.95, 25395.96, 25404, 25404.3, 44297, 100425, 101317, 101850, 113995, 118275, 120440, 125001 of, and to amend and renumber the heading of Article 45 (commencing with Section

123620) of Chapter 2 of Part 2 of Division 106 of, the Health and Safety Code, to amend Section 1215.2 of the Insurance Code, to amend Sections 98.2, 98.6, 2699.5, 3099.3, 3600.1, and 4658.5 of the Labor Code, to amend Sections 179, 972.1, and 985 of the Military and Veterans Code, to amend Sections 502.01, 679.05, 1203.4a, 11055, 12081, and 12553 of the Penal Code, to amend Sections 6106.5, 6108, and 10411 of the Public Contract Code, to amend Sections 5018.1, 14530.1, 14539, 14551, 21159.24, 30310, 40507, 42648.6 of, to amend and renumber Section 21061.5 of, and to amend and renumber the heading of Chapter 4 (commencing with Section 71069) of Part 2 of Division 34 of, the Public Resources Code, to amend Sections 353.2, 379.6, 394.25, 2827.10, 2828, 21661.5, 90300, 130054.1, 130630, and 170042 of the Public Utilities Code, to amend Sections 69.4, 214, 217, 2508, 3811, 7105, 17041, 17052.6, 18648, 18706, 19164, and 20583 of the Revenue and Taxation Code, to amend Sections 527, 36705, 36733, and 36737 of the Streets and Highways Code, to amend Section 1052 of the Unemployment Insurance Code, to amend Sections 4000.1, 4466, 5205.5, 9400.1, 12509, 13352, 15250, 15275, 23575, 23593, and 27362 of the Vehicle Code, to amend Sections 521, 525, 527, 1013, 12997, 13305, 13387, and 35539.13 of the Water Code, to amend Sections 294, 366.21, 387, 636, 740, 827, 4637.5, 4688.5, 7200.06, 11404, 11462, 14016.5, 14016.51, 14087.6, 14123.25, and 16206 of the Welfare and Institutions Code, to amend Section 15 of Chapter 656 of the Statutes of 2003, and to amend Sections 4 and 5 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1108, 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 1658 of the Business and Professions Code is amended to read:

1658. (a) When a licensee desires to have more than one place of practice, he or she shall, prior to the opening of the additional office, apply to the board, pay the fee required by this chapter, and receive permission in writing from the board to have the additional place of practice.

"Place of practice" means any dental office where any act of dentistry is practiced as defined by Section 1625, and includes a place of practice in which the applicant holds any proprietary interest of any nature whatsoever, or in which he *or she* holds any right to participate in the management or control thereof. A dentist who is the lessor of a dental office shall not be deemed to hold a proprietary interest in that place of practice, unless he *or she* is entitled to participate in the management or control of the dentistry practiced there.

(b) This section shall not apply to a licensee who practices dentistry outside his or her registered place of practice in any of the following places:

(1) Facilities licensed by the State Department of Health Services.

(2) Licensed health facilities as defined in Section 1250 of the Health and Safety Code.

(3) Clinics that are licensed under subdivision (a) of Section 1204 of, or that are exempt from licensure under ~~subdivisions~~ *subdivision* (b), (c), or (h) of Section 1206 of, the Health and Safety Code.

(4) Licensed community care facilities as defined in Section 1502 of the Health and Safety Code.

(5) Schools of any grade level, whether public or private.

(6) Public institutions*,* including, but not limited to, federal, state, and local penal and correctional facilities.

(7) Mobile units ~~which~~ *that* are operated by a public or governmental agency or a nonprofit or charitable organization and are approved by the board, provided that the mobile units meet all statutory or regulatory requirements.

(8) The home of a nonambulatory patient when a physician or registered nurse has provided a written note that the patient is unable to visit a dental office.

SEC. 2. Section 6704.1 of the Business and Professions Code is amended to read:

6704.1. (a) The Department of Consumer Affairs, in conjunction with the board, and the Joint Committee on Boards, Commissions, and Consumer Protection shall review the engineering branch titles specified in Section 6732 to determine whether certain title acts should be eliminated from this chapter, retained, or converted to practice acts similar to civil, electrical, and mechanical engineering, and whether supplemental engineering work should be permitted for all branches of engineering. The department shall contract with an independent consulting firm to perform this comprehensive analysis of title act registration.

(b) The independent consultant shall perform, but not be limited to, the following: (1) meet with representatives of each of the engineering branches and other professional groups; (2) examine the type of services and work provided by engineers in all branches of engineering and interrelated professions within the marketplace, to determine the interrelationship that exists between the various branches of engineers and other interrelated professions; (3) review and analyze educational requirements of engineers; (4) identify the degree to which supplemental or "overlapping" work between engineering branches and interrelated professions occurs; (5) review alternative methods of regulation of engineers in other states and what impact the regulations would have if adopted in California; (6) identify the manner in which local and state agencies utilize regulations and statutes to regulate engineering work; and~~,~~ (7) recommend changes to existing laws regulating engineers after considering how these changes may ~~effect~~ *affect* the health, safety, and welfare of the public.

(c) The board shall reimburse the department for costs associated with this comprehensive analysis. The department shall report its findings and recommendations to the Legislature by September 1, 2002.

SEC. 3. Section 8764 of the Business and Professions Code is amended to read:

8764. The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.

(b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

(c) Name and legal designation of the property in which the survey is located, and the date or time period of the survey.

(d) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.

(e) Memorandum of oaths.

(f) Statements required by Section 8764.5.

(g) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.

The record of survey shall also show, either graphically or by note, the reason or reasons, if any, why the mandatory filing provisions of ~~subdivisions~~ paragraphs (1) to (5), inclusive, of subdivision (b) of Section 8762 apply.

The record of survey need not consist of a survey of an entire property.

SEC. 4. Section 8776.4 of the Business and Professions Code is amended to read:

8776.4. ~~(a)~~ Notwithstanding any other provision of law, a licensee shall not be considered to have violated a confidential settlement agreement or other confidential agreement by providing a report to the board as required by this article.

SEC. 5. Section 19641.2 of the Business and Professions Code is amended to read:

19641.2. (a) The nonprofit foundation authorized to receive funds pursuant to Section 19641 shall use those funds to administer a health and welfare trust fund without prejudice and for the benefit of every eligible person. The officers and directors of the health and welfare trust fund shall have a fiduciary

responsibility to manage the fund for the benefit of the beneficiaries.

(b) Every employer of backstretch workers shall, upon request, submit in writing or electronically to the administrator of the welfare program for backstretch workers any employment records necessary for prompt payment of benefits and proper administration of the program. Upon request, employers shall also provide to the administrator access to any employment records necessary for prompt payment of benefits and proper administration of the program.

(c) At least one member of the health and welfare fund board shall be a member without financial interest in the horse racing industry appointed from a list of nominees submitted jointly by the California State Council of the Service Employees International Union, the Jockey's Guild, and the California Teamsters Public Affairs Council.

(d) Nothing in this section is intended to affect the status of the welfare fund as a charity under Section 501(c)(3) of the federal Internal Revenue Code or ~~it~~ *its* compliance with the Charitable Purposes Act (Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

SEC. 6. Section 24045.3 of the Business and Professions Code is amended to read:

24045.3. (a) The department may issue a special temporary retail package off-sale beer and wine license to a women's educational and charitable organization that is a part of a national organization having at least 10 chapters in California at least one of which has been incorporated since 1928, whose purpose is to foster interest among its members in the social, economic, and civic conditions of their community and to give effective volunteer service. An applicant for this license shall accompany the application with a fee of one hundred dollars ($100).

(b) This license shall only entitle the licensee to sell at auction for charitable purposes *beer and* wine donated to it. None of the funds realized from this auction shall be used for the administrative expenses of the auction and all funds shall be placed in trust for a charitable purpose. Notwithstanding any other provision of this division, a licensee may donate *beer and* wine~~,~~ to an organization licensed under this section, provided that

donations are not made in connection with a sale of an alcoholic beverage.

(c) This license shall be for a period not exceeding one day. Only one license shall be issued to any organization in a calendar year.

SEC. 7. Section 24045.5 of the Business and Professions Code is amended to read:

24045.5. The department in its discretion may issue a temporary permit to the transferee of any license to continue the operation of the premises during the period a transfer application for the license from person to person at the same premises is pending and when all the following conditions exist:

(a) The premises shall have been operated under a license within 30 days of the date of filing the application for a temporary permit.

(b) The license for the premises shall have been surrendered pursuant to rules of the department.

(c) The applicant for the temporary permit shall have filed with the department an application for transfer of the license at the premises to himself or herself.

(d) The application for the temporary permit shall be accompanied by a temporary permit fee of one hundred dollars ($100).

A temporary permit issued by the department pursuant to this section shall be for a period not to exceed four calendar months. A temporary permit may be extended at the discretion of the department for an additional four calendar months upon payment of an additional fee of one hundred dollars ($100) and upon compliance with all conditions required herein. A temporary permit is a conditional permit and authorizes the holder thereof to sell the alcoholic beverages as would be permitted to be sold under the privileges of the license for which the transfer application has been filed with the department.

Purchase of beer, wine, and distilled spirits by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by check. However, the holder of a temporary retail permit who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the temporary permit, and who is not delinquent under the provisions of Section 25509 as to any retail license

under which he or she operates, may purchase alcoholic beverages on credit under the temporary permit.

All checks received by a seller for alcoholic beverages purchased by the holder of a temporary retail permit shall be deposited not later than the second business day following the date the alcoholic beverages are delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

Transfer of the license for which the holder of a temporary permit has filed an application shall not be approved by the department until the holder of the temporary permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

It shall not be a violation of this section or otherwise grounds for disciplinary action for any licensee to extend credit to the holder of a temporary permit or to receive payment from the permittee in a manner other than authorized herein unless the seller had knowledge of the fact that the purchaser was operating under a temporary permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under a temporary permit were posted with the notice required by Section 23985, or the holder of the temporary permit had recorded notice as required by Section 24073, or the holder of the temporary permit had published notice as required by Section 23986, or the holder of the temporary permit had recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

Refusal by the department to issue or extend a temporary permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to temporary permits.

Notwithstanding any other provision of law, a temporary permit may be canceled or suspended summarily at anytime if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to temporary permits.

Application for a temporary permit shall be on any form the department shall prescribe. If an application for *a* temporary permit is withdrawn before issuance or is refused by the department, the fee which accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of temporary permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 8. Section 24045.9 of the Business and Professions Code is amended to read:

24045.9. (a) The department may issue a special temporary on-sale beer and wine license to: (1) a television station, supported wholly or in part by public membership subscription, which is a nonprofit, charitable corporation exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States, or (2) a nonprofit, charitable corporation exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States which receives and administers donations for a noncommercial, educational television station or public broadcasting station supported wholly or in part by public membership subscription. An applicant for this license shall accompany the application with a fee of one hundred dollars ($100).

(b) This license shall only entitle the licensee to sell and serve beer and wine donated to it. Notwithstanding any other provision of this division, a licensee may donate beer *or wine* to a corporation licensed under this section, provided ~~such~~ *that the* donations are not made in connection with a sale of an alcoholic beverage.

(c) This license shall be for a period not exceeding 30 days. Only one license shall be issued to any corporation in a calendar year.

(d) For purposes of this section, any licensee may also serve that beer *or wine* donated by him or her at any event for which the license has been issued.

(e) The department shall adopt rules as it determines necessary to implement and administer this section.

SEC. 9. Section 24045.15 of the Business and Professions Code is amended to read:

24045.15. (a) Notwithstanding any other provision of this division, the department may issue a special temporary on-sale or off-sale wine license to any nonprofit corporation having an agricultural purpose that is exempt from the payment of income taxes under Section 501(c)(5) of the Internal Revenue Code of 1986. If the nonprofit corporation's name, or any name under which the nonprofit corporation does business, includes the designation of an American ~~viticultural area~~ *Viticultural Area* (AVA) recognized by the United States Bureau of Alcohol, Tobacco and Firearms (BATF), as set forth in Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations (27 C.F.R. 9.1 et seq.), the membership of the nonprofit corporation shall include a majority of the winegrowers located in the named AVA in order to obtain a license under this section. No more than one nonprofit corporation located in an AVA is entitled to obtain a license under this section. The applicant shall accompany the application with a fee of one hundred dollars ($100).

(b) This special license shall only entitle the licensee to sell wine donated or sold to the nonprofit corporation by the member winegrowers to consumers for the purpose of fundraising. The wine shall bear the brand name of the producing winery. Off-sale privileges shall be limited to direct mail, telephone, and online computer services. No member winegrower shall donate or sell more than 75 cases of wine per year to the nonprofit corporation and the nonprofit corporation shall sell no more than 1,000 cases of wine per year under the license. If the nonprofit corporation's name or any name under which the nonprofit corporation does business includes the designation of an American ~~viticultural area~~ *Viticultural Area* (AVA) recognized by the United States Bureau of Alcohol, Tobacco and Firearms (BATF), as set forth in Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations (27 C.F.R. 9.1 et seq.), the wines sold by the

nonprofit corporation must be entitled to use the named AVA as the appellation of origin. In order to avoid confusion between the corporation and any winery whose name also includes the designation of the named AVA, any advertising or solicitation for the sale of wine under this license by the corporation shall include a statement disclosing that the corporation is a nonprofit agricultural organization whose members include individual winegrowers or grapegrowers and whose purpose is to promote its agricultural region and improve its grapes and wines. This advertising or solicitation shall also include a complete roster of the corporation's members and a list of the brand names, varieties, and vintages of the wines offered for sale. The wine shall not be sold at less than its minimum retail price.

(c) This special license shall be for a period not exceeding 60 days. Only one special license authorized by this section shall be issued to any nonprofit corporation in a calendar year.

SEC. 10. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be

suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of *a* fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of *a* fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of

Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution under any other provision of law, including, but not limited to, Section 272 of the Penal Code.

SEC. 11. Section 798.25 of the Civil Code is amended to read:

798.25. (a) Except as provided in subdivision (d), when the management proposes an amendment to the park's rules and regulations, the management shall meet and consult with the homeowners in the park, their representatives, or both, after written notice has been given to all the homeowners in the park 10 days or more before the meeting. The notice shall set forth the proposed amendment to the ~~park~~ *park's* rules and regulations and shall state the date, time, and location of the meeting.

(b) Except as provided in subdivision (d) following the meeting and consultation with the homeowners, the noticed amendment to the ~~park~~ *park's* rules and regulations may be implemented, as to any homeowner, with the consent of that homeowner, or without the homeowner's consent upon written notice of not less than six months, except for regulations applicable to recreational facilities, which may be amended without homeowner consent upon written notice of not less than 60 days.

(c) Written notice to a homeowner whose tenancy commences within the required period of notice of a proposed amendment to the park's rules and regulations under subdivision (b) or (d) shall constitute compliance with this section where the written notice is given before the inception of the tenancy.

(d) When the management proposes an amendment to the park's rules and regulations mandated by a change in the law, including, but not limited to, a change in a statute, ordinance, or governmental regulation, the management may implement the amendment to the ~~park~~ *park's* rules and regulations, as to any homeowner, with the consent of that homeowner or without the homeowner's consent upon written notice of not less than 60 days. For purposes of this subdivision, the management shall specify in the notice ~~a~~ *the* citation to the statute, ordinance, or regulation, including the section number, that necessitates the proposed amendment to the park's rules and regulations.

(e) Any amendment to the park's rules and regulations that creates a new fee payable by the homeowner and that has not been expressly agreed upon by the homeowner and management in the written rental agreement or lease, shall be void and unenforceable.

SEC. 12. Section 799.1.5 of the Civil Code is amended to read:

799.1.5. A homeowner or resident, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome through the death of the resident of the mobilehome who was a resident at the time of his or her death, or the agent of any of those persons, may advertise the sale or exchange of his or her mobilehome or, if not prohibited by the terms of an agreement with the management or ownership, may advertise the rental of his or her mobilehome by displaying a sign in the window of the mobilehome, or by a sign posted on the side of the mobilehome facing the street, or by a sign in front of the mobilehome facing the street, stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his or her agent. Any such person also may display a sign conforming to these requirements indicating that the mobilehome is on display for an "open house," unless the park rules prohibit the display of an open house sign. The sign shall state the name, address, and telephone number of the owner

of the mobilehome or his or her agent. The sign face may not exceed 24 inches ~~from~~ in width and 36 inches in height. Signs posted in ~~from~~ *front* of a mobilehome pursuant to this section may be of an H-frame or A-frame design with the sign face perpendicular to, but not extending into, the street. A homeowner or resident, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome through the death of the resident of the mobilehome who was a resident at the time of his or her death, or the agent of any of those persons, may attach to the sign or their mobilehome tubes or holders for leaflets that provide information on the mobilehome for sale, exchange, or rent.

SEC. 13. Section 1365.2.5 of the Civil Code is amended to read:

1365.2.5. (a) The disclosures required by this article in regard to an association or a property shall be summarized on the following form:

Assessment and Reserve Funding Disclosure Summary

(1) The current assessment per unit is $_____ per ____.
Note: If assessments vary by the size or type of unit, the assessment applicable to this unit may be found on page _____ of the attached report.

(2) Additional assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment is due:	Amount per unit per month (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of unit, the assessment applicable to this unit may be found on page ____ of the attached

report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years?

Yes _____ No _____

(4) If the answer to ~~#3~~ *(3)* is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years?

Approximate date assessment will be due:	Amount per unit per month:
	Total:

(5) The following major components, which are included in the reserve study, are NOT included in the existing reserve funding:

Major component:	Useful remaining life in years:	Reason this major component was not included:

(6) As of the last reserve study or update, the current balance in the reserve fund is $_____. Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, the required amount in the reserve fund is $_____, and if an alternate, but generally accepted, method of calculation is also used, the required amount is $____. (See attached explanation)

NOTE: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.

(b) For the purposes of preparing a summary pursuant to this section:

(1) "Estimated remaining useful life" means the time reasonably calculated to remain before a major component will require replacement.

(2) "Major component" has the meaning used in Section 1365.5. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

SEC. 14. Section 1747.08 of the Civil Code is amended to read:

1747.08. (a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation ~~which~~ *that* accepts credit cards for the transaction of business shall do ~~either~~ *any* of the following:

(1) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to write any personal identification information upon the credit card transaction form or otherwise.

(2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to provide personal identification information, which the person, firm, partnership, association, or corporation

accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise.

(3) Utilize, in any credit card transaction, a credit card form which contains preprinted spaces specifically designated for filling in any personal identification information of the cardholder.

(b) For purposes of this section "personal identification information," means information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number.

(c) Subdivision (a) does not apply in the following instances:

(1) If the credit card is being used as a deposit to secure payment in the event of default, loss, damage, or other similar occurrence.

(2) Cash advance transactions.

(3) If the person, firm, partnership, association, or corporation accepting the credit card is contractually obligated to provide personal identification information in order to complete the credit card transaction or is obligated to collect and record the personal identification information by federal law or regulation.

(4) If personal identification information is required for a special purpose incidental but related to the individual credit card transaction, including, but not limited to, information relating to shipping, delivery, servicing, or installation of the purchased merchandise, or for special orders.

(d) This section does not prohibit any person, firm, partnership, association, or corporation from requiring the cardholder, as a condition to accepting the credit card as payment in full or in part for goods or services, to provide reasonable forms of positive identification, which may include a driver's license or a California state identification card, or where one of these is not available, another form of photo identification, provided that none of the information contained thereon is written or recorded on the credit card transaction form or otherwise. If the cardholder pays for the transaction with a credit card number and does not make the credit card available upon request to verify the number, the cardholder's driver's license

number or identification card number may be recorded on the credit card transaction form or otherwise.

(e) Any person who violates this section shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for each subsequent violation, to be assessed and collected in a civil action brought by the person paying with a credit card, by the Attorney General, or by the district attorney or city attorney of the county or city in which the violation occurred. However, no civil penalty shall be assessed for a violation of this section if the defendant shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the defendant's maintenance of procedures reasonably adopted to avoid that error. When collected, the civil penalty shall be payable, as appropriate, to the person paying with a credit card who brought the action, or to the general fund of whichever governmental entity brought the action to assess the civil penalty.

(f) The Attorney General, or any district attorney or city attorney within his or her respective jurisdiction, may bring an action in the superior court in the name of the people of the State of California to enjoin violation of subdivision (a) and, upon notice to the defendant of not less than five days, to temporarily restrain and enjoin the violation. If it appears to the satisfaction of the court that the defendant has, in fact, violated subdivision (a), the court may issue an injunction restraining further violations, without requiring proof that any person has been damaged by the violation. In these proceedings, if the court finds that the defendant has violated subdivision (a), the court may direct the defendant to pay any or all costs incurred by the Attorney General, district attorney, or city attorney in seeking or obtaining injunctive relief pursuant to this subdivision.

(g) Actions for collection of civil penalties under subdivision (e) and for injunctive relief under subdivision (f) may be consolidated.

(h) The changes made to this section by ~~Assembly Bill 1316 of the 1995–96 Regular Session of the Legislature~~ *Chapter 458 of the Statutes of 1995* apply only to credit card transactions entered into on and after January 1, 1996. Nothing in those

changes shall be construed to affect any civil action which was filed before January 1, 1996.

SEC. 15. Section 1798.81.5 of the Civil Code is amended to read:

1798.81.5. (a) It is the intent of the Legislature to ensure that personal information about California residents is protected. To that end, the purpose of this section is to encourage businesses that own or license personal information about Californians to provide reasonable security for that information. For the purpose of this section, the phrase "owns or licenses" is intended to include, but is not limited to, personal information that a business retains as part of the business' internal customer account or for the purpose of using that information in transactions with the person to whom the information relates.

(b) A business that owns or licenses personal information about a California resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(c) A business that discloses personal information about a California resident pursuant to a contract with a nonaffiliated third party shall require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(d) For purposes of this section*, the following terms have the following meanings*:

(1) "Personal information" means an individual's first name or first initial and his or her last name in combination with any one or more of the following data elements, when either the name or the ~~date~~ *data* elements are not encrypted or redacted:

(A) Social security number.

(B) Driver's license number or California identification card number.

(C) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(D) Medical information.

(2) "Medical information" means any individually identifiable information, in electronic or physical form, regarding the individual's medical history or medical treatment or diagnosis by a health care professional.

(3) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(e) The provisions of this section do not apply to any of the following:

(1) A provider of health care, health care service plan, or contractor regulated by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1).

(2) A financial institution as defined in Section 4052 of the Financial Code and subject to the California Financial Information Privacy Act (Division 1.2 (commencing with Section 4050) of the Financial Code.

(3) A covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

(4) An entity that obtains information under an agreement pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code and is subject to the confidentiality requirements of the Vehicle Code.

(5) A business that is regulated by state or federal law providing greater protection to personal information than that provided by this section in regard to the subjects addressed by this section. Compliance with that state or federal law shall be deemed compliance with this section with regard to those subjects. This paragraph does not relieve a business from a duty to comply with any other requirements of other state and federal law regarding the protection and privacy of personal information.

SEC. 16. Section 1798.83 of the Civil Code is amended to read:

1798.83. (a) Except as otherwise provided in subdivision (d), if a business has an established business relationship with a customer and has within the immediately preceding calendar year

disclosed personal information that corresponds to any of the categories of personal information set forth in paragraph (6) of subdivision (e) to third parties, and if the business knows or reasonably should know that the third parties used the personal information for the third parties' direct marketing purposes, that business shall, after the receipt of a written or electronic mail request, or, if the business chooses to receive requests by toll-free telephone or facsimile numbers, a telephone or facsimile request from the customer, provide all of the following information to the customer free of charge:

(1) In writing or by electronic mail, a list of the categories set forth in paragraph (6) of subdivision (e) that correspond to the personal information disclosed by the business to third parties for the third parties' direct marketing purposes during the immediately preceding calendar year.

(2) In writing or by electronic mail, the names and addresses of all of the third parties that received personal information from the business for the third parties' direct marketing purposes during the preceding calendar year and, if the nature of the third parties' business cannot reasonably be determined from the third parties' name, examples of the products or services marketed, if known to the business, sufficient to give the customer a reasonable indication of the nature of the third parties' business.

(b) (1) A business required to comply with this section shall designate a mailing address, electronic mail address, or, if the business chooses to receive requests by telephone or facsimile, a toll-free telephone or facsimile number, to which customers may deliver requests pursuant to subdivision (a). A business required to comply with this section shall, at its election, do at least one of the following:

(A) Notify all agents and managers who directly supervise employees who regularly have contact with customers of the designated addresses or numbers or the means to obtain those addresses or numbers and instruct those employees that customers who inquire about the ~~business'~~ *business's* privacy practices or the ~~business'~~ *business's* compliance with this section shall be informed of the designated addresses or numbers or the means to obtain the addresses or numbers.

(B) Add to the home page of its Web site~~,~~ a link either to a page titled "Your Privacy Rights" or ~~to~~ add the words "Your

Privacy ~~Rights,"~~ *Rights"* to the home page's link to the ~~business'~~ *business's* privacy policy. If the business elects to add the words "Your Privacy Rights" to the link to the ~~business'~~ *business's* privacy policy, the words "Your Privacy Rights" shall be in the same style and size ~~of~~ *as* the link to the ~~business'~~ *business's* privacy policy. If the business does not display a link to its privacy policy on the home page of its Web site, or does not have a privacy policy, the words "Your Privacy Rights" shall be written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language. The first page of the link shall describe a customer's rights pursuant to this section and shall provide the designated mailing address, e-mail address, as required, or toll-free telephone number or facsimile number, as appropriate. If the business elects to add the words "Your California Privacy Rights" to the home page's link to the ~~business'~~ *business's* privacy policy in a manner that complies with this subdivision, and the first page of the link describes a customer's rights pursuant to this section, and provides the designated mailing address, electronic mailing address, as required, or toll-free telephone or facsimile number, as appropriate, the business need not respond to requests that are not received at one of the designated addresses or numbers.

(C) Make the designated addresses or numbers, or means to obtain the designated addresses or numbers, readily available upon request of a customer at every place of business in California where the business or its agents regularly have contact with customers.

The response to a request pursuant to this section received at one of the designated addresses or numbers shall be provided within 30 days. Requests received by the business at other than one of the designated addresses or numbers shall be provided within a reasonable period, in light of the circumstances related to how the request was received, but not to exceed 150 days from the date received.

(2) A business that is required to comply with this section and Section 6803 of Title 15 of the United States Code may comply with this section by providing the customer the disclosure

required by Section 6803 of Title 15 of the United States Code, but only if the disclosure also complies with this section.

(3) A business that is required to comply with this section is not obligated to provide information associated with specific individuals and may provide the information required by this section in standardized format.

(c) (1) A business that is required to comply with this section is not obligated to do so in response to a request from a customer more than once during the course of any calendar year. A business with fewer than 20 full-time or part-time employees is exempt from the requirements of this section.

(2) If a business that is required to comply with this section adopts and discloses to the public, in its privacy policy, a policy of not disclosing personal information of customers to third parties for the third parties' direct marketing purposes unless the customer first affirmatively agrees to that disclosure, or of not disclosing the personal information of customers to third parties for the third parties' direct marketing purposes if the customer has exercised an option that prevents that information from being disclosed to third parties for those purposes, as long as the business maintains and discloses the policies, the business may comply with subdivision (a) by notifying the customer of his or her right to prevent disclosure of personal information, and providing the customer with a cost-free means to exercise that right.

(d) The following are among the disclosures not deemed to be disclosures of personal information by a business for a third ~~parties'~~ *party's* direct marketing purposes for purposes of this section:

(1) Disclosures between a business and a third party pursuant to contracts or arrangements pertaining to any of the following:

(A) The processing, storage, management, or organization of personal information, or the performance of services on behalf of the business during which personal information is disclosed, if the third party that processes, stores, manages, or organizes the personal information does not use the information for a third party's direct marketing purposes and does not disclose the information to additional third parties for their direct marketing purposes.

(B) Marketing products or services to customers with whom the business has an established business relationship where, as a part of the marketing, the business does not disclose personal information to third parties for the third parties' direct marketing purposes.

(C) Maintaining or servicing accounts, including credit accounts and disclosures pertaining to the denial of applications for credit or the status of applications for credit and processing bills or insurance claims for payment.

(D) Public record information relating to the right, title, or interest in real property or information relating to property characteristics, as defined in Section 408.3 of the Revenue and Taxation Code, obtained from a governmental agency or entity or from a multiple listing service, as defined in Section 1087, and not provided directly by the customer to a business in the course of an established business relationship.

(E) Jointly offering a product or service pursuant to a written agreement with the third party that receives the personal information, provided that all of the following requirements are met:

(i) The product or service offered is a product or service of, and is provided by, at least one of the businesses that is a party to the written agreement.

(ii) The product or service is jointly offered, endorsed, or sponsored by, and clearly and conspicuously identifies for the customer, the businesses that disclose and receive the disclosed personal information.

(iii) The written agreement provides that the third party that receives the personal information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a product or service that is the subject of the written agreement.

(2) Disclosures to or from a consumer reporting agency of a customer's payment history or other information pertaining to transactions or experiences between the business and a customer if that information is to be reported in, or used to generate, a consumer report as defined in subdivision (d) of Section 1681a of Title 15 of the United States Code, and use of that information is

limited by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

(3) Disclosures of personal information by a business to a third party financial institution solely for the purpose of the business obtaining payment for a transaction in which the customer paid the business for goods or services with a check, credit card, charge card, or debit card, if the customer seeks the information required by subdivision (a) from the business obtaining payment, whether or not the business obtaining payment knows or reasonably should know that the third party financial institution has used the personal information for its direct marketing purposes.

(4) Disclosures of personal information between a licensed agent and its principal, if the personal information disclosed is necessary to complete, effectuate, administer, or enforce transactions between the principal and the agent, whether or not the licensed agent or principal also uses the personal information for direct marketing purposes, if that personal information is used by each of them solely to market products and services directly to customers with whom both have established business relationships as a result of the principal and agent relationship.

(5) Disclosures of personal information between a financial institution and a business that has a private label credit card, affinity card, retail installment contract, or cobranded card program with the financial institution, if the personal information disclosed is necessary for the financial institution to maintain or service accounts on behalf of the business with which it has a private label credit card, affinity card, retail installment contract, or ~~branded~~ *cobranded* card program, or to complete, effectuate, administer, or enforce customer transactions or transactions between the institution and the business, whether or not the institution or the business also uses the personal information for direct marketing purposes, if that personal information is used solely to market products and services directly to customers with whom both the business and the financial institution have established business relationships as a result of the private label credit card, affinity card, retail installment contract, or cobranded card program.

(e) For purposes of this section*, the following terms have the following meanings*:

(1) "Customer" means an individual who is a resident of California who provides personal information to a business during the creation of, or throughout the duration of, an established business relationship if the business relationship is primarily for personal, family, or household purposes.

(2) "Direct marketing purposes" means the use of personal information to solicit or induce a purchase, rental, lease, or exchange of products, goods, property, or services directly to individuals by means of the mail, telephone, or electronic mail for their personal, family, or household purposes. The sale, rental, exchange, or lease of personal information for consideration to businesses is a direct marketing purpose of the business that sells, rents, exchanges, or obtains consideration for the personal information. "Direct marketing purposes" does not include the use of personal information (A) by bona fide tax exempt charitable or religious organizations to solicit charitable contributions, (B) to raise funds from and communicate with individuals regarding politics and government, (C) by a third party when the third party receives personal information solely as a consequence of having obtained for consideration permanent ownership of accounts that might contain personal information, or (D) by a third party when the third party receives personal information solely as a consequence of a single transaction where, as a part of the transaction, personal information had to be disclosed in order to effectuate the transaction.

(3) "Disclose" means to disclose, release, transfer, disseminate, or otherwise communicate orally, in writing, or by electronic or any other means to any third party.

(4) "Employees who regularly have contact with customers" means employees whose contact with customers is not incidental to their primary employment duties, and whose duties do not predominantly involve ensuring the safety or health of the ~~businesses~~ *business's* customers. It includes, but is not limited to, employees whose primary employment duties are as cashier, clerk, customer service, sales, or promotion. It does not, by way of example, include employees whose primary employment duties consist of food or beverage preparation or service, maintenance and repair of the ~~business'~~ *business's* facilities or equipment, direct involvement in the operation of a motor vehicle, aircraft, watercraft, amusement ride, heavy machinery or

similar equipment, security, or participation in a theatrical, literary, musical, artistic, or athletic performance or contest.

(5) "Established business relationship" means a relationship formed by a voluntary, two-way communication between a business and a customer, with or without an exchange of consideration, for the purpose of purchasing, renting, or leasing real or personal property, or any interest therein, or obtaining a product or service from the business, if the relationship is ongoing and has not been expressly terminated by the business or the customer, or if the relationship is not ongoing, but is solely established by the purchase, rental, or lease of real or personal property from a business, or the purchase of a product or service, *and* no more than 18 months have elapsed from the date of the purchase, rental, or lease.

(6) (A) The categories of personal information required to be disclosed pursuant to paragraph (1) of subdivision (a) are all of the following:

(i) Name and address.

(ii) Electronic mail address.

(iii) Age or date of birth.

(iv) Names of children.

(v) Electronic mail or other addresses of children.

(vi) Number of children.

(vii) The age or gender of children.

(viii) Height.

(ix) Weight.

(x) Race.

(xi) Religion.

(xii) Occupation.

(xiii) Telephone number.

(xiv) Education.

(xv) Political party affiliation.

(xvi) Medical condition.

(xvii) Drugs, therapies, or medical products or equipment used.

(xviii) The kind of product the customer purchased, leased, or rented.

(xix) Real property purchased, leased, or rented.

(xx) The kind of service provided.

(xxi) Social security number.

(xxii) Bank account number.
(xxiii) Credit card number.
(xxiv) Debit card number.
(xxv) Bank or investment account, debit card, or credit card balance.
(xxvi) Payment history.
(xxvii) Information pertaining to the customer's creditworthiness, assets, income, or liabilities.

(B) If a list, description, or grouping of customer names or addresses is derived using any of these categories, and is disclosed to a third party for direct marketing purposes in a manner that permits the third party to identify, determine, or extrapolate any other personal information from which the list was derived, and that personal information when it was disclosed identified, described, or was associated with an individual, the categories set forth in this subdivision that correspond to the personal information used to derive the list, description, or grouping shall be considered personal information for purposes of this section.

(7) "Personal information" as used in this section means any information that when it was disclosed identified, described, or was able to be associated with an individual and includes all of the following:

(A) An individual's name and address.
(B) Electronic mail address.
(C) Age or date of birth.
(D) Names of children.
(E) Electronic mail or other addresses of children.
(F) Number of children.
(G) The age or gender of children.
(H) Height.
(I) Weight.
(J) Race.
(K) Religion.
(L) Occupation.
(M) Telephone number.
(N) Education.
(O) Political party affiliation.
(P) Medical condition.
(Q) Drugs, therapies, or medical products or equipment used.

(R) The kind of product the customer purchased, leased, or rented.

(S) Real property purchased, leased, or rented.

(T) The kind of service provided.

(U) Social security number.

(V) Bank account number.

(W) Credit card number.

(X) Debit card number.

(Y) Bank or investment account, debit card, or credit card balance.

(Z) Payment history.

(AA) Information pertaining to creditworthiness, assets, income, or liabilities.

(8) "Third party" or "third parties" means one or more of the following:

(A) A business that is a separate legal entity from the business that has an established business relationship with a customer.

(B) A business that has access to a database that is shared among businesses, if the business is authorized to use the database for direct marketing purposes, unless the use of the database is exempt from being considered a disclosure for direct marketing purposes pursuant to subdivision (d).

(C) A business not affiliated by a common ownership or common corporate control with the business required to comply with subdivision (a).

(f) (1) Disclosures of personal information for direct marketing purposes between affiliated third parties that share the same brand name are exempt from the requirements of paragraph (1) of subdivision (a) unless the personal information disclosed corresponds to one of the following categories, in which case the customer shall be informed of those categories listed in this subdivision that correspond to the categories of personal information disclosed for direct marketing purposes and the third party recipients of personal information disclosed for direct marketing purposes pursuant to paragraph (2) of subdivision (a):

(A) Number of children.

(B) The age or gender of children.

(C) Electronic mail or other addresses of children.

(D) Height.

(E) Weight.

(F) Race.
(G) Religion.
(H) Telephone number.
(I) Medical condition.
(J) Drugs, therapies, or medical products or equipment used.
(K) Social security number.
(L) Bank account number.
(M) Credit card number.
(N) Debit card number.
(O) Bank or investment account, debit card, or credit card balance.

(2) If a list, description, or grouping of customer names or addresses is derived using any of these categories, and is disclosed to a third party or third parties sharing the same brand name for direct marketing purposes in a manner that permits the third party to identify, determine, or extrapolate the personal information from which the list was derived, and that personal information when it was disclosed identified, described, or was associated with an individual, any other personal information that corresponds to the categories set forth in this subdivision used to derive the list, description, or grouping shall be considered personal information for purposes of this section.

(3) If a business discloses personal information for direct marketing purposes to affiliated third parties that share the same brand name, the business that discloses personal information for direct marketing purposes between affiliated third parties that share the same brand name may comply with the requirements of paragraph (2) of subdivision (a) by providing the overall number of affiliated companies that share the same brand name.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) This section does not apply to a financial institution that is subject to the California Financial Information Privacy Act (Division 1.2 (commencing with Section 4050) of the Financial Code) if the financial institution is in compliance with Sections 4052, 4052.5, 4053, 4053.5, and 4054.6 of the Financial Code, as those sections read when they were chaptered on August 28,

2003, and as subsequently amended by the Legislature or by initiative.

(i) This section shall become operative on January 1, 2005.

SEC. 17. Section 1936 of the Civil Code, as amended by Section 1 of Chapter 317 of the Statutes of 2004, 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~~ *coworkers* 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.

(4) (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~~ *common-use* transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected may 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.

(5) "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.

(6) "Electronic surveillance technology" means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. "Electronic surveillance technology" does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(7) "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."

(8) "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.

(9) "Membership program" means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (r) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(10) "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 may 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 may 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 may 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) 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 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 may not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company 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 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 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 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 that 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, and, for renters who are enrolled in the rental company's membership program, in a sign which shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (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 a damage waiver shall, orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver

may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract shall also state that 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 rental contract or holder in which the contract is placed, 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 are also either vehicles of next year's model, or not older than the previous year's model, 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 that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

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

(2) A rental company may not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the 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 the 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 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 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, are not 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 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 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~~ *if* 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 is not 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 may 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 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 rental company may not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle has been stolen, abandoned, or missing.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it ~~shall report~~ *has reported* the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle has been stolen, abandoned, or is missing.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A) of paragraph (1), a rental company shall maintain a record, in either electronic or written form, of information relevant to the activation of ~~such~~ *that* technology. That information shall include the rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of any written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law

enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish any explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with ~~GPS based~~ *GPS-based* technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing~~,~~ *or* flat tire or fuel services, at the request of the renter, if the rental company does not use, access*,* or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) Nothing in this subdivision prohibits a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company,~~ and~~ the total mileage driven*,* and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the

information shall only be used for the purpose described in this paragraph.

(p) A rental company may not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) 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.

(r) 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.

(s) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(t) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g), including the terms and conditions of the rental agreement then in effect.

(ii) A Web site address, as well as a contact number or address, where the enrollee can learn of any changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed~~,~~ in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle

insurance. If it is not feasible to hang the statement from the rearview mirror, ~~it~~ *the statement* shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if ~~he or she~~ *the renter* (not his or her employer) has previously accepted or declined the collision damage waiver and ~~that he or she~~ now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

"□ If I previously accepted the collision damage waiver, I now decline it.

□ If I previously declined the collision damage waiver, I now accept it."

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make such a change, prior to leaving the lot, by returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from those disclosures that are required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

(v) 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 1936 of the Civil Code, as amended by Section 2 of Chapter 317 of the Statutes of 2004, is amended to read:

1936. (a) For the purpose of this section, the following ~~definitions shall apply~~ *terms have the following meanings*:

(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 provid~~e common use~~ *common-use* transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected may 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) "Electronic surveillance technology" means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. "Electronic surveillance technology" does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(6) "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."

(7) "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.

(8) "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 ~~incidental~~ *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 may 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 may 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 may 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) 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 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 may not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company 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 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 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 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 that 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 a 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 rental contract or holder in which the contract is placed, 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 are also either vehicles of next year's model, or not older than the previous year's model, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model, 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 that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

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

(2) A rental company may not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the 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 the 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 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 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, are not 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 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 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~~ *if* 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 is not 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 may 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 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 rental company may not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle has been stolen, abandoned, or missing.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle has been stolen, abandoned, or is missing.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A) of paragraph (1), a rental company shall maintain a record, in either electronic or written form, of information relevant to the activation of ~~such~~ *that* technology. That information shall include the rental agreement, including the

return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of any written or other communication with the renter, including communications regarding extensions of the rental, police reports or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish any explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with ~~GPS-based~~ *GPS-based* technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to lock or unlock the vehicle.

(5) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing~~,~~ *or* flat tire or fuel services, at the request of the renter, if the rental company does not use, access*,* or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to provide the requested roadside assistance.

(6) Nothing in this subdivision prohibits a rental company from obtaining, accessing, or using information from electronic

surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company may not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) 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.

(r) 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.

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

SEC. 19. Section 995.640 of the Code of Civil Procedure is amended to read:

995.640. The county clerk of any county shall, upon request of any person, do any of the following:

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

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

SEC. 20. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following ~~definitions apply~~ *terms have the following meanings*:

(1) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum. "Employee" also means any individual who is or has been represented by a labor organization that is a witness subject to a subpoena duces tecum.

(3) "Employment records" means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee, or by any labor organization that has represented or currently represents the employee.

(4) "Labor organization" has the meaning set forth in Section 1117 of the Labor Code.

(5) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but does not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; ~~and~~ the notice described in subdivision (e)~~,~~*;* and proof of service as provided in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service

shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee, and that any objection to *the* release of records is waived.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time, as provided in paragraph (1) of subdivision (d) of Section 2020, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records*,* the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of

taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer does not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, ~~and~~ the deposition officer, *and* the witness a written objection that cites the specific grounds on which production of the employment records should be prohibited.

No witness or deposition officer shall be required to produce employment records after receipt of notice that the motion has been brought by an employee, or after receipt of a written objection from a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected.

The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witnesses and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) This section may not be construed to apply to any subpoena duces tecum ~~which~~ *that* does not request the records of

any particular employee or employees and ~~which~~ *that* requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

SEC. 21. Section 2025.480 of the Code of Civil Procedure is amended to read:

2025.480. (a) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production.

(b) This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration under Section 2016.040.

(c) Notice of this motion shall be given to all parties~~,~~ and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice.

(d) Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio or video technology, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion.

(e) If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

(f) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party,

person, or attorney who unsuccessfully makes or opposes a motion to compel *an* answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(g) If a deponent fails to obey an order entered under this section, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of~~,~~ or in addition to~~,~~ this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that party deponent or against any party with whom the deponent is affiliated.

SEC. 22. Section 2030.050 of the Code of Civil Procedure is amended to read:

2030.050. Any party who is propounding or has propounded more than 35 specially prepared interrogatories to any other party shall attach to each set of those interrogatories a declaration containing substantially the following:

DECLARATION FOR ADDITIONAL DISCOVERY

I, _____, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for _____, a party to this action or proceeding).

2. I am propounding to _____ the attached set of interrogatories.

3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially prepared interrogatories permitted by Section ~~2030.30~~ *2030.030* of the Code of Civil Procedure.

4. I have previously propounded a total of _____ interrogatories to this party, of which _____ interrogatories were not official form interrogatories.
5. This set of interrogatories contains a total of _____ specially prepared interrogatories.
6. I am familiar with the issues and the previous discovery conducted by all of the parties in the case.
7. I have personally examined each of the questions in this set of interrogatories.
8. This number of questions is warranted under Section 2030.040 of the Code of Civil Procedure because _____. (Here state each factor described in Section 2030.040 that is relied on, as well as the reasons why any factor relied on is applicable to the instant lawsuit.)
9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost of litigation.
I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on _____.

_____
(Signature)
Attorney for _____

SEC. 23. Section 2031.300 of the Code of Civil Procedure is amended to read:

2031.300. If a party to whom an inspection demand is directed fails to serve a timely response to it, the following rules apply:

(a) The party to whom the inspection demand is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section ~~2108.010)~~ *2018.010)*. The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) The party making the demand may move for an order compelling response to the inspection demand.

(c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to ~~that~~ *this* sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

SEC. 24. Section 2033.220 of the Code of Civil Procedure is amended to read:

2033.220. (a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits.

(b) Each answer shall:

(1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party.

(2) Deny so much of the matter involved in the request as is untrue.

(3) Specify so much of the matter involved in the request as to the~~,~~ truth of which the responding party lacks sufficient information or knowledge.

(c) If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.

SEC. 25. Section 31109.1 of the Corporations Code is amended to read:

31109.1. (a) There shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) the offer and sale of a franchise registered under Section 31111, 31121, or 31123 on terms different from the terms of the offer registered thereunder if all of the following requirements are met:

(1) The initial offer is the offer registered under Section 31111, 31121, or 31123.

(2) The prospective franchisee receives all of the following in a separate written appendix to the offering circular:

(A) A summary description of each material negotiated term that was negotiated by the franchisor for a California franchise during the ~~12 month~~ *12-month* period ending in the calendar month immediately preceding the month in which the negotiated offer or sale is made under this section.

(B) A statement indicating that copies of the negotiated terms are available upon written request.

(C) The name, telephone number, and address of the representative of the franchisor to whom requests for a copy of the negotiated terms may be obtained.

(3) The franchisor certifies or declares in an appendix to its application for renewal that it has complied with all of the requirements of this section, in the event this exemption is claimed.

(4) The negotiated terms, on the whole, confer additional benefits on the franchisee.

(b) The franchisor shall provide a copy of the negotiated terms described in subdivision (a) to the prospective franchisee within five business days following the request of the franchisee.

(c) The franchisor shall maintain copies of all material negotiated terms for which this exemption is claimed for a period of five years from the effective date of the first agreement containing the relevant negotiated term. Upon the request of the commissioner, the franchisor shall make the copies available to the commissioner for review. For purposes of this section, the commissioner may prescribe by rule or order the format and content of the summary description of the negotiated terms required by ~~subdivision suparagraph~~ *subparagraph* (A) of paragraph (2) of subdivision (a).

(d) For purposes of this section, "material" means that a reasonable franchisee would view the terms as important in negotiating the franchise.

SEC. 26. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c) (1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2) (A) To the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, shall annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools.

(B) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, *and* Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(C) The results of the ~~visit~~ *visits* shall be reported to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements.

(D) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Not disrupt the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance and the sufficiency of instructional materials, as defined by Section 60119.

(E) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks, as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually present a report to the governing board of the school district and the Superintendent of Public Instruction regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined at any time to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent of Public Instruction.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates

who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(h) Enforce the course of study.

(i) (1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority.

(2) For purposes of this subdivision, ~~sufficient~~ *"sufficient* textbooks or instructional ~~materials~~ *materials"* has the same meaning as in subdivision (c) of Section 60119.

(3) If a school is ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and is not currently under review through a state or federal intervention program, the county superintendent shall specifically review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be conducted within the first four weeks of the school year. For the 2004–05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide*,* within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department, with approval by the State Board of Education, to purchase the textbooks or instructional materials necessary to

comply with the sufficiency requirement of this subdivision. If the state board approves a recommendation from the department to purchase textbooks or instructional materials for the school district, the board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary to ~~the~~ purchase the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent of Public Instruction, the Superintendent of Public Instruction shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials~~,~~ from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(*l*) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the

fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent of Public Instruction may reclassify any certification. If a county office of education receives a negative certification, the Superintendent of Public Instruction, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent of Public Instruction at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent of Public Instruction.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county~~.~~*;*

however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 27. Section 17212.2 of the Education Code is amended to read:

17212.2. (a) The governing board of a school district may make a written request upon *a* person, corporation, public utility, local publicly owned utility, or governmental agency for information necessary or useful to assess and determine the safety of a proposed schoolsite or an addition to an existing schoolsite, pursuant to Section 17251 and this chapter, including pipelines, electric transmission and distribution lines, railroads, and storage tanks. The written request shall identify the physical location of the schoolsite for which information is sought, describe the information sought, and contain a statement as to why the information is needed or useful. Information requested may include all of the following:

(1) Railroad operations involving hazardous or toxic materials, as reported to a governmental agency; frequency, speed, and schedule of railroad traffic; grade, curves, and condition of railroad tracks; and railroad accident occurrence.

(2) Whether there are existing pipelines, planned pipelines, or easements for pipelines on, or in proximity to*,* as specified pursuant to regulations ~~promulgated~~ *adopted* pursuant to Section 17251, the schoolsite, including the location of the pipeline, the age of the pipeline, the pipeline material, the class of pipeline, the diameter of the pipeline, the depth at which the pipeline is buried, the wall thickness of the pipeline, the product or products transported by the pipeline, the operating pressure of the pipeline, the history of spills or leaks of material being transported by the

pipeline, as reported to a governmental agency, and the location of the shutoff valves for the pipeline that are capable of preventing or halting the transport of product or products to the schoolsite.

(3) Whether there are easements for~~,~~ planned~~,~~ or existing lines for the transmission or distribution of electricity, electrical transformers, or electrical substations~~,~~ on~~,~~ or in proximity to*,* as specified pursuant to regulations ~~promulgated~~ *adopted* pursuant to Section 17251, the schoolsite, the location of easements for, planned*,* or existing lines, ~~transformer~~ *transformers*, or ~~substation~~ *substations*, the voltages currently handled or planned to be handled by the line, transformer, or substation, the ground clearance, if applicable, of a line, transformer, or substation, and the depth of burial, if applicable, of the line, transformer, or substation as specified by the Public Utilities Commission.

(4) The location, age, construction type, safety record, and product stored in a storage tank.

(b) A person, corporation, public utility, local publicly owned utility, or governmental agency receiving a written request for information pursuant to this section~~,~~ shall provide a written response within 30 calendar days of receipt of the request, that provides the requested information, identifies available public information or an available report to a governmental agency, or provides written justification why the requested information is not being provided. A claim that the requested information is proprietary or confidential is a legitimate justification for the requested information to not be provided. The governing board of a school district may grant additional time to respond to a request for information pursuant to this section.

(c) A school district may file a complaint with the appropriate regulatory agency or legislative body for a violation of the requirements of this section. The regulatory agency or legislative body may appoint a representative to work toward informally resolving the complaint.

SEC. 28. Section 17463.6 of the Education Code, as added by Section 2 of Chapter 838 of the Statutes of 2004, is amended and renumbered to read:

~~17463.6.~~

17463.5. (a) Notwithstanding any other law, the Santa Clara Unified School District may use the proceeds from the sale of

surplus real property, together with any personal property located thereon, if purchased entirely with local funds and may deposit the proceeds thereof into the general fund of the school district or county office of education for any one-time general fund purpose. If the purchase of the property was made using the proceeds of a general obligation bond act or revenue derived from developer fees, the amount of the proceeds of the transaction that may be deposited into the general fund of the school district or county office of education may not exceed the percentage computed by the difference between the purchase price of the property and the proceeds from the transaction, divided by the amount of the proceeds of the transaction. For the purposes of this section, proceeds of the transaction means either of the following, as appropriate:

(1) The amount realized from the sale of property minus reasonable expenses related to the sale.

(2) For any transaction that did not result in a lump-sum payment of the proceeds of the transaction, the proceeds of the transaction shall be calculated as the net present value of the transaction.

(b) The State Allocation Board shall reduce an apportionment of hardship assistance awarded to the Santa Clara Unified School District pursuant to Article 8 (commencing with Section 17075.10) by an amount equal to the amount of the sale of surplus real property used for a one-time expenditure of the school district pursuant to this section.

(c) If the Santa Clara Unified School District exercises the authority granted pursuant to this section, the district is ineligible for hardship funding from the State School Deferred Maintenance Fund under Section 17587 for five years after the date of sale.

(d) Before the Santa Clara Unified School District exercises the authority granted pursuant to this section, the governing board of the school district shall first submit to the State Allocation Board documents certifying the following:

(1) The district has no major deferred maintenance requirements not covered by existing capital outlay resources.

(2) The sale of real property pursuant to this section does not violate any provisions of a local bond act.

(3) The real property is not suitable to meet any projected school construction need for the next 10 years.

(e) Before the Santa Clara Unified School District exercises the authority granted pursuant to this section, the governing board of the school district shall at a regularly scheduled meeting present a plan for expending one-time resources pursuant to this section. The plan shall identify the source and use of the funds and describe the reasons why the expenditure will not result in ongoing fiscal obligations for the district.

(f) This section is repealed on January 1, 2007, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the date on which it is repealed.

SEC. 29. Section 17592.70 of the Education Code is amended to read:

17592.70. (a) There is hereby established the School Facilities Needs Assessment Grant Program ~~with the purpose~~ to provide for a one-time comprehensive assessment of school facilities needs. The grant program shall be administered by the State Allocation Board.

(b) (1) The grants shall be awarded to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school newly constructed prior to January 1, 2000.

(2) For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2003 base Academic Performance Index (API) shall include any schools determined by the State Department of Education to meet either of the following:

(A) The school meets all of the following criteria:

(i) Does not have a valid base API score for 2003.

(ii) Is operating in *the 2004–05* fiscal year ~~2004–05~~ and was operating in *the 2003–04* fiscal year ~~2003–04~~ during the Standardized Testing and Reporting (STAR) Program testing period.

(iii) Has a valid base API score for 2002 that was ranked in deciles 1 to 3, inclusive, in that year.

(B) The school has an estimated base API score for 2003 that would be in deciles 1 to 3, inclusive.

(3) The State Department of Education shall estimate an API score for any school meeting the criteria of clauses (i) and (ii) of

subparagraph (A) of paragraph (2) and not meeting the criteria of clause (iii) of subparagraph (A) of that paragraph, using available testing scores and any weighting or corrective factors it deems appropriate. The department shall provide those API scores to the Office of Public School Construction and post them on its Web site within 30 days of the enactment of this section.

(c) The ~~board~~ *State Allocation Board* shall allocate funds pursuant to subdivision (b) to school districts with jurisdiction over eligible schoolsites, based on ten dollars ($10) per pupil enrolled in the eligible school as of October 2003, with a minimum allocation of seven thousand five hundred dollars ($7,500) for each schoolsite.

(d) As a condition of receiving funds pursuant to this section, school districts shall do all of the following:

(1) Use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at a minimum, all of the following information for each schoolsite:

(A) The year each building that is currently used for instructional purposes was constructed.

(B) The year, if any, each building that is currently used for instructional purposes was last modernized.

(C) The pupil capacity of the school.

(D) The number of pupils enrolled in the school.

(E) The density of the school campus measured in pupils per acre.

(F) The total number of classrooms at the school.

(G) The age and number of portable classrooms at the school.

(H) Whether the school is operating on a multitrack, year-round calendar, and, if so, what type.

(I) Whether the school has a cafeteria, ~~or~~ an auditorium*,* or other space used for pupil eating and not for class instruction.

(J) The useful life remaining of all major building systems for each structure housing instructional space, including, but not limited to, sewer, water, gas, electrical, roofing, and fire and life safety protection.

(K) The estimated costs for five years necessary to maintain functionality of each instructional space to maintain health, safety, and suitable learning environment, as applicable, including ~~classroom~~ *classrooms*, counseling areas, administrative

space, libraries, gymnasiums, multipurpose and dining space, and the accessibility to those spaces.

(L) A list of necessary repairs.

(2) Use the data currently filed with the state as part of the process of applying for and obtaining modernization or construction funds for school facilities, or information that is available in the California Basic Education Data System for the element required in subparagraphs (D), (E), (F), and (G) of paragraph (1).

(3) Use the assessment as the baseline for the facilities inspection system required pursuant to subdivision (e) of Section 17070.75.

(4) Provide the results of the assessment to the Office of Public School Construction, including a report on the expenditures made in performing the assessment. It is the intent of the Legislature that the assessments be completed as soon as possible, but not later than January 1, 2006.

(5) If a school district does not need the full amount of the allocation it receives pursuant to this section, the school district shall expend the remaining funds for making facilities repairs identified in its needs assessment. The school district shall report to the Office of Public School Construction on the repairs completed pursuant to this paragraph and the cost of the repairs.

(6) Submit to the Office of Public School Construction an interim report regarding the progress made by the school district in completing the assessments of all eligible schools.

SEC. 30. Section 17592.72 of the Education Code is amended to read:

17592.72. (a) All moneys in the School Facilities Emergency Repair Account are available for reimbursement to schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school, as defined in subdivision (b) of Section 17592.70, to meet the repair costs of the school district projects that meet the criteria specified in subdivisions (c) and (d) and as approved by the State Allocation Board.

(b) (1) It is the intent of the Legislature that each school district exercise due diligence in the administration of deferred

maintenance and regular maintenance in order to avoid the occurrence of emergency repairs.

(2) Funds made available pursuant to this article shall supplement, not supplant, existing funds available for maintenance of school facilities.

(3) The board is authorized to deny future funding pursuant to this article to a school district if the board determines that there is a pattern of failure to exercise due diligence pursuant to paragraph (1) or supplantation. If the board finds a pattern of failure to exercise due diligence, the board shall notify the county superintendent of schools in which the school district is located.

(c) (1) For purposes of this article, "emergency facilities needs" means structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school. These projects may include, but are not limited to, the following types of facility ~~repair~~ *repairs* or replacements ~~of~~:

(A) Gas leaks.

(B) Nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems.

(C) Electrical power failure.

(D) Major sewer line stoppage.

(E) Major pest or vermin infestation.

(F) Broken windows or exterior doors or gates that will not lock and that pose a security risk.

(G) Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff.

(H) Structural damage creating a hazardous or uninhabitable condition.

(2) For purposes of this section, "emergency facilities needs" does not include any cosmetic or nonessential repairs.

(d) For the purpose of this section, structures or components shall only be replaced if it is more cost-effective than repair.

SEC. 31. Section 17592.73 of the Education Code is amended to read:

17592.73. ~~(a)~~ The State Allocation Board shall do all of the following:

~~(1)~~

(a) Adopt regulations and review and amend its regulations, as necessary, pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), for the administration of this article, including those *regulations* necessary to specify the qualifications of the personnel performing the needs assessment and a method to ensure their independence. The initial regulations adopted pursuant to this article shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this article shall be adopted by January 31, 2005.

~~(2)~~

(b) Establish and publish any procedures and policies in connection with the administration of this article as it deems necessary.

~~(3)~~

(c) Apportion funds to eligible school districts under this article.

~~(4)~~

(d) Provide technical assistance to school districts to implement this article.

~~(5)~~

(e) Submit an interim status report to the Legislature and the Governor by June 30, 2005, by compiling the reports submitted pursuant to paragraph (6) of subdivision (d) of Section 17592.70.

~~(6)~~

(f) By June 30, 2008, report to the Legislature and the Governor on expenditures pursuant to Section 17592.72 and projections of future expenditures pursuant to Section 17592.72.

SEC. 32. Section 22115 of the Education Code is amended to read:

22115. (a) "Compensation earnable" means the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis, excluding service for which contributions are credited by the system to the Defined Benefit Supplement Program.

(b) The board may determine compensation earnable for persons employed on a part-time basis.

(c) When service credit for a school year is less than 1.000, compensation earnable shall be the ~~product~~ *quotient* obtained

when creditable compensation paid in that year is divided by the service credit for that year, except as provided in subdivision (d).

(d) When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least 0.900 of a year, compensation earnable shall be determined as if all service credit for that year had been earned at the highest pay rate. This subdivision shall be applicable only for purposes of determining final compensation. When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than 0.900 of a year, compensation earnable shall be determined pursuant to subdivision (c).

(e) For purposes of determining compensation earnable for a member employed by a community college prior to July 1, 1996, full time shall be defined pursuant to Section 22138.5 and pursuant to Section 20521 of Title 5 of the California Code of Regulations, as those provisions read on June 30, 1996, if application of that definition will increase the compensation earnable or otherwise enhance the benefits of the member.

(f) The amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2003.

SEC. 33. Section 22200 of the Education Code is amended to read:

22200. (a) The plan and the system are administered by the Teachers' Retirement Board. On and after January 1, 2004, the members of the board are as follows:

(1) The Superintendent of Public Instruction.

(2) The Controller.

(3) The Treasurer.

(4) The Director of Finance.

(5) Three persons who are either members of the Defined Benefit Program or participants in the Cash Balance Benefit Program, as follows:

(A) One person who, at the time of election, is an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a school district that provides instruction for *kindergarten and* grades ~~K~~ *1* to 12, inclusive, or a county office of education, in a position other than a school administrator that requires a services credential with a specialization in administrative services. This member shall be elected by the active members of the Defined Benefit Program and active participants of the Cash Balance Benefit Program who are employed by a school district that provides instruction for *kindergarten and* grades ~~K~~ *1* to 12, inclusive, or county office of education, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(B) One person who, at the time of election, is an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a school district that provides instruction for *kindergarten and* grades ~~K~~ *1* to 12, inclusive, or a county office ~~or~~ *of* education. This member shall be elected by the active members of the Defined Benefit Program and active participants of the Cash Balance Benefit Program who are employed by a school district that provides instruction for *kindergarten and* grades ~~K~~ *1* to 12, inclusive, or a county office of education, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(C) One person who, at the time of election, is a community college instructor and an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a community college district, who shall be elected by the active community college members of the Defined Benefit Program and the active community college participants of the Cash Balance Benefit Program, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(6) Five persons appointed by the Governor for a term of four years, subject to confirmation by the Senate, as follows:

(A) One person who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(B) One person who is either a retired member under this part or a retired participant under Part 14 (commencing with Section 26000).

(C) Three persons representing the public, whose terms shall be staggered by varying the first terms of these members, as follows:

(i) One person to a term expiring December 31, 2005.

(ii) One person to a term expiring December 31, 2006.

(iii) One person to a term expiring December 31, 2007.

(b) A person who is employed to perform creditable service by a community college district and either a school district that provides instruction for kindergarten ~~through grade 12~~ *and grades 1 to 12, inclusive,* or a county office of education may only be elected to the position on the board that corresponds to the position in which ~~they~~ *he or she* accrued the most service credit during the prior school year.

(c) The members of the board shall annually elect a chairperson and vice chairperson.

SEC. 34. Section 33126 of the Education Code is amended to read:

33126. (a) The school accountability report card shall provide data by which a parent can make meaningful comparisons between public schools that will enable him or her to make informed decisions on which school to enroll his or her children.

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) (A) Pupil achievement by grade level, as measured by the standardized testing and reporting programs pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(B) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period.

(C) After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, pupil achievement by grade level, as measured by the results of the statewide assessment.

(D) Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one-year dropout rate listed in the California Basic Education Data System or any successor data system for the schoolsite over the most recent three-year period, and the graduation rate, as defined by the State Board of Education, over the most recent three-year period when available pursuant to Section 52052.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System or any successor data system information for the most recent three-year period.

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, any assignment of teachers outside their subject areas of competence, misassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

(A) For purposes of this paragraph, "vacant teacher position" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position ~~of~~ *to* which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

(B) For purposes of this paragraph, "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(6) (A) Quality and currency of textbooks and other instructional materials, including whether textbooks and other materials meet state standards and are adopted by the State Board of Education for kindergarten and grades 1 to 8, inclusive, and adopted by the governing boards of school districts for grades 9 to 12, inclusive, and the ratio of textbooks per pupil and the year the textbooks were adopted.

(B) The availability of sufficient textbooks and other instructional materials, as defined in Section 60119, for each pupil, including English learners, in each of the following areas:

(i) The core curriculum areas of reading/language arts, mathematics, science, and history/social science.

(ii) Foreign language and health.

(iii) Science laboratory equipment for grades 9 to 12, inclusive, as appropriate.

(7) The availability of qualified personnel to provide counseling and other pupil support services, including the ratio of academic counselors per pupil.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities, including any needed maintenance to ensure good repair as specified in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(17) The number of advanced placement courses offered, by subject.

(18) The Academic Performance Index, including the disaggregation of subgroups as set forth in Section 52052 and the decile rankings and a comparison of schools.

(19) Whether a school qualified for the Immediate Intervention Underperforming Schools Program pursuant to Section 52053 and whether the school applied for, and received, a grant pursuant to~~,~~ that program.

(20) Whether the school qualifies for the Governor's Performance Award Program.

(21) When available, the percentage of pupils, including the disaggregation of subgroups as set forth in Section 52052, completing grade 12 who successfully complete the high school exit examination, as set forth in Sections 60850 and 60851, as compared to the percentage of pupils in the district and statewide completing grade 12 who successfully complete the examination.

(22) Contact information pertaining to any organized opportunities for parental involvement.

(23) For secondary schools, the percentage of graduates who have passed course requirements for entrance to the University of California and the California State University pursuant to Section 51225.3 and the percentage of pupils enrolled in those courses, as reported by the California Basic Education Data System or any successor data system.

(24) Whether the school has a college admissions test preparation course program.

~~(25) When available from the department, the claiming rate of pupils who earned a Governor's Scholarship Award pursuant to subdivision (a) of Section 69997 for the most recent two-year period. This paragraph applies only to schools that enroll pupils in grade 9, 10 or 11.~~

(c) If the Commission on State Mandates finds *that* a school district is eligible for a reimbursement of costs incurred *in* complying with this section, the school district shall be reimbursed only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Section 41020. If the

information is determined to be inaccurate, the school district is not ineligible for reimbursement if the information is corrected by May 15.

(d) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

SEC. 35. Section 41020.5 of the Education Code is amended to read:

41020.5. (a) If the Controller determines by two consecutive quality control reviews pursuant to Section 14504.2, or if a county superintendent of schools determines, that audits performed by a certified public accountant or public accountant under Section 41020 were not performed in substantial conformity with provisions of the audit guide, or that the audit reports, including amended reports, submitted by February 15 following the close of the fiscal year audited, for two consecutive years do not conform to provisions of the audit guide as required by Section 14504, the Controller or the county superintendent of schools, as appropriate, shall notify in writing the certified public accountant or public accountant and the California Board of Accountancy.

If the certified public accountant or public accountant does not file an appeal in writing with the California Board of Accountancy within 30 calendar days after receipt of the notification from the Controller or county superintendent of schools, the determination of the Controller or county superintendent of schools ~~under~~ *pursuant to* this section shall be final.

(b) If an appeal is filed with the California Board of Accountancy, the board shall complete an investigation of the appeal within 90 days of the filing date. On the basis of the investigation, the board may do either of the following:

(1) Find that the determination of the Controller or county superintendent of schools should not be upheld and has no effect.

(2) Schedule the appeal for a hearing, in which case, the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

(c) If the determination of the Controller or county superintendent of schools under subdivision (a) becomes final, the certified public accountant or public accountant shall be ineligible to conduct audits under Section 41020 for a period of three years, or, in the event of an appeal, for any period, and subject to the conditions, that may be ordered by the California Board of Accountancy. Not later than the first day of March of each year, the Controller shall notify each school district and county office of education of those certified public accountants or public accountants determined to be ineligible under this section. School districts and county offices of education shall not use the audit services of a certified public accountant or public accountant ineligible under this section.

(d) For the purposes of this section, ~~the term~~ "certified public accountant or public accountant" ~~shall include~~ *includes* any person or firm entering into a contract to conduct an audit under Section 41020.

(e) This section shall not preclude the California Board of Accountancy from taking any disciplinary action it deems appropriate under other provisions of law.

SEC. 36. Section 41326.1 of the Education Code is amended to read:

41326.1. Within 30 days of assuming authority, an administrator who has control over a school district pursuant to Section 41326 shall discuss options for resolving the fiscal problems of the district with all of the following groups and shall consider, on a monthly basis, or more frequently if so desired by the administrator, information from one or more of the following groups:

~~(1)~~

(a) The governing board of the school district.

~~(2)~~

(b) Any advisory council of the school district.

~~(3)~~

(c) Any parent-teacher organization of the school district.

~~(4)~~

(d) Representatives from the community in which the school district is located.

~~(5)~~

(e) The district administrative team.

~~(6)~~

(f) The County Office Fiscal Crisis and Management Assistance Team.

~~(7)~~

(g) Representatives of employee bargaining units.

~~(8)~~

(h) The county superintendent of schools.

SEC. 37. Section 41328 of the Education Code is amended to read:

41328. The qualifying district shall bear 100 percent of all costs associated with implementing this article, including the activities of the County Office Fiscal Crisis and Management *Assistance* Team or the regional team. The Superintendent of Public Instruction shall withhold from the apportionments to be made from the State School Fund to the district the amounts due pursuant to this section.

SEC. 38. Section 41530 of the Education Code is amended to read:

41530. (a) There is hereby established the professional development block grant. Commencing with the 2005–06 fiscal year, the Superintendent of Public Instruction shall apportion block grant funds to a school district based on the number of certificated teachers employed by the school district in the immediately prior fiscal year.

(b) A school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41531, as the statutes governing those programs read on January 1, 2004, if the school district provides each teacher of kindergarten or ~~any of~~ grades 1 to 6, inclusive, with opportunities to participate in professional development activities in reading ~~language arts/English~~*, language arts, or English* language development. In providing teachers of kindergarten and ~~any of~~ grades 1 to 6, inclusive, with opportunities to participate in professional development activities in reading ~~language arts/English~~*, language arts, or English* language development, a

school district shall expend at least an amount that is equal to the proportion that funding calculated pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65 bears to the statewide total amount of block grant funds appropriated for purposes of this article. For purposes of this article, professional development in reading~~ language arts/English~~, *language arts, or English* language development shall be equivalent in rigor to the professional development provided pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65, as that article read on January 1, 2004.

(c) For purposes of this article, "school district" includes a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41531. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003–04 fiscal year.

SEC. 39. 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, 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 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. These 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 matter or matters 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 education classes and, for 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 of 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 of 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 required pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (b). The compensation shall be that which is normally provided by each district for staff development or in-service activity.

(d) Upon completion of service sufficient to meet program standards and performance assessments, 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. 40. Section 48853 of the Education Code is amended to read:

48853. (a) A pupil placed in a licensed children's institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

(1) The pupil has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.

(2) The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 727 of the Welfare and Institutions Code or Section 56055, determines that it is in the best interest of the pupil to be placed in another educational program, or that the pupil continue in his or her school of origin pursuant to paragraph (1) of subdivision (d) of Section 48853.5.

(b) Before any decision is made to place a pupil in a juvenile court school as defined by Section 48645.1, the parent or guardian, or person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, shall first consider placement in the regular public school.

(c) If any dispute arises as to the school placement of a pupil subject to this section, the pupil has the right to remain in his or her school of origin, as defined in subdivision (e) of Section 48853.5, pending resolution of the dispute.

(d) This section does not supersede other laws that govern pupil expulsion.

(e) This section does not supersede any other law governing the educational placement in a juvenile court school, as defined by Section 48645.1, of a pupil detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility.

(f) Foster children living in emergency shelters, as referenced in *the* McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. ~~1431~~ *11301* et seq.), may receive educational services at the emergency shelter as necessary for short periods of time for either of the following reasons:

(1) For health and safety emergencies.

(2) To provide temporary, special, and supplementary services to meet the child's unique needs if a decision regarding whether it is in the child's best interest to attend the school of origin cannot be made promptly, it is not practical to transport the child to the school of origin, and the child would otherwise not receive educational services.

The educational services may be provided at the shelter pending a determination by the person holding the right regarding the educational placement of the child.

(g) All educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

SEC. 41. Section 49341 of the Education Code is amended to read:

49341. The Legislature hereby finds and declares as follows:

(a) Because school science laboratories pose a potentially serious threat to the health and safety of school pupils and school personnel due to the use and storage of hazardous materials in these laboratories, educational efforts are needed to increase the awareness of persons dealing with these materials in these settings so that possible losses of life, injuries, ~~loss~~ *losses* of property, and social disruption*,* which could result from the improper and unsafe use of hazardous materials*,* will be minimized.

(b) Effective safety in school laboratories requires informed judgment, ~~decision making~~ *decisionmaking*, and operating procedures by those responsible for laboratory and related instruction. It is desirable that each high school and junior high, middle, or elementary school offering laboratory work have a trained member of the professional staff who is designated as the building laboratory consultant and who is responsible for the review, updating, and carrying out of the school's adopted procedures for laboratory safety.

(c) Efforts by state and local agencies to implement training programs designed to provide qualified individuals with the necessary information, organizational skills, and materials to assist schools and teachers in the development of their laboratory safety policies and procedures are nonexistent or inadequate, and it is necessary that this situation be remedied. The state should assume leadership through the policy and guidance of the State Department of Education in the development, support, and implementation of a statewide training program.

(d) The Legislature requests that the *State* Department of Education consider making this program a part of the department's energy and environmental education program ~~which~~ *that* is conducted pursuant to Chapter 4 (commencing with Section 8700) of Part 6.

SEC. 42. Section 49414.5 of the Education Code is amended to read:

49414.5. (a) In the absence of a credentialed school nurse or other licensed nurse onsite at the school, each school district may provide school personnel with voluntary emergency medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia, and volunteer personnel shall provide this emergency care, in accordance with standards established pursuant to subdivision (b) and the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained pursuant to subdivision (b) may not be required to provide emergency medical assistance pursuant to this subdivision.

(b) (1) The Legislature encourages the American Diabetes Association to develop performance standards for the training and supervision of school personnel in providing emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia. The performance standards shall be developed in cooperation with the department, the California School Nurses Organization, the California Medical Association, and the American Academy of Pediatrics. Upon the development of the performance standards pursuant to this paragraph, the State Department of Health Services' Diabetes Prevention and Control Program shall approve the performance standards for distribution and make those standards available upon request.

(2) Training established pursuant to this subdivision shall include all of the following:

(A) Recognition and treatment of hypoglycemia.

(B) Administration of glucagon.

(C) Basic emergency followup procedures, including, but not limited to, calling the emergency 911 ~~phone~~ *telephone* number and contacting, if possible, the pupil's parent or guardian and licensed health care provider.

(3) Training by a physician, credentialed school nurse, registered nurse, or certificated public health nurse according to the standards established pursuant to this section shall be deemed adequate training for the purposes of this section.

(4) (A) A school employee shall notify the credentialed school nurse assigned to the school district if he or she administers glucagon pursuant to this section.

(B) If a credentialed school nurse is not assigned to the school district, the school employee shall notify the superintendent of the school district, or his or her designee*,* if he or she administers glucagon pursuant to this section.

(5) All materials necessary to administer the glucagon shall be provided by the parent or guardian of the pupil.

(c) In the case of a pupil who is able to self-test and monitor his or her blood glucose level, upon written request of the parent or guardian, and with authorization of the licensed health care provider of the pupil, a pupil with diabetes shall be permitted to test his or her blood glucose level and to otherwise provide diabetes self-care in the classroom, in any area of the school or school grounds, during any school-related activity, and, upon specific request by a parent or guardian, in a private location.

(d) For the purposes of this section, the following terms have the following meanings:

(1) "School personnel" means any one or more employees of a school district who ~~volunteer~~ *volunteers* to be trained to administer emergency medical assistance to a pupil with diabetes.

(2) "Emergency medical assistance" means the administration of glucagon to a pupil who is suffering from severe hypoglycemia.

SEC. 43. 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 is encouraged to seek representation broadly reflective of the state population.

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

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

(f) Upon completion of the framework, the advisory group is encouraged to identify career technical education courses that meet state-adopted academic content standards and that satisfy high school graduation requirements and admissions requirements of the University of California and the California State University, and to determine the extent to which local educational agencies accept credit earned for the completion of those courses, in lieu of other courses of study.

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

SEC. 44. Section 51430 of the Education Code is amended to read:

51430. (a) Notwithstanding any other provision of law, a high school district, unified school district, or county office of education, may retroactively grant a high school diploma to a person who has not received a high school diploma if he or she meets either of the following conditions:

(1) The person was interned by order of the federal government during World War II and was enrolled in a high school operated by the school district or under the jurisdiction of the county office of education immediately preceding his or her internment and did not receive a high school diploma because his or her education was interrupted due to his or her internment during World War II.

(2) The person is a veteran of World War II, the Korean War, or the Vietnam War, was honorably discharged from his or her military service, was enrolled in a high school operated by the school district or under the jurisdiction of the county office of education immediately ~~preceeding~~ *preceding* his or her military service in those wars, and did not receive a high school diploma because his or her education was interrupted due to his or her military service in those wars.

(b) A high school district, unified school district, or county office of education may retroactively grant a high school diploma to a deceased person who meets the conditions of paragraph (1) or (2) of subdivision (a), to be received by the next of kin of the deceased person.

SEC. 45. Section 52059 of the Education Code is amended to read:

52059. (a) For purposes of complying with the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), a Statewide System of School Support shall be established by the department to provide a statewide system of intensive and sustained support and technical assistance for school districts, county offices of education, and schools in need of improvement. The system shall consist of regional consortia, which may include county offices of education and school districts, that work collaboratively with school districts and county offices of education to meet the needs of school districts and schools in need of improvement.

(b) The system shall provide assistance to school districts and schools in need of improvement by:

(1) Reviewing and analyzing all facets of a school's operation, including the ~~the~~ following:

(A) The design and operation of the instructional program offered by the school.

(B) The recruitment, hiring, and retention of principals, teachers, and other staff, including vacancy issues. The system may request the assistance of the Fiscal Crisis and Management Assistance Team to review school district or school recruitment, hiring, and retention practices.

(C) The roles and responsibilities of district and school management personnel.

(2) Assisting the school in developing recommendations for improving pupil performance and school operations.

(3) Assisting schools and school districts in efforts to eliminate misassignments of certificated personnel.

(c) In carrying out this article, the department shall ensure that support is provided in the following order of priority:

(1) To school districts or county offices of education with schools that are subject to corrective action under paragraph (7) of subsection (b) of Section 6316 of Title 20 of the United States Code.

(2) To school districts or county offices of education with schools that are identified as being in need of improvement pursuant to subsection (b) of Section 6316 of Title 20 of the United States Code.

(3) To provide support and assistance to school districts and county offices of education with schools participating under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) that need support and assistance to achieve the purposes of that act.

(4) To provide support and assistance to other school districts and county offices of education with schools participating in a program carried out under this chapter.

(d) For purposes of this article, all references to schools shall include charter schools.

(e) Funds shall be distributed under this article based on the number of schools and enrollment of those schools in each region that have been identified as being in need of improvement

pursuant to Section 6316 of Title 20 of the United States Code, or are participating in the programs conducted under this chapter.

SEC. 46. Section 52124 of the Education Code, as amended by Section 1 of Chapter 910 of the Statutes of 2004, is amended to read:

52124. (a) A school district that implements a class size reduction program pursuant to this chapter is subject to this section.

(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:

(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.

(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.

(3) If three grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 and 2 or grades 1 to 3, inclusive. Priority shall be given to the reduction of class sizes in grades 1 and 2 before the class sizes of kindergarten or grade 3 are reduced.

(4) If four grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 to 3, inclusive. First priority shall be given to the reduction of class sizes in grades 1 and 2, *and* second priority shall be given to the reduction of class size in kindergarten and grade 3. This paragraph shall be operative only in those fiscal years for which funds are appropriated expressly for the purposes of this paragraph.

(c) It is the intent of the Legislature to continue to permit the use of combination classes of more than one grade level to the extent that school districts are otherwise permitted to use that instructional strategy. However, any school district that uses a combination class in any class for which funding is received pursuant to this chapter may not claim funding pursuant to this chapter if the total number of pupils in the combination class, regardless of grade level, exceeds 20 pupils per certificated teacher assigned to provide direct instructional services.

(d) The governing board of a school district shall certify to the Superintendent of Public Instruction that it has met the

requirements of this section in implementing its class size reduction program. If a school district receives funding pursuant to this chapter but has not implemented its class size reduction program for all grades and classes for which it received funding pursuant to this chapter, the Superintendent of Public Instruction shall notify the Controller and the school district in writing and the Controller shall deduct an amount equal to the amount received by the school district under this chapter for each class that the school district failed to reduce to a class size of 20 or ~~less~~ *fewer* pupils from the next principal apportionment or apportionments of state funds to the district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

(e) Except for a school district participating pursuant to subdivision (h) of Section 52122, the amount deducted pursuant to subdivision (d) shall be adjusted as follows:

(1) Twenty percent of the amount to which the district would otherwise be eligible for each class for which the annual enrollment determined pursuant to Section 52124.5 is greater than or equal to 20.5 but less than 21.0.

(2) Forty percent of the amount to which the district would otherwise be eligible for each class for which the annual average enrollment determined pursuant to Section 52124.5 is greater than or equal to 21.0 but less than 21.5.

(3) Eighty percent of the amount to which the district would otherwise be eligible for each class for which the annual average enrollment determined pursuant to Section 52124.5 is greater than or equal to 21.5 but less than 21.9.

(4) The amount deducted pursuant to subdivision (d) for each class for which the annual average enrollment determined pursuant to *Section* 52141.5 is greater than or equal to 21.9 shall be the amount of funding the district received for the class pursuant to this chapter.

(f) Notwithstanding any other provision of this chapter, a school district located in the County of Los Angeles, Riverside, San Bernardino, San Diego, or Ventura may claim funding pursuant to this chapter for the 2003–04 school year based on enrollment counts before the October 2003 fires, in classes for which the class size reduction program is implemented*,* if the following criteria are met:

(1) The school district submits to the Superintendent of Public Instruction a "Request for Allowance of Attendance because of Emergency Conditions" pursuant to Section 46392 and the emergency conditions were caused by the October 2003 fires.

(2) The school district certifies that it suffered a loss of enrollment in classes in which the class size reduction program is implemented and this loss of enrollment is due to the October 2003 fires and would result in a decrease in funding that the district receives pursuant to this chapter.

(g) This section shall be operative until July 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute deletes or extend that date.

SEC. 47. Section 56366 of the Education Code is amended to read:

56366. It is the intent of the Legislature that the role of a nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to a local educational agency and parents.

(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master contract shall specify the general administrative and financial *agreements*, including teacher-to-pupil ratios, between the nonpublic, nonsectarian school or agency and the local educational agency to provide the special education and designated instruction and services, as well as transportation specified in ~~the~~ *each* pupil's individualized education program. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting local educational agency to ensure that appropriate high school graduation credit is received by ~~the~~ *each* pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) (A) The master contract shall include an individual services agreement for each pupil placed by a local educational agency that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

(B) The master contract shall include a description of the process being utilized by the local educational agency to oversee and evaluate placements in nonpublic, nonsectarian schools, as required by federal law. This description shall include a method for evaluating whether ~~the~~ *each* pupil is making appropriate educational progress. At least once every year, the local educational agency shall do all of the following and, to the extent possible, the following shall be conducted as part of the development and provision of an individualized education program:

(i) Evaluate the educational progress of each pupil placed in a nonpublic, nonsectarian school, including all state assessment results pursuant to the requirements of Section 52052.

(ii) Consider whether or not the needs of the pupil continue to be best met at the nonpublic, nonsectarian school and whether changes to the individualized education program of the pupil are necessary, including whether the pupil may be transitioned to a public school setting. This consideration shall be made at the meeting required by subdivision (d) of Section 56343.

(C) In the case of a nonpublic, nonsectarian school that is owned, operated by, or associated with a licensed children's institution, the master contract shall include a method for evaluating whether the nonpublic, nonsectarian school is in compliance with the mandate set forth in Section 56366.9 of ~~the Education Code~~ *this code* and subdivision (b) of Section 1501.1 of the Health and Safety Code.

(3) Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to ~~the~~ *a* pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent, the nonpublic, nonsectarian school or agency, or the local educational agency may request a review of ~~the~~ *a* pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the local educational agency.

(4) The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(5) The nonpublic, nonsectarian school or agency shall provide all services specified in ~~the~~ *an* individualized education program, unless the nonpublic, nonsectarian school or agency and the local educational agency agree otherwise in the contract or individual services agreement.

(6) Related services provided pursuant to a nonpublic, nonsectarian agency master contract shall only be provided during the period of ~~the child's~~ *a pupil's* regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(7) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services*,* as defined by Section 46307*,* for purposes of submitting a warrant for tuition to each contracting local educational agency.

(8) (A) A nonpublic, nonsectarian school~~,~~ is subject to the alternative accountability system developed pursuant to Section 52052~~,~~ in the same manner as public schools and each pupil placed in the nonpublic, nonsectarian school by a local educational agency shall be tested by qualified staff of the nonpublic, nonsectarian school in accordance with that accountability program. The test results shall be reported by the nonpublic, nonsectarian school to the department.

(B) Beginning with the 2006–07 school year testing cycle, each nonpublic, nonsectarian school shall determine its STAR testing period subject to subdivisions (b) and (c) of Section 60640. The nonpublic, nonsectarian school shall determine this period based on completion of 85 percent of the instructional year at that nonpublic, nonsectarian school, plus and minus 10 days, resulting in a 21-day period. Each nonpublic, nonsectarian school shall notify the district of residence of a pupil enrolled in the school of its testing period. Staff at the nonpublic, nonsectarian school who ~~shall~~ administer the assessments shall attend the regular testing training sessions provided by the

district of residence. If staff from a nonpublic, nonsectarian school have received training from one local educational agency, that training will be sufficient for all local educational agencies that send pupils to the nonpublic, nonsectarian school. The district of residence shall order testing materials for its pupils that have been placed in the nonpublic, nonsectarian school. The ~~state~~ board shall adopt regulations to facilitate the distribution of and collection of testing materials.

(9) With respect to a nonpublic, nonsectarian school, the school shall prepare a school accountability report card in accordance with Section 33126.

(b) The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a local educational agency for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a local educational agency for costs related to the provision of nonpublic, nonsectarian school or agency placements if the superintendent finds that the local educational agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If ~~the~~ *a* pupil is enrolled in ~~the~~ *a* nonpublic, nonsectarian school or agency with the approval of the local educational agency prior to agreement to a contract or individual services agreement, the local educational agency shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem tuition rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the master contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not

participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract, which shall be binding upon both parties.

(d) A master contract for special education and related services provided by a nonpublic, nonsectarian school or agency may not be authorized under this part, unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school or agency receiving approval to educate pupils under this part for a period no longer than 18 months from the date of the initial approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections 56836.16 and 56836.20 shall be developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.

SEC. 48. Section 56366.1 of the Education Code is amended to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the superintendent on forms provided by the department, and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member rendering special education or designated instruction and services to do so, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.

(b) (1) The applicant shall provide the special education local plan area in which the applicant is located with the written notification of its intent to seek certification or renewal of its certification. The applicant shall submit on a form, developed by the department, a signed verification by local educational agency representatives that they have been notified of the intent to certify or renew certification. The verification shall include a statement that *representatives of the* local educational agency ~~representatives~~ *for the area* in which the applicant is located have had the opportunity to review the application at least 60 calendar days prior to submission of an initial application to the superintendent, or at least 30 calendar days prior to submission of a renewal application to the superintendent. The signed verification shall provide assurances that local educational agency representatives have had the opportunity to provide input on all required components of the application.

(2) If the applicant has not received a response from the local educational agency 30 days from the date of the return receipt, the applicant may file the application with the superintendent. A copy of the return receipt shall be included with the application as verification of notification efforts to the local educational agency.

(3) The department shall mail renewal application materials to certified nonpublic, nonsectarian schools and agencies at least 120 days prior to the date their current certification expires.

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the superintendent.

(e) Prior to certification, the superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The superintendent shall conduct an additional onsite review of the facility and program within four years of the *effective date of the* certification ~~effective date~~, unless the superintendent conditionally certifies the school or agency or unless the superintendent receives a formal complaint against the school or agency. In the latter two cases, the superintendent shall conduct an onsite review at least annually.

(f) The superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31~~,~~ of the current school year. If certification is denied, the superintendent shall provide reasons for the denial. The superintendent may certify the school or agency for a period of not longer than one year.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(h) The superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board

grants a waiver pursuant to Section 56101. The superintendent may conduct an onsite review as part of the annual review.

(i) (1) The superintendent shall conduct an investigation of a nonpublic, nonsectarian school or agency onsite at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite investigation. The superintendent shall require a written response to any noncompliance or deficiency found.

(2) With respect to a nonpublic, nonsectarian school, the superintendent shall conduct an investigation, which may include an unannounced onsite visit, if the superintendent receives evidence of a significant deficiency in the quality of educational services provided ~~or~~, a violation of Section 56366.9, or noncompliance with the policies expressed by subdivision (b) of Section 1501 of the Health and Safety Code by the nonpublic, nonsectarian school. The superintendent shall document the complaint and the results of the investigation and shall provide copies of the documentation to the complainant, the nonpublic, nonsectarian school, and the contracting local educational agency.

(3) Violations or noncompliance documented pursuant to paragraph (1) or (2) shall be reflected in the status of the certification of the school, at the discretion of the superintendent, pending an approved plan of correction by the nonpublic, nonsectarian school. The department shall retain, for a period of 10 years, all violations pertaining to certification of the nonpublic, nonsectarian school or agency.

(j) The superintendent shall monitor the facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standard focused instructional materials used, of an existing certified nonpublic, nonsectarian school or agency on a three-year cycle, as follows:

(1) The nonpublic, nonsectarian school or agency shall complete a self-review in year one.

(2) The superintendent shall conduct an onsite review of the nonpublic, nonsectarian school or agency in year two.

(3) The superintendent shall conduct a followup visit to the nonpublic, nonsectarian school or agency in year three.

(k) (1) Notwithstanding any other provision of law, the superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.

(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.

(3) In addition to the requirements in subdivisions (a) ~~through~~ *to* (f), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency,

including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1~~,~~ if the school or agency provided the notification required pursuant to paragraph (1).

(*l*) (1) Commencing July 1, 2006, notwithstanding any other provision of law, the superintendent may not certify or renew the certification of a nonpublic, nonsectarian school or agency, unless all of the following conditions are met:

(A) The entity operating the nonpublic, nonsectarian school or agency maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school or agency identified separately from any licensed children's institution that it operates.

(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.

(C) The entity submits an entity-wide annual audit that identifies its costs and revenues, by entity, in accordance with generally accepted accounting and auditing principles. The audit shall clearly document the amount of moneys received and expended on the education program provided by the nonpublic, nonsectarian school.

(D) The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

(2) For purposes of this section, the term ~~licensed~~ *"licensed* children's ~~institution~~ *institution"* has the same meaning as it is defined by Section 56155.5.

(m) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually

commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1- 5 pupils	$ 300
(2) 6-10 pupils	500
(3) 11-24 pupils	1,000
(4) 25-75 pupils	1,500
(5) 76 pupils and over	2,000

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(n) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) The ~~state~~ board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 49. Section 56366.11 of the Education Code is amended to read:

56366.11. (a) The department shall implement a program to integrate individuals with exceptional needs placed in nonpublic, nonsectarian schools into public schools, as appropriate. Under

the program, a pupil placed in a nonpublic, nonsectarian school and each individual who has the right to make educational decisions for the pupil shall be informed of all ~~their~~ *his or her* rights relating to the educational placement of the pupil. Existing dispute resolution procedures involving public school enrollment or attendance shall be explained to a pupil placed in *a* nonpublic, nonsectarian school in an ~~age~~ *age-* and developmentally appropriate manner. The Foster Child Ombudsman shall disseminate the information on education rights to every foster child residing in a licensed children's institution or foster family home.

(b) Following the development of the next statewide assessment contract, the department shall submit to the Legislature a report on the academic progress of pupils attending nonpublic, nonsectarian schools serving individuals with exceptional needs. Using the results of the two most recent years of the Standardized Testing and Reporting (STAR) Program and the California Alternative Performance Assessment, the report shall summarize by district the achievement of all pupils attending a nonpublic, nonsectarian school. The department shall ensure that the report does not violate the confidentiality of individual pupil scores. In addition, the report shall include an academic performance index score for pupils attending nonpublic, nonsectarian schools for each district using the same procedures as under Section 52052.

SEC. 50. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil.

(c) The hearing shall be conducted by a person knowledgeable in the laws and regulations governing special education and administrative hearings pursuant to Section 56504.5, and who has satisfactorily completed training pursuant to this subdivision. The Superintendent shall establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control mechanisms to be used to ensure that the hearings are fair and the decisions are accurate. A due process hearing may not be conducted by any individual listed in

subsection (a) of Section 300.508 of Title 34 of the Code of Federal Regulations. Pursuant to subsection (b) of Section 300.508 of ~~the~~ Title 34 of the Code of Federal Regulations, a person who is qualified to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) Pursuant to subsection (a) of Section 300.514 of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state-level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.526 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed. As provided in subsection (c) of Section 300.514 of Title 34 of the Code of Federal Regulations, if the decision of a hearing officer in a due process hearing or a state review official in an administrative appeal agrees with the parent or guardian of the pupil that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local agency and the parent or guardian.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of~~,~~ witnesses.

(4) The right to a written, or, at the option of the parents or guardians, electronic verbatim record of the hearing.

(5) The right to written, or, at the option of the parent or guardian, electronic findings of fact and decisions. The record of

the hearing and the findings of fact and decisions shall be provided at no cost to parents or guardians in accordance with paragraph (2) of subsection (c) of Section 300.509 of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to paragraph (4) of subsection (h) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to paragraph (3) of subsection (a) of Section 300.509 of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision, including the reasons for any nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for such placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be mailed to all parties to the hearing within 45 days from the receipt by the Superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension.

The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) Subdivision (f) does not alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(i) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(j) In a hearing conducted pursuant to this section, the hearing officer may not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program.

(k) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.512 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), the child involved in the hearing shall remain in his or her present educational placement, unless the public education agency and the parent or guardian of the child agree otherwise. Any action brought under this subdivision shall adhere to the provisions of subsection (b) of Section 300.512 of Title 34 of the Code of Federal Regulations.

(*l*) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

(m) Pursuant to subsection (c) of Section 300.508 of Title 34 of the Code of Federal Regulations, each public education agency shall keep a list of the persons who serve as due process hearing officers, in accordance with Section 56504.5, and the list shall include a statement of the qualifications of each of those persons. The list of hearing officers shall be provided to the public education agencies by the organization or entity under contract with the department to conduct due process hearings.

SEC. 51. Section 59052 of the Education Code is amended to read:

59052. (a) Commencing with the 2004–05 school year, an individual may not be hired as a certificated employee to instruct deaf pupils~~,~~ unless the individual achieves a minimum score of 2.5 on the American Sign Language Proficiency Interview (ASLPI) or an equivalent score on an alternate test selected by the American Sign Language Competency Evaluation Committee of the California School for the Deaf that assesses American Sign Language linguistic competency.

(b) Commencing with the 2005–06 school year, an individual may not be hired as a certificated employee to instruct deaf pupils~~,~~ unless the individual achieves a minimum score of 3 on the ASLPI or an equivalent score on an alternate test, as described in subdivision (a).

(c) Commencing with the 2006–07 school year, an individual may not be hired as a certificated employee to instruct deaf pupils~~,~~ unless the individual achieves a minimum score of 3.5 on the ASLPI or an equivalent score on an alternate test, as described in subdivision (a).

(d) The minimum score requirements specified in subdivisions (a) to ~~(d)~~ *(c)*, inclusive, may be waived by the superintendent of the school if he or she certifies that no candidate who meets those requirements and all other selection criteria has applied to instruct deaf pupils and open positions remain.

SEC. 52. Section 66739.5 of the Education Code is amended to read:

66739.5. (a) The Legislature finds and declares all of the following:

(1) The California Master Plan and supporting statutes place utmost importance on the effective transfer of community college

students to the University of California (UC) and the California State University (CSU) as a means of providing access to the baccalaureate degree.

(2) In 2002, CSU enrolled 55,000 transfer students from community colleges.

(3) Two out of three students who earn CSU baccalaureate degrees begin in a community college.

(4) Effective use of state and student time and resources would be maximized by students accruing fewer unrequired units in earning their degrees.

(5) Additional access to community colleges and CSU will be created by higher graduation rates and fewer nonessential units taken.

(6) The state budget situation makes it urgent to streamline the path of the transfer student to the baccalaureate degree.

(b) It is, therefore, the intent of the Legislature to ensure that community college students who wish to earn the baccalaureate degree at CSU are provided with a clear and effective path to this degree.

(c) This section shall not be construed to limit in any way the ability of students to gain admission through alternative paths to transfer, such as the Intersegmental General Education Transfer Curriculum (IGETC) or the California State University General Education-Breadth Requirements.

(d) On or before February 1, 2005, the Chancellor of CSU shall establish transfer student admissions requirements that give highest priority to transfer students who are qualified in accordance with subdivision (f) and paragraph (3) of subdivision (g).

(e) (1) CSU campuses admitting students qualified in accordance with subdivision (f) and paragraph (3) of subdivision (g) will make it possible for these students to complete their baccalaureate degree in the minimum number of remaining units required for that degree major.

(2) For purposes of this subdivision, the "minimum number of remaining units" is the minimum number of units required for a degree major after subtracting the number of fully degree-transferable units earned at the community college.

(f) The Chancellor of CSU, in consultation with the Academic Senate of CSU, shall establish the following components necessary for a clear degree path for transfer students:

(1) On or before June 1, 2005, the Chancellor of CSU, in consultation with the Academic Senate of CSU and with the faculty responsible for each high-demand baccalaureate degree major program, shall specify for each high-demand baccalaureate program major a systemwide lower division transfer curriculum composed of at least 45 semester course units, or the ~~quarter-units~~ *quarter-unit* equivalent, that will be common across all CSU campuses offering specific major programs.

(2) (A) The systemwide lower division transfer curriculum for each high-demand baccalaureate ~~major~~ degree *major* program shall be composed of at least 45 semester units, or the quarter-unit equivalent, and shall include all of the following:

(i) General education courses.

(ii) Any other lower division courses required for graduation.

(iii) Lower division components of the student's declared major.

(iv) Elective units, as appropriate.

(B) The coursework described in subparagraph ~~in subparagraph~~ (A) shall be designated by the CSU faculty responsible for the student's major degree program.

(3) The systemwide lower division transfer curriculum shall be specified in sufficient manner and detail so that existing and future community college lower division courses may be articulated, according to the usual procedures, to the corresponding CSU courses or course descriptions.

(g) (1) On or before June 1, 2006, the Chancellor of CSU and the Chancellor of the California Community Colleges, in consultation with the Academic Senate of the California Community Colleges, shall articulate those lower division, baccalaureate-level courses at each campus of the California Community Colleges that meet for each degree major the systemwide lower division transfer curriculum requirements specified in paragraph (1) of subdivision (f).

(2) To the extent that the goals of efficiency and urgency are advanced, existing articulation procedures such as the California Articulation Number (CAN) program shall be employed.

(3) On or before June 1, 2006, each CSU campus shall have identified any additional specific, nonelective course requirements beyond the systemwide lower division transfer curriculum requirements for each major, up to a maximum of 60 semester units or the quarter-unit equivalent, for the systemwide and campus-specific requirements combined. To the extent these additional course requirements are identified, each CSU campus shall provide that information to all community colleges.

(4) The Chancellor of CSU shall amend CSU's transfer admissions procedures to encourage prospective community college transfer students to identify and, to the extent possible, commit to, a specific CSU transfer destination campus before earning ~~no~~ more than 45 semester units, or the quarter-unit equivalent, of lower division, baccalaureate-level courses, as described in subdivision (f).

(h) As allowed by enrollment demand and available space, each CSU campus shall develop a transfer admission agreement with each student who intends to meet the requirements of this section, including the declaration of a major and identification of a choice of a destination campus, before earning ~~no~~ more than 45 systemwide semester units, or the quarter-unit equivalent. The transfer admission agreement shall guarantee admission to the campus and major identified in that agreement and transfer of all 60 semester units, or the quarter-unit equivalent, as creditable to the baccalaureate degree, subject to the student's meeting the following conditions:

(1) Completion of the 60 semester units of college-level coursework, or the quarter-unit equivalent, specified for the student's major degree program.

(2) Declaration of a major.

(3) Satisfactory completion of the systemwide lower division transfer curriculum requirements for the student's declared major.

(4) Satisfactory completion of any requirements beyond the systemwide lower division transfer curriculum that are specified by the CSU destination campus.

(5) Any impaction criteria for that campus or major.

(i) A CSU campus shall guarantee that the transfer students admitted under this section will be able to complete the

baccalaureate degree in the minimum number of course units required for that degree.

SEC. 53. Section 71093 of the Education Code is amended to read:

71093. Notwithstanding any other provision of law:

(a) The board of governors may authorize the chancellor to suspend, for a period of up to one year, the authority of the Board of Trustees of the Compton Community College District, or of any of the members of that board, to exercise any powers or responsibilities or to take any official actions with respect to the management of the district, including any of the district's assets, contracts, expenditures, facilities, funds, personnel, or property. With the prior approval of the board of governors, the chancellor may renew a suspension under this section as many times, and as often, as, he or she finds it necessary during the period of operation of this section.

(b) A suspension authorized by this section becomes effective immediately upon the delivery of a document to the administrative offices of the Compton Community College District that sets forth the finding of the chancellor that a suspension pursuant to this section is necessary for the establishment of fiscal integrity and security in that district.

(c) If and when the chancellor suspends the authority of the Board of Trustees of the Compton Community College District or any of its members pursuant to this section, the chancellor may appoint a special trustee as provided in paragraph (3) of subdivision (c) of Section 84040, at district expense, to manage the district. The chancellor is authorized to assume, and delegate to the special trustee, those powers and duties of the Board of Trustees of the Compton Community College District that the chancellor determines, with the approval of the board of governors, are necessary for the management of that district. The Board of Trustees of the Compton Community College District may not exercise any of the duties or powers assumed by the chancellor under this section. The chancellor may appoint as a special trustee under this section a person who has served in a similar capacity prior to the enactment of the act that adds this section. A special trustee appointed under this section shall serve at the pleasure of the chancellor.

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

SEC. 54. Section 89539.2 of the Education Code is amended to read:

89539.2. (a) Any party claiming that his or her request for discovery pursuant to Section 89539.1 has not been complied with may serve and file a petition to compel discovery with the Hearing Office of the State Personnel Board, naming as the respondent the party refusing or failing to comply with Section 89539.1. The petition shall state facts showing that the respondent failed or refused to comply with Section 89539.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under Section 89539.1, and the ground or grounds ~~of~~ *for* the respondent's refusal so far as known to the petitioner.

(b) (1) The petition shall be served upon the respondent, and filed within 14 days after the respondent first evidenced his or her failure or refusal to comply with Section 89539.1, or within 30 days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party.

(2) The respondent shall have a right to file a written answer to the petition. Any answer shall be filed with the Hearing Office of the State Personnel Board and the petitioner within 15 days of service of the petition.

(3) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent, and issue a decision granting or denying the petition within 20 days after the filing of the petition. Nothing in this section shall preclude the

administrative law judge from determining that an evidentiary hearing shall be conducted prior to the issuance of a decision on the petition. In the event that a hearing is ordered, the decision of the administrative law judge shall be issued within 20 days of the closing of the hearing.

(4) A party aggrieved by the decision of the administrative law judge may, within 30 days of service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the trustees is located. The petition shall be served on the respondent.

(c) If, from a reading of the petition, the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his or her attorney of record in the administrative proceeding by personal delivery or certified mail, and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may, in its discretion, order the administrative proceeding stayed during the pendency of the proceeding, and, if necessary, for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) If the matter sought to be discovered is under the custody or control of the respondent and the respondent asserts that the matter is not a discoverable matter under Section 89539.1, or is privileged against disclosure under Section 89539.1, the court may order lodged with it matters that are provided in subdivision (b) of Section 915 of the Evidence Code, and shall examine the matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall, no later than 45 days after the filing of the petition, file its order denying or granting the petition. However, the court may, on its own motion, for good cause, extend the time an additional 45

days. The order of the court shall be in writing, setting forth the matters or parts the petitioner is entitled to discover under Section 89539.1. A copy of the order shall forthwith be served by mail by the clerk upon the parties. If the order grants the petition in whole or in part, the order shall not become effective until 10 days after the date the order is served by the clerk. If the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) (1) The order of the superior court shall be final and, except for this subdivision, shall not be subject to review by appeal. A party aggrieved by the order, or any part thereof, may, within 30 days after the service of the superior court's order, serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside, or otherwise modify, its order.

(2) If a review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus. However, the court of appeal may dissolve or modify the stay thereafter, if it is in the public interest to do so. If the review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) If the superior court finds that a party or his or her attorney, without substantial justification, failed or refused to comply with Section 89539.1, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney's fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

SEC. 55. Section 94742.3 of the Education Code is amended to read:

94742.3. "Short-term education program" means an educational service meeting all of the following criteria:

(a) The total charge to the student is more than five hundred dollars ($500) and not more than two thousand dollars ($2,000).

(b) The length of training is 250 hours or less.

(c) The service is not any of the following:

(1) Instruction leading to a degree.

(2) Instruction financed by a federal or state loan or grant.

(3) Any educational service that was originally longer than 250 hours or cost more than two thousand dollars ($2,000), but has been structured into segments to meet the requirement of subdivision (a).

~~(c)~~

(d) The service is offered by approved institutions or institutions registered pursuant to Article 9.5 (commencing with Section 94931).

SEC. 56. Section 94931 of the Education Code is amended to read:

94931. (a) No private postsecondary educational institution, except those offering degrees and approved under Article 8 (commencing with Section 94900) or offering vocational and nondegree granting programs and approved under Article 9 (commencing with Section 94915), or those that are exempt from this chapter, may offer educational services or programs or short-term educational programs unless the institution has been registered by the bureau as meeting the requirements of this article.

(b) An institution approved to offer degrees under Article 8 (commencing with Section 94900) or approved to offer vocational and nondegree granting programs under Article 9 (commencing with Section 94915) may offer registered short-term education programs without affecting its status under either of those articles so long as the registered short-term education program is disclosed in its approval to operate application or the institution completes a registration application and receives specific authorization for the program, maintains compliance for all registered programs in conformity with this article, and maintains a set of student records for registered programs separate from its approved programs. Any registered institution that offers an educational program not specified in subdivision (c) or not otherwise exempt from this chapter shall be approved under Article 8 (commencing with Section 94900) or Article 9 (commencing with Section 94915) and shall comply with this chapter.

(c) Except as otherwise provided in this article, this chapter does not apply to an educational service that qualifies for registration status and that complies with this article. The educational services that qualify for registration status are limited to:

(1) An educational service, as ~~defined~~ *described* in Section 94733, that is offered to provide an intensive English language program.

(2) An educational service, as ~~defined~~ *described* in Section 94742.1, that is offered to provide short-term career training.

(3) An educational service, as ~~defined~~ *described* in Section ~~94742.2~~ *94742.3*, that is offered to provide short-term seminar training.

(4) An educational service that is offered to assist students to prepare for an examination for licensure, except as provided in Section 94787.

(5) An educational service that consists of continuing education not otherwise exempt from this chapter.

(d) An institution that qualifies under any of paragraphs (1) to (4), inclusive, of subdivision (c) shall complete a registration form provided by the bureau, including a signed declaration by the chief executive officer of the institution under penalty of perjury, and provide all of the following information for public disclosure:

(1) The owner's legal name, headquarters address, and the name of an agent for the service of process within California.

(2) All names, whether real or fictitious, under which the owner is doing and will do business.

(3) The names and addresses of the principal officers of the institution.

(4) A list of all California locations at which the institution operates, its offerings, and, if previously registered, the number of students enrolled in California during the preceding year.

(5) A copy of the registration form or agreement that enrolls the student in the educational service that contains all of the following:

(A) The name and address of the location where instruction will be provided.

(B) The title of the educational program.

(C) The total amount the student is obligated to pay for the educational service.

(D) A clear and conspicuous statement that the enrollment form or agreement is a legally binding instrument when signed by the student and accepted by the institution.

(E) The refund policy developed by the institution unless this article specifies a different refund policy.

(F) Unless this article specifies that the institution is required to participate in the Student Tuition Recovery Fund, a statement that the institution does not participate in that fund.

(G) In 10-point boldface type or larger, the following statement: "Any questions or problems concerning this school that have not been satisfactorily answered or resolved by the school should be directed to the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs (insert city, address, CA ZIP Code number, and telephone number)."

(H) Schools approved under paragraph (1) of subdivision (c) of Section 94931 shall also include with the statement required by subparagraph (G) information referring the student to a consulate of his or her country and the United States Immigration and Naturalization Service.

(6) A brochure or catalog and a sample advertisement used to promote the educational service.

(7) A copy of its certificate of completion.

(8) If the educational service offers short-term career training, the institution shall comply with the requirements of Sections 94804 and 94806.

(9) If the institution assists students in obtaining financing from a third party for the cost of the educational services at the institution, a copy of the contract or finance agreement reflecting that financing.

(e) The bureau shall establish the initial registration fee and the annual fee to be paid by institutions registered under this article. No institution shall be registered pursuant to this article unless it has paid the appropriate fees required by the bureau. Upon receipt of an institution's initial application for registration for a program, the bureau may conduct a site visit pursuant to subdivision (c) of Section 94915.

(f) For the purposes of communication with other state agencies, any organization or individual registered to offer short-term seminar training may state that ~~they are~~ *he, she, or it is* "authorized" by the State of California.

(g) (1) Except as provided by subdivision (f), any institution registered pursuant to this article shall be restricted to stating that ~~their~~ *its* training is "registered" with the State of California and is prohibited from using the words "approval," "approved," "approval to operate," "approved to operate," "authorized," "licensed," or "licensed to operate."

(2) The institution shall place the following statement in all brochures, catalogues, enrollment agreements, and registration forms, in a conspicuous location in at least 12-point boldfaced type:

"We are registered with the State of California. Registration means we have met certain minimum standards imposed by the state for registered schools on the basis of our written application to the state. Registration does not mean we have met all of the more extensive standards required by the state for schools that are approved to operate or licensed or that the state has verified the information we submitted with our registration form."

(h) The bureau may require, at least every three years following the initial registration date, that a registered institution verify all or part of the information required to be provided with the registration form under subdivision (d).

(i) Sections 94812 and 94818, Sections 94822 to 94825, inclusive, ~~and~~ Sections 94829 to 94838, inclusive, and Sections 94841 and 94846 ~~shall~~ apply to any institution registered pursuant to this article.

(j) Article 1 (commencing with Section 94700), Article 2 (commencing with Section 94710), Article 3 (commencing with Section 94750), Article 3.5 (commencing with Section 94760), Article 4 (commencing with Section 94770), and Article 13 (commencing with Section 94950) ~~shall~~ apply to any institution registered pursuant to this article.

SEC. 57. Section 99235 of the Education Code is amended to read:

99235. (a) The Superintendent of Public Instruction shall notify local educational agencies that they are eligible to receive funding to provide instructional aides and paraprofessionals who

directly assist with classroom instruction in mathematics 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 educational agencies on a ~~first-come-first-served~~*first-come, first-served* basis. A local educational agency that chooses to participate in the program is eligible to receive funding for no greater than the percentage calculated in accordance with provisions of an item of appropriation in the annual Budget Act for its instructional aides and paraprofessionals. However, the statewide total number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading served under this program may not exceed 9,600 over the two fiscal years.

(b) Of the incentive provided pursuant to subdivision (a), a local educational agency may *not* use ~~not~~ more than five hundred dollars ($500) of the *amount* per instructional aide and paraprofessional~~,~~ who directly ~~assist~~ *assists* with classroom instruction in mathematics and reading~~, amount~~ to provide an individual instructional ~~aid~~ *aide* stipend.

SEC. 58. Section 9042 of the Elections Code is amended to read:

9042. If a measure submitted to the voters by the Legislature was not adopted unanimously, one Member of the Senate who voted against it shall be appointed by the President pro Tempore of the Senate and one Member of the Assembly who voted against it shall be appointed by the Speaker of the Assembly, at the same time as appointments to draft an argument in its favor are made, to write an argument against the measure. An argument shall not exceed 500 words.

If those ~~members~~ *Members* appointed to write an argument against the measure choose, each may write a separate argument opposing it, but the combined length of the two arguments ~~may~~ *shall* not exceed 500 words.

SEC. 59. Section 299.3 of the Family Code is amended to read:

299.3. (a) On or before June 30, 2004, and again on or before December 1, 2004, and again on or before January 31, 2005, the Secretary of State shall send the following letter to the mailing

address on file of each registered domestic partner who registered more than one month prior to each of those dates:

"Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

Effective January 1, 2005, California's law related to the rights and responsibilities of registered domestic partners will change (or, if you are receiving this letter after that date, the law has changed, as of January 1, 2005). With this new legislation, for purposes of California law, domestic partners will have a great many new rights and responsibilities, including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated is also changing. After January 1, 2005, under certain circumstances, it will be necessary to participate in a dissolution proceeding in court to end a domestic partnership.

Domestic partners who do not wish to be subject to these new rights and responsibilities MUST terminate their domestic partnership before January 1, 2005. Under the law in effect until January 1, 2005, your domestic partnership is automatically terminated if you or your partner marry or die while you are registered as domestic partners. It is also terminated if you send to your partner or your partner sends to you, by certified mail, a notice terminating the domestic partnership, or if you and your partner no longer share a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership.

If you do not terminate your domestic partnership before January 1, 2005, as provided above, you will be subject to these new rights and responsibilities and, under certain circumstances, you will only be able to terminate your domestic partnership, other than as a result of *your* domestic partner's death, by the filing of a court action.

Further, if you registered your domestic partnership with the state prior to January 1, 2005, you have until June 30, 2005, to enter into a written agreement with your domestic partner that will be enforceable in the same manner as a premarital agreement under California law, if you intend to be so governed.

If you have any questions about any of these changes, please consult an attorney. If you cannot find an attorney in your locale, please contact your county bar association for a referral.
Sincerely,
The Secretary of State"

(b) From January 1, 2004, to December 31, 2004, inclusive, the Secretary of State shall provide the following notice with all requests for the Declaration of Domestic Partnership form. The Secretary of State also shall attach the Notice to the Declaration of Domestic Partnership form that is provided to the general public on the Secretary of State's Web site:

"NOTICE TO POTENTIAL DOMESTIC PARTNER REGISTRANTS

As of January 1, 2005, California's law of domestic partnership will change.

Beginning at that time, for purposes of California law, domestic partners will have a great many new rights and responsibilities, including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated will also change. Unlike current law, which allows partners to end their partnership simply by filing a "Termination of Domestic Partnership" form with the Secretary of State, after January 1, 2005, it will be necessary under certain circumstances to participate in a dissolution proceeding in court to end a domestic partnership.

If you have questions about these changes, please consult an attorney. If you cannot find an attorney in your area, please contact your county bar association for a referral."

SEC. 60. Section 420 of the Family Code is amended to read:

420. (a) No particular form for the ceremony of marriage is required for solemnization of the marriage, but the parties shall declare, in the presence of the person solemnizing the marriage and necessary witnesses, that they take each other as husband and wife.

(b) Notwithstanding subdivision (a), a member of the Armed Forces of the United States who is stationed overseas and serving

in a conflict or a war and is unable to appear for the licensure and solemnization of the marriage may enter into that marriage by the appearance of an attorney-in-fact, commissioned and empowered in writing for that purpose through a power of attorney. The attorney-in-fact must personally appear at the county clerk's office with the party who is not stationed overseas, and present the original power of attorney duly signed by the party stationed overseas and acknowledged by a notary or witnessed by two officers of the United States Armed Forces. The power of attorney shall state the true legal names of the parties to be married, and that the power of attorney is solely for the purpose of ~~authorizingg~~ *authorizing* the attorney-in-fact to obtain a marriage license on the person's behalf and participate in the solemnization of the marriage. The original power of attorney shall be a part of the marriage certificate upon registration.

(c) No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 61. Section 2024.6 of the Family Code is amended to read:

2024.6. (a) Upon request by a party to a petition for dissolution of marriage, nullity of marriage, or legal separation, the court shall order a pleading that lists the parties' financial assets and liabilities and provides the location or identifying information about those assets and liabilities sealed. The request may be made by ex parte application. Nothing sealed pursuant to this section may be unsealed except upon petition to the court and good cause shown.

(b) Commencing not later than July 1, 2005, the Judicial Council form used to declare assets and liabilities of the parties in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties shall require the party filing the form to state whether the declaration contains identifying information on the assets and liabilities listed therein. If the party making the request uses a pleading other than the Judicial Council form, the pleading shall exhibit a notice on the front page, in bold capital letters, that the pleading lists and identifies financial information and is therefore subject to this section.

(c) For purposes of this section, "pleading" means a document that sets forth or declares the parties' assets and liabilities,

income and expenses, a marital settlement agreement that lists and identifies the parties' assets and liabilities, or any document filed with the court incidental to the declaration or agreement that lists and identifies financial information.

~~(c)~~

(d) The party making the request to seal a pleading pursuant to subdivision (a) shall serve a copy of the pleading on the other party to the proceeding and file a proof of service with the request to seal the pleading.

~~(f)~~

(e) Nothing in this section precludes a party to a proceeding described in this section from using any document or information contained in a sealed pleading in any manner that is not otherwise prohibited by law.

SEC. 62. Section 3111 of the Family Code is amended to read:

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a), or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) *of* Section 827 of the Welfare and Institutions Code.

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

SEC. 63. Section 6341 of the Family Code is amended to read:

6341. (a) If the parties are married to each other and no other child support order exists or if there is a presumption under Section 7611 that the respondent is the natural father of a minor child and the child is in the custody of the petitioner, after notice and a hearing, the court may, if requested by the petitioner, order a party to pay an amount necessary for the support and maintenance of the child if the order would otherwise be authorized in an action brought pursuant to Division 9 (commencing with Section 3500) or the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12). When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom child support is requested, including safety concerns related to the financial needs of the petitioner and the children. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(b) An order issued pursuant to subdivision (a) of this section shall be without prejudice in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(c) If the parties are married to each other and no spousal support order exists, after notice and a hearing, the court may order the respondent to pay spousal support in an amount, if any, that would otherwise ~~by~~ *be* authorized in an action pursuant to Part 1 (commencing with Section 3500) or Part 3 (commencing with Section 4300) of Division 9. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner, including safety concerns related to the financial needs of the petitioner. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(d) An order issued pursuant to subdivision (c) shall be without prejudice in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties.

SEC. 64. Section 14252 of the Financial Code is amended to read:

14252. (a) A credit union with total assets equal to or greater than ten million dollars ($10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(b) The audit report called for in subdivision (a) shall comply with all of the following provisions:

(1) The audit report shall contain the audited financial statements of the credit union for, or as of the end of, the fiscal year, prepared in accordance with generally accepted accounting principles that the commissioner may specify, and any other information that the commissioner may specify.

(2) The audit report shall be based upon an audit of the credit union, conducted in accordance with generally accepted auditing standards, and any other requirements that the commissioner may specify.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is acceptable to the commissioner.

(4) The audit report shall include, or be accompanied by, a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the credit union to take any action that the commissioner may find necessary or advisable to enable the independent certified public accountant or independent public accountant to remove the qualification.

(c) A credit union with total assets of less than ten million dollars ($10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(d) The audit report called for in subdivision (c) may comply with all the provisions of subdivision (b), or may consist of alternative procedures acceptable to the commissioner. An

alternative procedures audit may be performed by any of the following:

(1) An independent certified public accountant.

(2) An independent public accountant.

(3) The credit union's supervisory committee, provided that the audit complies with the requirements of Section ~~14533~~ *14253*.

(e) Notwithstanding subdivision (d), the commissioner may reject an alternative procedures audit that he or she determines is not satisfactory. If the commissioner rejects an alternative procedures audit for any reason, he or she may order a credit union to obtain an audit that is satisfactory to the commissioner.

(f) The commissioner may, by order or regulation, either unconditionally or upon specified terms and conditions, grant an exemption from this section in any case where the commissioner finds that the requirements of this section are not necessary or advisable.

SEC. 65. Section 1053 of the Fish and Game Code is amended to read:

1053. No person shall obtain more than one license, permit, reservation, or other entitlement of the same class, or more than the number of tags authorized by statute or regulation for the same license year, except under one of the following conditions:

(a) Licenses issued pursuant to paragraphs (3), (4), and (5) of subdivision (a) of Section 7149, paragraphs (3), (4), and (5) of subdivision (a) of Section 7149.05, and paragraphs (4) and (5) of subdivision (a) of Section 3031.

(b) The loss or destruction of an unexpired license, tag, permit, reservation, or other entitlement as certified by the applicant's signed affidavit and proof, as determined by the department, that the original license, tag, permit, reservation, or other entitlement was issued, and payment of a base fee of five dollars ($5), adjusted pursuant to Section 713, not to exceed the fee for the original entitlement.

(c) The adjustment of the base fee pursuant to Section 713 applies to the hunting license years commencing on or after July 1, 1996, and the fishing license years commencing on or after January 1, 1996.

SEC. 66. Section 1363.5 of the Fish and Game Code is amended to read:

1363.5. (a) Commencing on June 30, 2003, and every two years thereafter, the board shall report to the Legislature and the Governor concerning the activities and expenditures of the fund.

(b) (1) In the first report to the Legislature, the board shall provide its best estimate of the total amount, in terms of acreage, species, and coverage, of oak woodlands habitat purchased with funds from the Habitat Conservation Fund and other funds pursuant to the California Wildlife Protection Act of 1990 (Chapter 9 (commencing with Section 2780) of Division ~~3~~ *3)*.

(2) In each subsequent report, the board shall update the information required by paragraph (1) to reflect additional oak woodlands habitat purchased with funds from the Habitat Conservation Fund pursuant to Chapter 9 (commencing with Section 2780) of Division 3, and any purchases made with moneys deposited in the Oak Woodlands Conservation Fund.

(c) The board shall provide its best estimate in each report~~,~~ *of* the acreage, cover, and species of oak woodlands habitat purchased with all moneys from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund.

(d) The board shall make all information available online at its Web site.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed, unless a later enacted statute that is enacted before January 1, 2021, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 67. Section 8494 of the Fish and Game Code is amended to read:

8494. (a) Commencing April 1, 2006, any vessel using bottom trawl gear in state-managed halibut fisheries, as described in subdivision (a) of Section 8841, shall possess a halibut bottom trawl permit issued by the department that authorizes the use of trawl gear by that vessel for the take of California halibut. An application for a California halibut bottom trawl vessel permit for the 2006–07 season shall be received by the department not later than January 1, 2006.

(b) A halibut bottom trawl vessel permit shall be issued annually, commencing with the 2006 permit year. Commencing with the 2007-08 season, in order to be eligible for that permit, an applicant shall have previously held a valid California halibut bottom trawl vessel permit.

(c) The department shall not issue a bottom trawl vessel permit pursuant to this section for use in the halibut fishery unless that vessel has landed a minimum of 200 pounds of California halibut and reported that landing on fish tickets as being caught with bottom trawl gear in at least one of the following:

(1) At least two of the calendar years 1995 to 2003, inclusive.

(2) At least one of the calendar years 1995 to 2003, inclusive, and from January 1, 2004, to February 19, 2004, inclusive.

(d) Permits issued pursuant *to* this section may be transferred only if at least one of the following ~~occur~~ *occurs*:

(1) The commission adopts a restricted access program for the fishery, including, but not limited to, if necessary, a plan for reducing capacity in this fishery in a manner that is consistent with the commission's policies regarding restricted access to commercial fisheries.

(2) Prior to the implementation of a restricted access program, the permit is transferred to another vessel owned by the same permitholder of equal or less capacity, as determined by the department based on the United States Coast Guard documentation papers, and if the originally permitted vessel was lost, stolen, destroyed, or suffered a major irreparable mechanical breakdown. The department may not issue a permit for a replacement vessel if the department determines that the originally permitted vessel was fraudulently reported as lost, stolen, destroyed, or damaged. Only the permitholder at the time of the loss, theft, destruction, or irreparable mechanical breakdown of a vessel may apply to transfer the vessel permit. Evidence that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard, or any other law enforcement agency or fire department that conducted an investigation of the loss.

(3) Prior to the implementation of a halibut trawl restricted access program, a vessel permitholder, or his or her heirs or assigns, requests to transfer the permit because of the death or permanent disability of the permitholder or the decision by the permitholder to retire from fishing upon reaching or exceeding *the* age *of* 65 *years*, and halibut landings contributed significantly to the catch record and economic income derived from the vessel, and the permit is authorized by the department to be transferred with the vessel. The department may request information that it

determines is reasonably necessary from the permitholder or his or her heirs and assigns for the purpose of verifying statements in the request prior to authorizing the transfer of the permit.

(e) The commission shall establish California halibut bottom trawl vessel permit fees based on the recommendations of the department and utilizing the guidelines outlined in subdivision (b) of Section 711 to cover the costs of administering this section. Prior to the adoption of a restricted access program pursuant to subdivision (d), fees may not exceed one thousand dollars ($1,000) per permit.

(f) Individuals holding a federal groundfish trawl permit may retain and land up to 150 pounds of California halibut per trip without a California halibut trawl permit in accordance with federal and state regulations, including, but not limited to, regulations developed under a halibut fishery management plan.

(g) This section shall become inoperative upon the adoption by the commission of a halibut fishery management plan in accordance with the requirements of Part 1.7 (commencing with Section 7050).

SEC. 68. Section 77253 of the Food and Agricultural Code is amended to read:

77253. The commission or the secretary may bring an action for judicial relief from the secretary's written notice, or from noncompliance by the commission with the written notice, as the case ~~maybe~~ *may be*, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

SEC. 69. Section 77265 of the Food and Agricultural Code is amended to read:

77265. The secretary or his or her ~~representatives~~ *representative* shall be notified and may attend each meeting of the commission and any committee meeting of the commission.

SEC. 70. 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) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state

public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) 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.

(d) (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 *injunction*, 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.

(e) 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. 71. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development,

or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of

Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph may not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the

Governor's Legal Affairs Secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work ~~products~~ *product*, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of

Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with

an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates

of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program *that are* related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal *for agreement* the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract ~~is~~ *are* open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the

funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code~~, and~~ that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions,

opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(bb) ~~(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.~~

~~(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.~~

~~(B) In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.~~

~~(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.~~

~~(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).~~

~~(cc)~~ All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care

Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 72. Section 7072 of the Government Code is amended to read:

7072. For purposes of this chapter, the following definitions shall apply:

(a) "Department" means the Department of Housing and Community Development.

(b) "Date of original designation" means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the department pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the former Trade and Commerce Agency pursuant to Chapter 12.8 (commencing with Section 7070) or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) "Eligible area" means any of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the department, fulfills at least one of the following *criteria*:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the department for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(3) A geographic area that meets at least two of the following criteria:

(A) The census tracts within the proposed zone have an unemployment rate not less than 3 percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(B) The county of the proposed zone has more than 70 percent of the children enrolled in public school participating in the federal free lunch program.

(C) The median household income for a family of four within the census tracts of the proposed zone does not exceed 80 percent of the statewide median income for the most recently available calendar year.

(d) "Enterprise zone" means any area within a city, county, or city and county that is designated as such by the department in accordance with Section 7073.

(e) "Governing body" means a county board of supervisors or a city council, as appropriate.

(f) "High technology industries" ~~include~~ *includes*, but ~~are~~ *is* not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) "Resident," unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) "Targeted employment area" means an area within a city, county, or city and county that is composed solely of those census tracts designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using either the

most recent United States Department of Census data available at the time of the original enterprise zone application or the most recent census data available at the time the targeted employment area is designated to determine that eligibility. The purpose of a "targeted employment area" is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county, or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

SEC. 73. Section 7076.2 of the Government Code is amended to read:

7076.2. (a) The department shall dedesignate a zone on the first day of the month immediately following the date upon which the department has received from each jurisdiction

comprising the zone a resolution, adopted by the governing body of that jurisdiction, requesting the dedesignation of the zone. Upon the dedesignation of a zone pursuant to this ~~paragraph~~ *subdivision*, the department shall initiate an application process for a new designation as provided in Section 7073.

(b) The department shall exclude from a zone that portion of that zone that is located within a jurisdiction on the first day of the month immediately following the date upon which the department receives from that jurisdiction a resolution, adopted by the governing body of that jurisdiction, requesting that exclusion. Any jurisdiction that provides notice to the department pursuant to this ~~paragraph~~ *subdivision* shall concurrently provide a copy of that notice to all other jurisdictions that comprise the affected zone.

(c) Any business, located within any jurisdiction that comprises a zone that has been dedesignated or within a jurisdiction that has excluded itself from a zone, that has elected to avail itself of any state tax incentive specifically applicable to a zone for any taxable or income year beginning prior to the dedesignation of the zone or the exclusion of a jurisdiction comprising the zone may, to the extent the business is still otherwise eligible for those incentives, continue to avail itself of those incentives for a period equal to the remaining life of the zone. However, any business, located within any jurisdiction that comprises a zone that has been dedesignated or within a jurisdiction that has excluded itself from a zone, that has not availed itself of any state tax incentive in the manner described in the preceding sentence may not, after dedesignation of the zone, avail itself of any state incentive specifically applicable to a zone.

(d) For purposes of this section, "dedesignation" is defined as set forth in paragraph (1) of subdivision (d) of Section 7076.1.

SEC. 74. Section 7099 of the Government Code is amended to read:

7099. (a) The Department of Housing and Community Development may approve a proposed expansion of *a* targeted tax area subject to the following conditions:

(1) The governing body of each city and county in which the targeted tax area is located approves an ordinance or resolution approving the proposed expansion of the area.

(2) The department determines that the proposed additional territory meets the criteria specified in subdivision (a) of Section 7097 to the same extent as the existing territory of the targeted tax area.

(3) The proposed expansion, in combination with any previous expansions of the targeted tax area, does not exceed 15 percent of the size of the area on the date of *its* original designation.

(4) The expansion area is contiguous to the targeted tax area.

(5) The expansion meets the criteria established in paragraphs (1), (2), and (3) of subdivision (b) of Section 7074.

(b) The department shall respond in writing to any application for a proposed expansion of the targeted tax area within 90 days of the date on which the application is deemed complete.

SEC. 75. Section 7110 of the Government Code is amended to read:

7110. (a) The governing body may, either by ordinance or resolution, propose an eligible area within its respective jurisdiction as the geographic area for a local agency military base recovery area. A county may propose an area within the unincorporated area as the geographic area for a local agency military base recovery area, but shall not propose an area within an incorporated area. A city may propose an area within the incorporated area as the geographic area for a local agency military base recovery area, but may not propose an area within an unincorporated area. A city and county may propose an area within the city and county for designation as a local agency military base recovery area. This proposed geographic area shall be based upon findings by the governing body that the area meets the criteria in Section 7111 and that the designation as a local agency military base recovery area is necessary in order to assist in attracting private sector investment in the area. The governing body shall establish definitive boundaries, not to exceed former base property, for the area to be included in the application for designation and, if designated by the ~~agency~~ *department*, the designation shall be binding for the period described in Section 7110.5.

(b) Following the application for designation of a local agency military base recovery area, the governing body shall apply to the department for designation. The department shall adopt

regulations and guidelines concerning the necessary contents of each application for designation.

(c) Any governing body with an eligible area within its jurisdiction may complete a preliminary application.

(d) In designating a local agency military base recovery area, the department shall select from the applications submitted those proposed local agency military base recovery areas which, based on a comparison of those applications, propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives to attract private sector investment in the proposed local agency military base recovery area. For purposes of this ~~paragraph~~ *subdivision, the following terms have the following meanings*:

(1) "Regulatory incentives" ~~include~~ *includes*, but ~~are~~ *is* not limited to, the elimination or reduction of fees for applications, permits, and local government facilities and services; and the establishment of a streamlined permit process.

(2) "Tax incentives" ~~include~~ *includes*, but ~~are~~ *is* not limited to, the elimination or reduction of business license taxes and utility user taxes.

(3) "Program" and "other incentives" may include, but are not limited to*,* the provision or expansion of infrastructure; the targeting of federal block grant moneys, including small cities, education, and health and welfare block grants; the targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration; the targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Partnership Training Act of 1982; the targeting of federal or state transportation grant moneys; and the targeting of federal or state low-income housing and rental assistance moneys.

(e) The department shall also consider the following:

(1) The unemployment rate for the area under the jurisdiction of the local governing body.

(2) The number of civilian and military jobs lost as a result of the base closure when compared to the number of jobs available in the area.

(3) Whether the local agency has a comprehensive economic development plan that is consistent with the reuse plan.

(4) Whether the local agency has a prepared plan for appropriate hazardous waste management facilities as an integral part of the base and shall give extra consideration for any plan ~~which~~ *that* includes provisions for critically needed hazardous waste facilities.

(5) ~~The~~ *Whether the* governing body has resolved, as part of the reuse plan approval, to prepare a program environmental impact report that is in compliance with the California Environmental Quality Control Act and associated guidelines.

(f) In evaluating applications for designation, the department shall ensure that applications are not disqualified solely because of technical deficiencies and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks. The department shall provide technical assistance to applicants that request it.

SEC. 76. Section 7113.5 of the Government Code is amended to read:

7113.5. When selecting successful applicants for a local agency military base recovery area, the department shall limit the number of local agency military base recovery areas to eight, which shall be awarded by the following criteria, in addition to the criteria set forth in Section 7111~~.~~*:*

(a) The department shall designate at least one local agency military base recovery area in each region.

(b) If the department finds that none of the applications in a competition ~~are~~ *is* satisfactory in meeting the selection criteria, the department shall inform all applicants on the deficiencies in their application and shall reopen competition for a period not to exceed six months. Local governing bodies who originally applied~~,~~ may reapply in the new competition.

(c) If, after following the procedures specified in ~~(c)~~ *subdivision (b)*, the ~~agency~~ *department* determines that ~~there are~~ no applications ~~that~~ are satisfactory, the department may not designate a local agency military base recovery area.

(d) Eligible bases shall compete for approval of a local agency military base recovery area against other eligible bases. In any

event, not less than one area shall be designated from each region.

SEC. 77. Section 8592.4 of the Government Code is amended to read:

8592.4. (a) The committee shall determine which state public safety departments listed in subdivision (b) of Section 8592.1 need new or upgraded communication equipment and shall establish a program for equipment purchase. In establishing this program, the committee shall recommend the purchase of~~,~~ equipment that will enable state agencies to commence conforming to accepted industry standards for interoperability specified in subdivision (a) of Section 8592.5.

(b) This section may not be construed to mandate that a state or local governmental agency affected thereby is required to compromise its immediate mission or ability to function and carry out its existing responsibilities.

SEC. 78. Section 8875.10 of the Government Code is amended to read:

8875.10. (a) Notwithstanding any other provision of law, a city or county may not impose any additional building or site conditions*,* including, but not limited to, parking or other onsite or offsite requirements, fees, or exactions, on or before the issuance of a building permit that is necessary for the owner of a potentially hazardous building to conduct seismic-related improvements to that building in order for that building to meet the requirements of a mitigation program established pursuant to Section 8875.1 and adopted pursuant to Section 8875.2, if the building or site conditions do not relate to, or further the purpose of, seismic improvements to the building and the improvements comply with applicable building codes and meet or ~~exceeds~~ *exceed* the requirements of state and federal law and regulations that would otherwise apply.

(b) This section shall not apply to any changes in use, design, or other building features that are unrelated to the seismic improvements. This section shall also not apply to a request for other entitlements for the project, including, but not limited to, a general plan amendment, zone change, or approval pursuant to the Subdivision Map Act *(Division 2 (commencing with Section 66410) of Title 7*.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 79. Section 12599 of the Government Code is amended to read:

12599. (a) "Commercial fundraiser for charitable purposes" ~~is defined as~~ *means* any individual, corporation, unincorporated association, or other legal entity who for compensation does any of the following:

(1) Solicits funds, assets, or property in this state for charitable purposes.

(2) As a result of a solicitation of funds, assets, or property in this state for charitable purposes, receives or controls the funds, assets, or property solicited for charitable purposes.

(3) Employs, procures, or engages any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

A commercial fundraiser for charitable purposes shall include any person, association of persons, corporation, or other entity that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code.

A commercial fundraiser for charitable purposes shall not include a "trustee" as defined in Section 12582 or 12583, a "charitable corporation" as defined in Section 12582.1, or any employee thereof. A commercial fundraiser for charitable purposes shall not include an individual who is employed by or under the control of a commercial fundraiser for charitable purposes registered with the Attorney General. A commercial fundraiser for charitable purposes shall not include any federally insured financial institution ~~which~~ *that* holds as a depository funds received as a result of a solicitation for charitable purposes.

As used in this section, "charitable purposes" includes any solicitation in which the name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any funds, assets, or property, unless the only

expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

(b) A commercial fundraiser for charitable purposes shall, prior to soliciting any funds, assets, or property, including salvageable personal property, in California for charitable purposes, or prior to receiving and controlling any funds, assets, or property, including salvageable personal property, as a result of a solicitation in this state for charitable purposes, register with the Attorney General's Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the commercial fundraiser for charitable purposes does business and shall be effective for one year. A registration or renewal fee of two hundred dollars ($200) shall be required for registration of a commercial fundraiser for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(c) A commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts an annual financial report on a form provided by the Attorney General, accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding calendar year. The annual financial report shall be filed with the Attorney General's Registry of Charitable Trusts no later than 30 days after the close of the preceding calendar year.

(d) The contents of the forms for annual registration and annual financial reporting by commercial fundraisers for charitable purposes shall be established by the Attorney General in a manner consistent with the procedures set forth in subdivisions (a) and (b) of Section 12586. The annual financial report shall require a detailed, itemized accounting of funds, assets, or property, solicited for charitable purposes on behalf of each charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or for each charitable

purpose during the accounting period, and shall include, among other data, the following information for funds, assets, or property, solicited by the commercial fundraiser for charitable purposes:

(1) Total revenue.

(2) The fee or commission charged by the commercial fundraiser for charitable purposes.

(3) Salaries paid by the commercial fundraiser for charitable purposes to its officers and employees.

(4) Fundraising expenses.

(5) Distributions to the identified charitable organization or purpose.

(6) The names and addresses of any director, officer, or employee of the commercial fundraiser for charitable purposes who is a director, officer, or employee of any charitable organization listed in the annual financial report.

(e) A commercial fundraiser for charitable purposes that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code shall file with the Attorney General's Registry of Charitable Trusts, and not with the sheriff of any county, an annual financial report on a form provided by the Attorney General that is separate and distinct from forms filed by other commercial fundraisers for charitable purposes pursuant to subdivisions (c) and (d).

(f) It shall be unlawful for any commercial fundraiser for charitable purposes to solicit funds in this state for charitable purposes unless the commercial fundraiser for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article. Failure to comply with these registration or annual renewal and financial reporting requirements shall be grounds for injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(g) A commercial fundraiser for charitable purposes is a constructive trustee for charitable purposes as to all funds collected pursuant to solicitation for charitable purposes and shall account to the Attorney General for all funds. A commercial

fundraiser for charitable purposes is subject to the Attorney General's supervision and enforcement over charitable funds and assets to the same extent as a trustee for charitable purposes under this article.

(h) Not less than 10 working days prior to the commencement of each solicitation campaign, event, or service, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, a commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth all of the following:

(1) The name, address, and telephone number of the commercial fundraiser for charitable purposes.

(2) The name, address, and telephone number of the charitable organization with whom the commercial fundraiser has contracted.

(3) The fundraising methods to be used.

(4) The projected dates when performance under the contract will commence and terminate.

(5) The name, address, and telephone number of the person responsible for directing and supervising the work of the commercial fundraiser under the contract.

(i) There shall be a written contract between a commercial fundraiser for charitable purposes and a charitable organization for each solicitation campaign, event, or service, that shall be signed by the authorized contracting officer for the commercial fundraiser and by an official of the charitable organization who is authorized to sign by the organization's governing body. The contract shall be available for inspection by the Attorney General and shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the Registry of Charitable Trusts, unless the charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign, event, or service is being conducted.

(3) A statement of the respective obligations of the commercial fundraiser and the charitable organization.

(4) If the commercial fundraiser is to be paid a fixed fee, a statement of the fee to be paid to the commercial fundraiser and a good faith estimate of what percentage the fee will constitute of

the total contributions received. The contract shall clearly disclose the assumptions upon which the estimate is based, and the stated assumptions shall be based upon all of the relevant facts known to the commercial fundraiser regarding the solicitation to be conducted by the commercial fundraiser.

(5) If a percentage fee is to be paid to the commercial fundraiser, a statement of the percentage of the total contributions received that will be remitted to or retained by the charitable organization, or, if the solicitation involves the sale of goods or services or the sale of admissions to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization. The stated percentage shall be calculated by subtracting from contributions received and sales receipts not only the commercial fundraiser's fee, but also any additional amounts that the charitable organization is obligated to pay as fundraising costs.

(6) The effective and termination dates of the contract and the date solicitation activity is to commence within the state.

(7) A provision that requires that each contribution in the control or custody of the commercial fundraiser shall in its entirety and within five working days of its receipt comply with either of the following:

(A) Be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the charitable organization and over which the charitable organization has sole control of withdrawals.

(B) Be delivered to the charitable organization in person, by United States express mail, or by another method of delivery providing for overnight delivery.

(8) A statement that the charitable organization exercises control and approval over the content and frequency of any solicitation.

(9) If the commercial fundraiser proposes to make any payment in cash or in kind to any person or legal entity to secure any person's attendance at, or sponsorship, approval, or endorsement of, a charity fundraising event, the maximum dollar amount of those payments shall be set forth in the contract. "Charity fundraising event" means any gathering of persons, including, but not limited to, a party, banquet, concert, or show,

that is held for the purpose or claimed purpose of raising funds for any charitable purpose or organization.

(10) A provision that the charitable organization has the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed; that the charitable organization may cancel the contract by serving a written notice of cancellation on the commercial fundraiser; that, if mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing; that any funds collected after effective notice that the contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for costs or expenses of any nature; and that the charitable organization shall be entitled to recover all funds collected after the date of cancellation.

(11) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract by giving 30 days' written notice; that, if mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing; and that, in the event of termination under this subdivision, the charitable organization shall be liable for services provided by the commercial fundraiser up to 30 days after the effective service of the notice.

(12) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract at any time upon written notice, without payment or compensation of any kind to the commercial fundraiser, if the commercial fundraiser or its agents, employees, or representatives (A) make any material misrepresentations in the course of solicitations or with respect to the charitable organization, (B) are found by the charitable organization to have been convicted of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or a felony, or (C) otherwise conduct fundraising activities in a manner that causes or could cause public disparagement of the charitable organization's good name or good will.

(13) Any other information required by the regulations of the Attorney General.

(j) It shall be unlawful for a commercial fundraiser for charitable purposes to not disclose the percentage of total fundraising expenses of the fundraiser upon receiving a written or oral request from a person solicited for a contribution for a charitable purpose. "Percentage of total fundraising expenses," as used in this section, means the ratio of the total expenses of the fundraiser to the total revenue received by the fundraiser for the charitable purpose for which funds are being solicited, as reported on the most recent financial report filed with the Attorney General's Registry of Charitable Trusts. A commercial fundraiser shall disclose this information in writing within five working days from receipt of a request by mail or facsimile. A commercial fundraiser shall orally disclose this information immediately upon a request made in person or in a telephone conversation and shall follow this response with a written disclosure within five working days. Failure to comply with the requirements of this subdivision shall be grounds for an injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(k) If the Attorney General issues a report to the public containing information obtained from registration forms or financial report forms filed by commercial fundraisers for charitable purposes, there shall be a separate section concerning commercial fundraisers for charitable purposes that obtain a majority of their inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited ~~\by~~ *by* an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code. The report shall include an explanation of the distinctions between these thrift store operations and other types of commercial fundraising.

(*l*) No person may act as a commercial fundraiser for charitable purposes if that person, any officer or director of that person's business, any person with a controlling interest in the business, or any person the commercial fundraiser employs, engages, or procures to solicit for compensation, has been convicted by a court of any state or the United States of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or felony.

(m) A commercial fundraiser for charitable purposes shall not solicit in the state on behalf of a charitable organization unless that charitable organization is registered or is exempt from registration with the Attorney General's Registry of Charitable Trusts.

(n) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect *any* other ~~provisions~~ *provision* or application of this section ~~which~~ *that* can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 80. Section 12715 of the Government Code is amended to read:

12715. (a) The Controller, acting in consultation with the California Gambling Control Commission, shall divide the County Tribal Casino Account for each county that has gaming devices that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund into a separate account for each tribe that operates a casino within the county. These accounts shall be known as Individual Tribal Casino Accounts, and funds may be released from these accounts to make grants selected by an Indian Gaming Local Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. Each Individual Tribal Casino Account shall be funded in proportion to the amount that each individual tribe paid in the prior fiscal year to the Indian Gaming Special Distribution Fund.

(b) (1) There is hereby created in each county in which Indian gaming is conducted an Indian Gaming Local Community Benefit Committee. The selection of all grants from each Individual Tribal Casino Account or County Tribal Casino Account shall be made by each county's Indian Gaming Local Community Benefit Committee. In selecting grants, the Indian Gaming Local Community Benefit Committee shall follow the priorities established in subdivision (g). This committee has the following additional responsibilities:

(A) Establishing all application policies and procedures for grants from the Individual Tribal Casino Account or County Tribal Casino Account.

(B) Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.

(C) Determining the appropriate amount for reimbursement from the aggregate county tribal account of the demonstrated costs incurred by the county for administering the grant programs. The reimbursement for county administrative costs may not exceed 2 percent of the aggregate county tribal account in any given fiscal year.

(2) Except as provided in Section 12715.5, the Indian Gaming Local Community Benefit Committee shall be composed of seven representatives, consisting of the following:

(A) Two representatives from the county, selected by the county board of supervisors.

(B) Three elected representatives from cities located within four miles of a tribal casino in the county, selected by the county board of supervisors. In the event that there are no cities located within four miles of a tribal casino in the county, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the county. When there are no cities within four miles of a tribal casino in the county, and when the Indian Gaming Local Community Benefit Committee acts on behalf of a county where no tribes pay into the Indian Gaming Special Distribution Fund, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes operating casinos in the county.

(C) Two representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in each county. When an Indian Gaming Local Community Benefit Committee acts on behalf of a county where no tribes pay into the Indian Gaming Special Distribution Fund, the two representatives may be selected upon the recommendation of the tribes operating casinos in the county.

(c) Sixty percent of each individual tribal casino account shall be available for nexus grants on a yearly basis to cities and counties impacted by tribes that are paying into the Indian Gaming Special Distribution Fund, according to the four-part nexus test described in paragraph (1). Grant awards shall be selected by each county's Indian Gaming Local Community

Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(1) A nexus test based on the geographical proximity of a local government jurisdiction to an individual Indian land upon which a tribal casino is located shall be used by each county's Indian Gaming Local Community Benefit Committee to determine *the* relative priority for grants, using the following criteria:

(A) Whether the local government jurisdiction borders the Indian lands on all sides.

(B) Whether the local government jurisdiction partially borders Indian lands.

(C) Whether the local government jurisdiction maintains a highway, road, or other thoroughfare that is the predominant access route to a casino that is located within four miles.

(D) Whether all or a portion of the local government jurisdiction is located within four miles of a casino.

(2) Fifty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet all four of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (3) or (4).

(3) Thirty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet three of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (2) or (4).

(4) Twenty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet two of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local

government jurisdictions meeting the requirements of paragraph (2) or (3).

(d) Twenty percent of each ~~individual tribal casino account~~ *Individual Tribal Casino Account* shall be available for discretionary grants to local jurisdictions impacted by tribes that are paying into the Indian Gaming Special Distribution Fund. These discretionary grants shall be made available to all local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c). Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(e) (1) Twenty percent of each ~~individual tribal casino account~~ *Individual Tribal Casino Account* shall be available for discretionary grants to local jurisdictions impacted by tribes that are not paying into the Indian Gaming Special Distribution Fund. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c), and irrespective of whether the impacts presented are from a tribal casino that is not paying into the Indian Gaming Special Distribution Fund. Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and ~~of~~ these multiyear grants shall be accounted for in the grant process for each year.

(A) Grants awarded pursuant to this subdivision are limited to addressing service-oriented impacts and providing assistance with one-time large capital projects related to Indian gaming impacts.

(B) Grants shall be subject to the sole sponsorship of the tribe that pays into the Indian Gaming Special Distribution Fund and the recommendations of the Indian Gaming Local Community Benefit Committee for that county.

(2) If an eligible county does not have a tribal casino operated by a tribe that does not pay into the Indian Gaming Special Distribution Fund, the money available for discretionary grants

under this subdivision shall be available for distribution pursuant to subdivision (d).

(f) (1) For each county that does not have gaming devices subject to an obligation to make payments to the Indian Gaming Special Distribution Fund, funds may be released from the county's County Tribal Casino Account to make grants selected by the county's Indian Gaming Local Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to any particular tribal casino. These grants shall follow the priorities specified in subdivision (g).

(2) Funds not allocated from a county tribal casino account by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund. Moneys allocated for the 2003–04 fiscal year shall be eligible for expenditure through December 31, 2004.

(g) The following uses shall be the priorities for the receipt of grant money from Individual Tribal Casino Accounts: law enforcement, fire services, emergency medical services, environmental impacts, water supplies, waste disposal, behavioral, health, planning and adjacent land uses, public health, roads, recreation and youth programs, and child care programs.

(h) All grants from Individual Tribal Casino Accounts shall be made only upon the affirmative sponsorship of the tribe paying into the Indian Gaming Special Distribution Fund from whose ~~individual tribal casino account~~ *Individual Tribal Casino Account* the grant moneys are available for distribution. Tribal sponsorship shall confirm that the grant application has a reasonable relationship to a casino impact and satisfies at least one of the priorities listed in subdivision (g). A grant may not be made for any purpose that would support or fund, directly or indirectly, any effort related to *the* opposition or challenge to Indian gaming in the state, and, to the extent any awarded grant is utilized for any prohibited purpose by any local government, upon notice given to the county by any tribe from whose Individual Tribal Casino Account the awarded grant went toward that prohibited use, the grant shall terminate immediately and any

moneys not yet used shall again be made available for qualified nexus grants.

(i) A local government jurisdiction that is a recipient of a grant from an Individual County Tribal Casino Account or a County Tribal Casino Account shall provide notice to the public, either through a slogan, signage, or other mechanism, ~~which states~~ *stating* that the local government project has received funding from the Indian Gaming Special Distribution Fund and ~~which~~ further ~~identifies~~ *identifying* the particular Individual Tribal Casino Account from which the grant derives.

(j) (1) Each county's Indian Gaming Local *Community* Benefit Committee shall submit to the Controller a list of approved projects for funding from Individual Tribal Casino Accounts. Upon receipt of this list, the Controller shall release the funds directly to the local government entities for which a grant has been approved by the committee.

(2) Funds not allocated from an ~~individual tribal casino account~~ *Individual Tribal Casino Account* by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund. Moneys allocated for the 2003–04 fiscal year shall be eligible for expenditure through December 31, 2004.

SEC. 81. The heading of Chapter 5 (commencing with Section 14557) is added to Part 5.3 of Division 3 of Title 2 of the Government Code, to read:

Chapter 5. Suspension of Article XIX B Transfers

SEC. 82. Section 17555 of the Government Code is amended to read:

17555. (a) ~~No~~ *Not* later than 30 days after hearing and deciding upon a test claim pursuant to subdivision (a) of Section 17551, the commission shall notify the appropriate Senate and Assembly policy and fiscal committees, the Legislative Analyst, the Department of Finance, and the Controller of that decision.

(b) For purposes of this section, the "appropriate policy committee" means the policy committee that has jurisdiction over the subject matter of the statute, regulation, or executive order, and *in which* bills relating to that subject matter would have been heard.

SEC. 83. Section 20281.5 of the Government Code is amended to read:

20281.5. (a) Notwithstanding Section 20281, a person who becomes a state miscellaneous or state industrial member of the system on or after the effective date of this section because the person is first employed by the state and qualifies for membership shall be subject to the provisions of this section.

(b) Members subject to this section shall not accrue credit for service in the system and shall not make employee contributions to the system, including the contributions set forth in Section 20677.4, for employment with the state until the first day of the first pay period commencing 24 months after becoming a member of the system.

(c) Notwithstanding subdivision (a), this section shall not apply to any of the following:

(1) Persons who are already members or annuitants of the system at the time they are first employed by the state.

(2) Employees of the California State University, or the legislative or judicial branch of state government.

(3) Members of the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement System, or the University of California Retirement Plan.

(4) Persons who are members of a reciprocal retirement system and whose employment was subject to a reciprocal retirement system within the six months prior to membership in this system.

(5) Persons whose service is not included in the federal system.

(6) Persons who are employed by the Department of the California Highway Patrol as students at the department's training school established pursuant to Section 2262 of the Vehicle Code.

(7) Persons who ~~had~~ *have* ceased to be members pursuant to Section 20340 or 21075.

(d) Any regulations adopted by the board to implement the requirements of this section shall not be subject to the review and approval of the Office of Administrative Law, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of

Division 3. The regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 84. Section 20610 of the Government Code is amended to read:

20610. (a) Every county superintendent of schools shall enter into a contract with the board for the inclusion in this system of ~~(a)~~ *(1)* 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)~~ *(2)* 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~~ *with* respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement Plan. The effective date of each contract shall *not* 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.

(b) If a charter school chooses to participate in the system, all employees of the charter school who qualify for membership in the system shall be covered under the system and all provisions of this part shall apply in the same manner as if the charter school were a public school in the school district that granted the charter.

SEC. 85. Section 21224 of the Government Code is amended to read:

21224. (a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or any other employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 960 hours in any calendar year, and the rate of pay

for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees ~~ma~~ performing comparable duties.

(b) (1) This section ~~shall~~ *does* not apply to any retired person otherwise eligible if during the 12-month period prior to an appointment described in this section the retired person received any unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retired person shall not be subject to Section 21202 or subdivision (b) of Section 21220.

SEC. 86. Section 22860 of the Government Code is amended to read:

22860. It is the policy of the Legislature that benefits provided by a health benefit plan be integrated with the benefits provided by federal or state plans for health care services for the aged in which there is federal or state financial participation. The board shall adopt rules and regulations necessary to implement this section. Notwithstanding any other provision of this part, those rules and regulations may establish exclusions and limitations with respect to benefits, different rates within health benefit plans for employees or annuitants eligible ~~to~~ *for* benefits under other plans, or enrollment of those employees or annuitants in separate plans.

SEC. 87. Section 27393 of the Government Code is amended to read:

27393. (a) The Attorney General shall, in consultation with interested parties, adopt regulations for the review, approval, and oversight of electronic recording delivery systems. Regulations shall be adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3). The regulations shall comply with Section 12168.7.

(b) The regulations adopted pursuant to subdivision (a) may include, but need not be limited to, all of the following:

(1) Establishment of baseline technological and procedural specifications for electronic recording delivery systems.

(2) Requirements for security, capacity, reliability, and uniformity.

(3) Requirements as to the nature and frequency of computer security audits.

(4) A statement of a detailed and uniform definition of the term "source code" consistent with paragraph (7) of subdivision (b) of Section 27390, and as used in this article, and applicable to each county's electronic recording delivery system.

(5) Requirements for placement of a copy of the operating system, source code, compilers, and all related software associated with each county's electronic recording delivery system in an approved escrow facility prior to that system's first use.

(6) Requirements to ensure that substantive modifications to an operating system, compilers, related software, or source code are approved by the Attorney General.

(7) Procedures for initial certification of vendors offering software and other services to counties for electronic recording delivery systems.

(8) Requirements for system certification and for oversight of approved systems.

(9) Requirements for fingerprinting and criminal records checks required by Section 27395, including a list of employment positions or classifications subject to criminal records checks under subdivision (f) of that section.

(10) Requirements for uniform index information that shall be included in every digitized or digital electronic record.

(11) Requirements for protecting proprietary information accessed pursuant to subdivision (e) of Section 27394 from public disclosure.

(12) Requirements for certification under Section 27397.5.

(c) The Attorney General may promulgate any other regulations necessary to fulfill his or her obligations under this article.

~~(c)~~

(d) An electronic recording delivery system shall be subject to local inspection and review by the Attorney General. The Attorney General shall furnish a statement of any relevant

findings associated with a local inspection of an electronic recording delivery system, to the county recorder and the district attorney of the affected county, and to all technology vendors associated with that system.

SEC. 88. 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 moneys to be expended for the implementation of this chapter, the county auditor shall allocate *the* 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. *The moneys shall be allocated as follows:*

(1) Five and ~~fifteen one hundredths~~ *fifteen-hundredths* percent 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~~ *fifteen-hundredths* percent to the district attorney for criminal prosecution.

(3) Thirty-nine and ~~seven tenths~~ *seven-tenths* percent 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 that 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 to the county or city and county to implement a comprehensive multiagency juvenile justice plan as provided in this paragraph and to the Board of Corrections for administrative purposes. Funding for the Board of Corrections, as determined by the Department of Finance, shall not exceed two hundred seventy-five thousand dollars ($275,000). For the 2003–04 fiscal year, of the two hundred seventy-five thousand dollars ($275,000), up to one hundred seventy-six thousand dollars

($176,000) may be used for juvenile facility inspections. The juvenile justice 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 *contain* 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 at a time determined by the board in each year that the Legislature appropriates funds for purposes of this chapter, or within 30 days after a request by a recipient agency for a hearing if the funds have been received by the county from the state prior to that request, 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) If 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. 89. Section 31492.1 of the Government Code is amended to read:

31492.1. (a) Notwithstanding Section 31492, each monthly survivor allowance paid pursuant to subdivision (a) of Section 31492 on account of a member who retires on or after the operative date of this section shall be equal to 55 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision ~~(b)~~ *(c)* or ~~(c)~~ *(d)* of that section.

(b) This section is only applicable to Los Angeles County and is not operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 90. Section 31725.65 of the Government Code is amended to read:

31725.65. (a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member may be capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall notify the appropriate agency in county service of its findings.

(b) When the appropriate agency in county service receives that notification from the board, the agency shall immediately inform the member of any vacant county positions that may be suitable for the member, consistent with his or her disability, and shall consult with the member in an effort to develop a reemployment plan that shall identify what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities.

(c) Upon approval by the member of the reemployment plan, the appropriate agency in county service shall notify the board that the agency is proceeding to implement the approved reemployment plan.

(d) Upon commencement of service by the member in the position specified in the approved reemployment plan, the member shall not be paid the disability retirement allowance to which the member would otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved reemployment plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved reemployment plan, and the compensation rate of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved reemployment plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability allowance payments made pursuant to this section shall be considered as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(e) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved reemployment plan, and the member has commenced service in that position, the disability retirement allowance to which the member is entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved reemployment plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's contributions

shall continue to be based on the same age at entrance into the retirement system ~~as~~ *on which* the member's rates were based ~~on~~ prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(f) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved reemployment plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(g) This section shall apply only to members who are incapacitated for the performance of the member's duties on or after January 1, 2004, and who are eligible to retire for service-connected disability.

SEC. 91. Section 31755 of the Government Code is amended to read:

31755. (a) (1) The Board of Supervisors of Contra Costa County may make this section, Tier Three, applicable to officers and employees for whom it is the governing body, by adopting an ordinance specifying the future operative date of its application.

(2) As used in this section, "Tier One" refers to the retirement plan covering general members not covered by Section 31751.

(3) After the board of supervisors has adopted an ordinance, the governing body of a district not governed by the board of supervisors may make this section applicable as Tier Three to its officers and employees on and after the future operative date it specifies.

(b) Except as otherwise provided in this section, this section shall cover all officers and employees who are members or return to membership in the county's Tier Two retirement system established by Section 31751 on or after the operative date specified in the ordinance adopted pursuant to subdivision (a), and in a district on or after the date of its applicability thereto.

(c) (1) This section shall not cover any employee who is in, or eligible for, Tier One or safety membership under this chapter.

(2) This section shall not cover any person who is a member of the retirement system in the county or district on or after the operative date of its application thereto unless and until the person voluntarily in writing irrevocably elects coverage.

(3) This section shall not be applicable to any eligible member who does not elect coverage, is then laid off or terminates employment, regardless of whether voluntarily or involuntarily, and later returns to membership employment.

(4) This section shall not be applicable to any eligible member who does not elect coverage, then retires or becomes a deferred member, and later returns to active membership.

(5) This section shall not be applicable to any person referred to in subparagraph (D) of paragraph (2) of subdivision (d) who does not elect coverage.

(d) Upon adoption of this section by the board of supervisors, the following provisions shall become applicable:

(1) Subject to the provisions of paragraph (2) of subdivision (d), any qualified individual county or district employee may irrevocably elect coverage under Tier Three.

(2) (A) County or district employees who are members of the county's Tier Two retirement system and who have attained five years' ~~retirement~~ credited service ~~to~~ *with* the county or district on the applicable date of this section, must elect Tier Three coverage in writing within six months after that date.

(B) Persons not subject to subparagraph (A), who thereafter attain five years' credited service in the county's Tier Two retirement system, must elect Tier Three coverage in writing within 90 days after attaining the five years' ~~retirement~~ credited service.

(C) Persons not subject to subparagraph (A) or (B), who, before the Tier Three applicability date, elected deferred retirement under Article 9 (commencing with Section 31700) from the county's Tier Two retirement system, and who had at least five years' credited Tier Two ~~retirement~~ service, and who thereafter while still in deferred status return to active membership, must elect coverage in writing within 90 days after that return.

(D) Persons not ~~under~~ *subject to* subparagraph (A), (B), or (C), who enter or reenter employment in the county or the district for the first time after Tier Three is applicable thereto, and who have reciprocal rights under Article 15 (commencing with Section 31830), and who are otherwise eligible to elect Tier Three by virtue of their Tier Two status and years of retirement credited service must elect Tier Three coverage in writing within 90 days after that entry or reentry.

(e) The board may not grant a disability retirement allowance to a person who has become a Tier Three member except as provided in Section 31720.1. The amount of disability retirement allowances under Tier Three shall be as set forth in Section 31727.01.

(f) Notwithstanding any other provision of this chapter, service retirements under Tier Three shall be governed by the same provisions that govern Tier One retirements in Contra Costa County.

(g) Notwithstanding any other provision of this chapter, Tier Three retired members who have retired for service shall only be entitled to cost-of-living adjustments as provided by the board of supervisors for Tier One retired members pursuant to Article 16.5 (commencing with Section 31830).

(h) Notwithstanding any other provision of this chapter, Tier Three retired members who have been retired for disability shall only be entitled to cost-of-living adjustments as provided by the board of supervisors for Tier Two retired members pursuant to Article 16.5 (commencing with Section 31830).

(i) The board of supervisors may adopt regulations to implement the provisions of this section.

SEC. 92. Section 31781.2 of the Government Code is amended to read:

31781.2. In lieu of accepting in cash the death benefit payable under Section 31781 or ~~31781.02~~ *31781.01*, the surviving spouse of a member who dies prior to reaching the minimum retirement age and who at the date of his *or her* death has 10 or more years of service to his *or her* credit, shall have the option to leave the amount of the death benefit on deposit in the retirement system until the earliest date when ~~such~~ *the* deceased member could have retired had he *or she* lived, and at that time receive the

retirement allowance provided for in Section 31765 ~~or~~, 31765.1, or 31765.11, whichever is applicable.

If, at the death of ~~such~~ *the* spouse, ~~she or~~ he *or she* is survived by one or more unmarried children of ~~such~~ *the* member, under the age of 18 *years*, ~~such~~ *the* retirement allowance shall continue to ~~such~~ *the* child or children, collectively, until every child dies, marries, or attains *the* age *of* 18 *years*. If ~~such~~ *the* spouse dies, either before or after the death of ~~such~~ *the* member, without either making ~~such~~ *the* election or receiving any portion of the death benefit, and no part of the death benefit had been paid to any person, prior to the payment of any benefits, the legally appointed guardian of ~~such~~ *the* children shall make the election herein provided for on behalf of ~~such~~ *the* surviving children as, in his *or her* judgment, may appear to be in their interest and advantage, and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to ~~such~~ *those* children through the age of 21 *years* if ~~such~~ *the* children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

SEC. 93. Section 31831.2 of the Government Code is amended to read:

31831.2. Any member who left county or district service on or before December 31, 1974, and became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System, who did not elect to, or was not eligible to, leave his *or her* contributions on deposit pursuant to Article 9 (commencing with Section 31700) may now elect to leave his *or her* accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) by redepositing in the retirement fund of the county or district he *or she* left the amount of accumulated contributions and interest he *or she* withdrew from ~~such~~ *the* retirement fund plus regular interest thereon from date of separation.

Any such member whose accumulated contributions are on deposit as provided in this section and any other member who left county or district service on or before December 31, 1974,

who became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System and who elected to leave his *or her* accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) shall be eligible for the benefits provided in this article, and for purposes of ~~such~~ *these* benefits shall be deemed to have entered membership in ~~such~~ *the* other system within 90 days, or six months if Section 31840.4 applies, of his *or her* separation from county or district employment. The deferred retirement allowance for ~~such~~ *the* member shall be determined in accordance with the provisions of this chapter applicable to ~~members~~ *a member* retiring directly from county employment on the date of his *or her* retirement. Any member who qualifies for a reduced age at entry pursuant to this section shall be entitled to use ~~such~~ *that* age only from and after the date he *or she* completes the redeposit as provided in this section or, if he *or she* elected to leave his *or her* accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700), from and after the date he *or she* notifies the board in writing that he *or she* desires the benefits of this section. This section shall not apply to members who are retired or who are not in service of an employer making him *or her* a member of a retirement system established under this chapter or of the Public Employees' Retirement System.

Unless this chapter expressly provides to the contrary*,* the retirement allowance received by a member pursuant to this section shall be calculated based upon the laws pertaining to the retirement system of ~~such~~ *the* district or county as of the date of retirement and not the laws pertaining to ~~such~~ *the* system as of the date the member first left county or district service.

This section shall not be applicable to any member entering service after December 31, 1979.

This section shall apply only in a county of the first class, as established by Sections 28020 and 28022*,* but shall not be operative in a county until adopted by resolution of the board of supervisors.

SEC. 94. Section 31874.6 of the Government Code is amended to read:

31874.6. (a) Notwithstanding any other provision of law, on an annual basis, the board of retirement may, with the approval

of the county board of supervisors, grant a cost-of-living adjustment on a prefunded basis to the retirement allowances, optional death allowances, or annual death allowances payable to or on account of eligible members. The action by the board of retirement may specify a date as of which the adjustment shall be effective and, if no effective date is specified, the adjustment shall be made in allowances payable for the time commencing on the first day of the month following the action by the board of retirement or approval by the county board of supervisors, whichever is later.

(b) Before the board of retirement may grant an adjustment pursuant to this section, the total costs of the adjustment shall be determined by a qualified actuary and the board shall determine, with the advice of the actuary, that full funding of the adjustment can be provided from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(c) The adjustment provided by this section shall be payable only to those retired members, survivors, beneficiaries, or successors in interest whose accumulated loss of purchasing power equals or exceeds 20 percent as of January 1 of the year the board of retirement takes action pursuant to this section. Loss of purchasing power shall be determined by the board of retirement based on the difference between the following:

(1) The initial retirement allowance, optional death allowance, or annual death allowance as it would have been increased by the cumulative total effect of the annual changes, rounded to the nearest one-half of 1 percent, in the Consumer Price Index for All Urban ~~Consumer~~ *Consumers* for the area in which the county seat is situated.

(2) The retirement allowance, optional death allowance, or annual death allowance as actually increased by cost-of-living adjustments previously granted with respect to the allowance.

(d) A cost-of-living adjustment granted pursuant to this section shall become part of the retirement allowance, optional death allowance, or annual death allowance to be increased by any subsequent cost-of-living adjustments. The granting of an increase pursuant to this section in any particular year does not create any continuing entitlement to additional increases in subsequent years, and does not create any claim by a retired

member, survivor, beneficiary, or successor in interest against the county, district, or retirement fund for any increase in any allowance paid or payable prior to the effective date of the action by the board of retirement pursuant to this section.

(e) This section shall only be applicable in a county of the 19th class, as defined by Sections 28020 and 28040, as amended by Chapter 1204 of the Statutes of 1971.

SEC. 95. Section 51283.4 of the Government Code is amended to read:

51283.4. (a) Upon tentative approval of a petition accompanied by a proposal for a specified alternative use of the land, the clerk of the board or council shall record*,* in the office of the county recorder of the county in which *the land* is located ~~the land as~~ to which the contract is applicable*,* a certificate of tentative cancellation~~, which~~*. The certificate* shall set forth the name of the landowner requesting the cancellation, the fact that a certificate of cancellation of contract will be issued and recorded at the time that specified conditions and contingencies are satisfied, a description of the conditions and contingencies ~~which~~ *that* must be satisfied, and a legal description of the property. Conditions to be satisfied shall include payment in full of the amount of the fee computed under the provisions of Section 51283, together with a statement that unless the fee is paid, or a certificate of cancellation of contract is issued within one year from the date of the recording of the certificate of tentative cancellation, the fee shall be recomputed as of the date the landowner requests a recomputation. A landowner may request a recomputation when he or she believes that he or she will be able to satisfy the conditions and contingencies of the certificate of cancellation within 180 days. The board or council shall request the assessor to recompute the cancellation valuation. The assessor shall recompute the valuation, certify it to the board or council, and provide notice to the Department of Conservation and landowner as provided in subdivision (a) of Section 51283, and the board or council shall certify the fee to the county auditor. Any provisions related to the waiver of the fee or portion ~~thereof~~ *of the fee* shall be treated in the manner provided for in the certificate of tentative cancellation. Contingencies to be satisfied shall include a requirement that the landowner obtain all permits necessary to commence the project. The board or council

may, at the request of the landowner, amend a tentatively approved specified alternative use if it finds that the amendment is consistent with the findings made pursuant to subdivision (a) of Section 51282.

(b) The landowner shall notify the board or council when he or she has satisfied the conditions and contingencies enumerated in the certificate of tentative cancellation. Within 30 days of receipt of the notice, and upon a determination that the conditions and contingencies have been satisfied, the board or council shall execute a certificate of cancellation of contract, cause the ~~the~~ certificate to be recorded, and send a copy to the Director of Conservation.

(c) If the landowner has been unable to satisfy the conditions and contingencies enumerated in the certificate of tentative cancellation, the landowner shall notify the board or council of the particular conditions or contingencies he or she is unable to satisfy. Within 30 days of receipt of the notice, and upon a determination that the landowner is unable to satisfy the conditions and contingencies listed, the board or council shall execute a certificate of withdrawal of tentative approval of a cancellation of contract and cause the same to be recorded. However, the landowner shall not be entitled to the refund of any cancellation fee paid.

SEC. 96. Section 53080 of the Government Code is amended to read:

53080. (a) No city, county, city and county, or special district, including, but not limited to, a community services district, recreation and park district, regional park district, regional park and open-space district, regional open-space park district, or resort improvement district shall discriminate against any person on the basis of sex or gender in the operation, conduct, or administration of community youth athletics programs or in the allocation of parks and recreation facilities and resources that support or enable these programs.

(b) The Unruh Civil Rights Act (Section 51 of the Civil Code) has been held to prohibit local governmental agencies from discriminating on the bases proscribed by the act, and Section 11135 also prohibits local governmental agencies that receive financial assistance from the state from discriminating on the basis of gender, among other bases.

(c) As used in this section, "community youth athletics program" means any athletic program in which youth solely or predominantly participate ~~and~~, that is organized for the purposes of training for and engaging in athletic activity and competition, and that is in any way operated, conducted, administered, supported, or enabled by a city, county, city and county, or special district.

(d) As used in this section, "parks and recreation facilities and resources" include, but are not limited to, park facilities, including, but not limited to, athletic fields, athletic courts, gymnasiums, recreational rooms, restrooms, concession stands and storage spaces; lands and areas accessed through permitting, leasing, or other land use arrangements, or otherwise accessed through cities, counties, cities and counties, or special districts; sports and recreation equipment; devices used to promote athletics such as scoreboards, banners, and advertising; and all moneys used in conjunction with youth athletics.

(e) It is the intent of the Legislature in enacting this section that girls shall be accorded opportunities for participation in community youth athletics programs ~~on an~~ equal ~~basis~~, both in quality and scope, to those accorded to boys.

(f) In civil actions brought under this section or under other applicable antidiscrimination laws alleging discrimination in community youth athletics programs, courts shall consider the following factors, among others, in determining whether discrimination exists:

(1) Whether the selection of community youth athletics programs offered effectively accommodate the athletic interests and abilities of members of both genders.

(2) The provision of moneys, equipment, and supplies.

(3) Scheduling of games and practice times.

(4) Opportunity to receive coaching.

(5) Assignment and compensation of coaches.

(6) Access to lands and areas accessed through permitting, leasing, or other land use arrangements, or otherwise accessed through a city, a county, a city and county, or a special district.

(7) Selection of the season for a sport.

(8) Location of the games and practices.

(9) Locker rooms.

(10) Practice and competitive facilities.

(11) Publicity.

(12) Officiation by umpires, referees, or judges who have met training and certification standards.

(g) In making the determination under paragraph (1) of subdivision (f), a court shall assess whether the city, county, city and county, or special district has effectively accommodated the athletic interests and abilities of both genders in any one of the following ways:

(1) The community youth athletics program opportunities for boys and girls are provided in numbers substantially proportionate to their respective numbers in the community.

(2) Where the members of one gender have been, and continue to be, underrepresented in community youth athletics programs, the city, county, city and county, or special district can show a history and continuing practice of program expansion and allocation of resources that are demonstrably responsive to the developing interests and abilities of the members of that gender.

(3) Where the members of one gender are underrepresented in community youth athletics programs, the city, county, city and county, or special district can demonstrate that the interests and abilities of the members of that gender have been fully and effectively accommodated by the present program and allocation of resources.

(h) Effective January 1, 2015, a city, county, city and county, and special district may no longer rely on paragraph (2) of subdivision (g) to show that they have accommodated the athletic interests and abilities of both genders.

(i) Nothing in this section shall be construed to invalidate any existing consent decree or any other settlement agreement entered into by a city, county, city and county, or special district to address gender equity in athletic programs.

(j) This section and any ordinances, regulations, or resolutions adopted pursuant to this section by a city, county, city and county, or special district may be enforced against a city, county, city and county, or special district by a civil action for injunctive relief or damages or both, which shall be independent of any other rights and remedies.

SEC. 97. 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 issuer.

(3) No more than 10 percent of the outstanding commercial paper of any single 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 for cities and counties with regard to the investment of money in eligible commercial paper.

SEC. 98. Section 54954.5 of the Government Code is amended to read:

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers ~~agency.) Name~~ *agency)*

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY BUREAU OF STATE AUDITS

SEC. 99. Section 56700 of the Government Code, as amended by Section 2 of Chapter 471 of the Statutes of 2004, is amended to read:

56700. (a) A proposal for a change of organization or a reorganization may be made by petition. The petition shall do all of the following:

(1) State that the proposal is made pursuant to this part.

(2) State the nature of the proposal and list all proposed changes of organization.

(3) Set forth a description of the boundaries of affected territory accompanied by a map showing the boundaries.

(4) Set forth any proposed terms and conditions.

(5) State the reason or reasons for the proposal.

(6) State whether the petition is signed by registered voters or owners of land.

(7) Designate ~~not to exceed~~ *up to* three persons as chief petitioners, setting forth their names and mailing addresses.

(8) Request that proceedings be taken for the proposal pursuant to this part.

(9) State whether the proposal is consistent with the sphere of influence of any affected city or affected district.

(b) A petition for a proposal for a change of organization or a reorganization that includes the consolidation of two or more special districts not formed pursuant to the same principal act, in addition to the requirements set forth in subdivision (a), shall do either of the following:

(1) Designate the district that shall be the successor and specify under which principal act the successor shall conduct itself.

(2) State that the proposal requires the formation of a new district and includes a plan for services prepared pursuant to Section 56653.

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 100. Section 56700 of the Government Code, as added by Section 2.5 of Chapter 471 of the Statutes of 2004, is amended to read:

56700. (a) A proposal for a change of organization or a reorganization may be made by petition. The petition shall do all of the following:

(1) State that the proposal is made pursuant to this part.

(2) State the nature of the proposal and list all proposed changes of organization.

(3) Set forth a description of the boundaries of affected territory accompanied by a map showing the boundaries.

(4) Set forth any proposed terms and conditions.

(5) State the reason or reasons for the proposal.

(6) State whether the petition is signed by registered voters or owners of land.

(7) Designate~~ not to exceed~~ *up to* three persons as chief petitioners, setting forth their names and mailing addresses.

(8) Request that proceedings be taken for the proposal pursuant to this part.

(9) State whether the proposal is consistent with the sphere of influence of any affected city or affected district.

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

SEC. 101. Section 65053.5 of the Government Code is amended to read:

65053.5. (a) As used in this article, the following terms have the following~~ meaning~~ *meanings*:

(1) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the United States Department of Defense, as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(2) "Affected local government" means any county or city identified as located wholly or partly within the boundaries of a military installation or as having a sphere of influence over any portion of the installation with responsibility for local zoning and planning decisions.

(b) The Legislature hereby finds and declares all of the following:

(1) Because of the tremendous economic impact that military installations have on the state, it is in the best interest of the state to facilitate their retention.

(2) It is the intent of the Legislature to encourage cooperation among affected local governments in their efforts to retain military installations in this state by authorizing the creation of a joint powers authority pursuant to this section.

(3) The Legislature also encourages affected local governments to engage other community-based organizations in their retention activities.

(c) For the purposes of this article, a local retention authority shall be recognized for each active military installation in this state.

(d) A list of retention authorities or their successors, including, but not limited to, separate airport or port authorities recognized as the local retention authority for the military installations, shall be maintained by the Office of Military and Aerospace Support created pursuant to Section 13998.2. If multiple affected local governments are identified for a military installation as described in paragraph (2) of subdivision (a), those affected counties and cities may, by resolution, designate an existing joint powers authority or establish a joint powers authority for the purposes of this article pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1.

(e) The state shall recognize a local retention authority for each active military installation if resolutions acknowledging the authority as the local retention authority are adopted by all county boards of supervisors and city councils identified as described in paragraph (2) of subdivision (a) and are forwarded to the Office of Military and Aerospace Support on or before October 1, 2004. If prior to January 1, 2004, a local government was awarded grant moneys pursuant to any predecessor to Section 13998.8 for a specific military installation and qualifies as an affected local government as described in paragraph (2) of subdivision (a), the recipient local government shall be recognized by the state as the local retention authority unless resolutions acknowledging a different authority are adopted by all county boards of supervisors and city councils identified as described in paragraph (2) of subdivision (a), and are forwarded to the Office of Military and Aerospace Support.

(f) If the necessary resolutions are not adopted within the time limit specified in subdivision (e), the Office of Military and Aerospace Support shall recognize a local retention authority for each military installation.

SEC. 102. Section 65351 of the Government Code is amended to read:

65351. During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens*,* California Native American Indian tribes, public agencies, public utility companies, and civic,

education, and other community groups, through public hearings and any other means the ~~city or county~~ *planning agency* deems appropriate.

SEC. 103. Section 65460.1 of the Government Code is amended to read:

65460.1. (a) The Legislature hereby finds and declares all of the following:

(1) Federal, state, and local governments in California are investing in new and expanded ~~rail~~ transit systems in areas throughout the state, including Los Angeles County, the San Francisco Bay area, San Diego County, Santa Clara County, and Sacramento County.

(2) This public investment in ~~rail~~ transit is unrivaled in the state's history and represents well over ten billion dollars ($10,000,000,000) in planned investment alone.

(3) Recent studies of transit ridership in California indicate that persons who live within a quarter-mile radius of ~~rail~~ transit stations utilize the transit system in far greater numbers than does the general public living elsewhere.

(4) The use of transit by persons living near ~~rail~~ transit stations is particularly important given the decline of transit ridership in California between 1980 and 1990. Transit's share of commute trips dropped in all California metropolitan areas—greater Los Angeles: 5.4 percent to 4.8 percent; San Francisco Bay area: 11.9 percent to 10.0 percent; San Diego: 3.7 percent to 3.6 percent; Sacramento: 3.7 percent to 2.5 percent.

(5) Only a few ~~rail~~ transit stations in California have any concentration of housing proximate to the station.

(6) Interest in clustering housing and commercial development around ~~rail~~ transit stations, called transit villages, has gained momentum in recent years.

(b) For purposes of this article, the following definitions shall apply:

(1) "Bus hub" means an intersection of three or more bus routes, with a minimum route headway of 10 minutes during peak hours.

(2) "District" means a transit village development district as defined in Section 65460.4.

(3) "Peak hours" means the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday.

(4) "Transit station" means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station.

SEC. 104. Section 66907.7 of the Government Code is amended to read:

66907.7. (a) The conservancy may award grants to local public agencies, state agencies, federal agencies, federally recognized Indian tribes, the Tahoe~~ transportation district~~ *Transportation District* established under Section 66801, and nonprofit organizations, for the purposes of this title.

(b) Grants to nonprofit organizations for the acquisition of real property or interests therein shall be subject to all of the following conditions:

(1) The purchase price of any interest in land acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the conservancy.

(2) The conservancy approves the terms under which the interest in land is acquired.

(3) The interest in land acquired pursuant to a grant from the conservancy may not be used as security for any debt to be incurred by the nonprofit organization unless the conservancy approves the transaction.

(4) The transfer of land acquired pursuant to a grant shall be subject to the approval of the conservancy and the execution of an agreement between the conservancy and the transferee sufficient to protect the interest of the people of California.

(5) The state shall have a right of entry and power of termination in and over all interests in real property acquired with state funds, which may be exercised if any essential term or condition of the grant is violated.

(6) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state, except that, prior to that termination, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property, by recording its acceptance of title, together with the conservancy's approval, in writing.

(c) Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest or right of entry on the part of the state.

(d) The relocation by a local public agency of a ~~water~~ *water-* or sewer-related infrastructure owned by a publicly owned utility shall be considered an eligible expense by the conservancy for the purpose of awarding soil erosion grant funds, if that relocation is intended to control or reduce soil erosion caused by the infrastructure to be relocated. A local public agency is eligible to receive grant funds *for* up to two-thirds of the cost of relocating the ~~water~~ *water-* or sewer-related infrastructure, provided the relocation cost is not eligible for any other public funding.

SEC. 105. 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 or the Trial Court Improvement Fund to fund administrative infrastructure within the Administrative Office of the Courts, such as legal services, financial services, information systems services, human resource services, and support services, for one or more participating courts upon

appropriation of funding for these purposes in the annual Budget Act. The amount of appropriations from the Trial Court Improvement Fund under this subdivision may not exceed 20 percent of the amount deposited in the Trial Court Improvement Fund pursuant to subdivision (a) of Section 77205. 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 from the Trial Court Trust Fund 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 trial courts with quarterly reports on expenditures from the Trial Court Trust Fund 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*, and 631.3* 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~~ *is* 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 that 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 ½ 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.

(*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.

SEC. 106. 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 location or locations within

a county, 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 transfer may 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) Declare that a date or dates on which an emergency condition, as described in this section, substantially interfered with the public's ability to file papers in a court facility or facilities be deemed a holiday for purposes of computing the time for filing papers with the court under Sections 12 and 12a of the Code of Civil Procedure. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the ~~Chair~~ *Chairperson* of the Judicial Council.

(d) Declare that a date on which an emergency condition, as described in this section, prevented the court from conducting proceedings governed by Section 825 of the Penal Code, or Section 313, 315, 631, 632, 637, or 657 of the Welfare and Institutions Code, be deemed a holiday for purposes of computing time under those statutes. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the ~~Chair~~ *Chairperson* of the Judicial Council.

(e) Extend the duration of any temporary restraining order that would otherwise expire because an emergency condition, as described in this section, prevented the court from conducting proceedings to determine whether a permanent order should be entered. The extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the ~~Chair~~ *Chairperson* of the Judicial Council.

(f) 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.

(g) 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.

(h) 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.

(i) 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 313, 315, 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.

(j) 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 Sections 334 and 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition shall be held by not more 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. 107. Section 68927 of the Government Code is amended to read:

68927. The fee for filing a petition for review in a civil case in the Supreme Court after *a* decision in a court of appeal is four hundred twenty dollars ($420). A fee may not be charged for petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

SEC. 108. Section 69927 of the Government Code is amended to read:

69927. (a) It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 810 of the California Rules of Court, as it read on July 1, 1996, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a ~~sheriff~~ *sheriff's* or marshal's court law enforcement budget ~~may~~ not be reduced as a result of this article. Any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature.

(1) The Judicial Council shall adopt a rule establishing a working group on court security. The group shall consist of six representatives from the judicial branch of government, as selected by the Administrative Director of the Courts, two representatives of the counties, as selected by the California State Association of Counties, and three representatives of the county sheriffs, as selected by the California State Sheriffs' Association. It is the intent of the Legislature that this working group may recommend modifications only to the template used to determine that the security costs submitted by the courts to the Administrative Office of the Courts are permitted pursuant to this article. The template shall be a part of the trial court's financial policies and procedures manual and used in place of the

definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court. If the working group determines that there is a need to make recommendations to the template that specifically involve law enforcement or security personnel in courtrooms or court detention facilities, the membership of the working group shall change and consist of six representatives from the judicial branch of government selected by the Administrative Director of the Courts, two representatives of the counties selected by the California State Association of Counties, two representatives of the county sheriffs selected by the California State Sheriffs' Association, and two representatives of labor selected by the California Coalition of Law Enforcement Associations.

(2) The Judicial Council shall establish a working group on court security to promulgate recommended uniform standards and guidelines that may be used by the Judicial Council and any sheriff or marshal for the implementation of trial court security services. The working group shall consist of representatives from the judicial branch of government, the California State Sheriffs' Association, the California State Association of Counties, the Peace Officer's Research Association of California, and the California Coalition of Law Enforcement Associations, for the purpose of developing guidelines. The Judicial Council, after requesting and receiving recommendations from the working group on court security, shall promulgate and implement rules, standards, and policy directions for the trial courts in order to achieve efficiencies that will reduce security operating costs and constrain growth in those costs.

(3) When mutually agreed to by the courts, county, and the sheriff or marshal in any county, the costs of perimeter security in any building that the court shares with any county agency, excluding the ~~sheriff~~ *sheriff's* or marshal's department, shall be apportioned based on the amount of the total noncommon square feet of space occupied by the court and any county agency.

(4) "Allowable costs for equipment, services, and supplies," as defined in the contract law enforcement template, means the purchase and maintenance of security screening equipment and the costs of ammunition, batons, bulletproof vests, handcuffs, holsters, leather gear, chemical spray and holders, radios, radio chargers and holders, uniforms, and one primary duty sidearm.

(5) "Allowable costs for professional support staff for court security operations," as defined in the contract law enforcement template, means the salary, benefits, and overtime of staff performing support functions that, at a minimum, provide payroll, human resources, information systems, accounting, or budgeting.

Allowable costs for professional support staff for court security operations in each trial court shall not exceed 6 percent of total allowable costs for law enforcement security personnel services in courts with total allowable costs for law enforcement security personnel services less than ten million dollars ($10,000,000) per year. Allowable costs for professional support staff for court security operations for each trial court shall not exceed 4 percent of total allowable costs for law enforcement security personnel services in courts with total allowable costs for law enforcement security personnel services exceeding ten million dollars ($10,000,000) per year. Additional costs for services related to court-mandated special project support, beyond those provided for in the contract law enforcement template, are allowable only when negotiated by the trial court and the court law enforcement provider. Allowable costs shall not exceed actual costs of providing support staff services for law enforcement security personnel services.

The working group established pursuant to paragraph (1) of subdivision (a) may periodically recommend changes to the limit for allowable costs for professional support staff for court security operations based on surveys of actual expenditures incurred by trial courts and the court law enforcement provider in the provision of law enforcement security personnel services. Limits for allowable costs as stated in this section shall remain in effect until changes are recommended by the working group and adopted by the Judicial Council.

(6) "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, including, but not limited to, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay,

retirement, state disability insurance, unemployment insurance costs, ~~worker's~~ *workers'* compensation paid to an employee in lieu of salary, ~~worker's~~ *workers'* compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

(A) The Administrative Office of the Courts shall use the actual salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance.

(B) Courts and court security providers shall manage their resources to minimize the use of overtime.

(7) "Allowable costs for vehicle use for court security needs," as defined in the contract law enforcement template, means the per-mile recovery cost for vehicles used in rendering court law enforcement services, exclusive of prisoner or detainee transport to or from court. The standard mileage rate applied against the miles driven for the above shall be the standard reimbursable mileage rate in effect for judicial officers and employees at the time of contract development.

(b) Nothing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996, or that meets the definition of any new law enforcement component developed pursuant to this article.

SEC. 109. 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, pursuant to subdivision (d) of Section 70363, the approved county facilities payment, the Administrative Director of the Courts may submit a declaration to the Court Facilities Dispute Resolution Committee, ~~mailing of~~ *with* copies *mailed* 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~~ *copies mailed* 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, *an* 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, *an* 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. 110. Section 71622 of the Government Code is amended to read:

71622. (a) Each trial court may establish and may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties, as authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment or termination of a subordinate judicial officer shall be made by order of the presiding judge or another judge or a committee to whom appointment or termination authority is delegated by the court, *and shall be* entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

(g) A subordinate judicial officer who has been duly appointed and has thereafter ~~been~~ retired from service may be assigned by a presiding judge to perform subordinate judicial duties consistent with subdivision (a). The retired subordinate judicial officer shall be subject to the limits, if any, on postretirement service prescribed by the Public Employees' Retirement System, the county defined-benefit retirement system, as defined in subdivision (f) of Section 71624, or any other defined-benefit retirement plan from which the retired officer is receiving benefits. The retired subordinate judicial officer shall be compensated by the assigning court at a rate not to exceed 85 percent of the compensation of a retired judge assigned to a superior court.

SEC. 111. Section 82036 of the Government Code is amended to read:

82036. "Late contribution" means any of the following:

(a) Any contribution*,* including a loan*,* that totals in the aggregate one thousand dollars ($1,000) or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before the date of the election at which the candidate or measure is to be voted on but after the closing date of the last campaign statement required to be filed before the election.

(b) Any contribution, including a loan, that totals in the aggregate one thousand dollars ($1,000) or more that is made to or received by a political party committee, as defined in Section 85205, before the date of any state election, but after the closing date of the last campaign statement required to be filed before the election.

SEC. 112. Section 84602 of the Government Code is amended to read:

84602. To implement the Legislature's intent, the Secretary of State, in consultation with the commission, notwithstanding any other provision of the Government Code, shall do all of the following:

(a) Develop online and electronic filing processes for use by persons and entities specified in Sections 84604 and 84605 that are required to file statements and reports with the Secretary of State's office pursuant to Chapter 4 (commencing with Section 84100) and Chapter 6 (commencing with Section 86100). Those processes shall each enable a user to comply with all the disclosure requirements of this title and shall include, at a minimum, the following:

(1) A means or method whereby filers subject to this chapter may submit required filings free of charge. Any means or method developed pursuant to this provision shall not provide any additional or enhanced functions or services that exceed the minimum requirements necessary to fulfill the disclosure provisions of this title. At least one means or method shall be made available no later than December 31, 2002.

(2) The definition of a nonproprietary standardized record format or formats using industry standards for the transmission of the data that is required of those persons and entities specified in subdivision (a) of Section 84604 and Section 84605 and that conforms with the disclosure requirements of this title. The Secretary of State shall hold public hearings prior to development of the record format or formats as a means to ensure that affected entities have an opportunity to provide input into the development process. The format or formats shall be made public no later than July 1, 1999, to ensure sufficient time to comply with the requirements of this chapter.

(b) Accept test files~~,~~ from software vendors and others wishing to file reports electronically, for the purpose of determining

whether the file format is in compliance with the standardized record format developed pursuant to subdivision (a) and is compatible with the Secretary of State's system for receiving the data. A list of *the* software and service providers who have submitted acceptable test files shall be published by the Secretary of State and made available to the public. Acceptably formatted files shall be submitted by a filer in order to meet the requirements of this chapter.

(c) Develop a system that provides for the online or electronic transfer of the data specified in this section utilizing telecommunications technology that assures the integrity of the data transmitted and that creates safeguards against efforts to tamper with or subvert the data.

(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to this title.

(e) Develop a procedure for filers to comply with the requirement that they sign under penalty of perjury pursuant to Section 81004.

(f) Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format.

(g) Provide assistance to those seeking public access to the information.

(h) Implement sufficient technology to seek to prevent unauthorized alteration or manipulation of the data.

(i) Provide the commission with necessary information to enable it to assist agencies, public officials, and others, with the compliance ~~and~~ with *and* administration of this title.

(j) Report to the Legislature on the implementation and development of the online and electronic filing and disclosure requirements of this chapter. The report shall include an examination of system security, private security issues, software

availability, compliance costs to filers, use of the filing system and software provided by the Secretary of State, and other issues relating to this chapter, and shall recommend appropriate changes if necessary. In preparing the report, the commission may present to the Secretary of State and the Legislature its comments regarding this chapter as it relates to the duties of the commission and suggest appropriate changes if necessary. There shall be one report due before the system is operational as set forth in Section 84603, one report due no later than June 1, 2002, and one report due no later than January 31, 2003.

(k) Review *the* current filing and disclosure requirements of this chapter and report to the Legislature, no later than June 1, 2005, recommendations on revising *these* requirements so as to promote greater reliance on electronic and online submissions.

SEC. 113. Section 90004 of the Government Code is amended to read:

90004. (a) The Franchise Tax Board shall periodically prepare reports*,* which, except as otherwise provided in this section, shall be sent to the commission, the Secretary of State, and the Attorney General. If the reports relate to candidates for or committees supporting or opposing candidates for the office of Attorney General, the reports shall be sent to the commission, the Secretary of State, and the District Attorneys of Los Angeles, Sacramento, and San Francisco Counties. If the reports relate to local candidates and their controlled committees, the reports shall be sent to the commission, the local filing officer with whom the candidate or committee is required to file the originals of campaign reports pursuant to Section 84215, and the district attorney for the candidate's county of domicile.

(b) The Franchise Tax Board shall complete its report of any audit conducted on a random basis pursuant to Section 90001 within one year after the person or entity subject to the audit is selected by the commission to be audited.

(c) The reports of the Franchise Tax Board shall be public documents and shall contain in detail the Franchise Tax Board's findings with respect to the accuracy and completeness of each report and statement reviewed and its findings with respect to any report or statement that should have been but was not filed. The Secretary of State and the local filing officer shall place the

audit reports in the appropriate campaign statement or lobbying files.

SEC. 114. Section 1179.2 of the Health and Safety Code is amended to read:

1179.2. (a) The Health and Welfare Agency shall establish an interdepartmental Task Force on Rural Health to coordinate rural health policy development and program operations and to develop a strategic plan for rural health.

(b) At a minimum, the following state departmental directors, or their representatives, shall participate on this task force:

(1) The Director of Health Services.

(2) The Director of Statewide Health Planning and Development.

(3) The Director of Alcohol and Drug Programs.

(4) The Director of the Emergency Medical Services Authority.

(5) The Director of Mental Health.

(6) The Executive Director of the Managed Risk Medical Insurance Board.

(c) The task force shall review and direct the activities of the Office of Rural Health or the alternative organizational structure, as determined by the Secretary of the Health and Welfare Agency.

(d) The task force shall establish appropriate mechanisms, such as ad hoc or standing advisory committees or the holding of public hearings in rural communities, for the purpose of soliciting and receiving input from these communities, including input from rural hospitals, rural clinics, health care service plans, local governments, academia, and consumers.

SEC. 115. Section 1351.2 of the Health and Safety Code, as added by Section 2 of Chapter 491 of the Statutes of 2004, is amended to read:

1351.2. (a) If a prepaid health plan operating lawfully under the laws of Mexico elects to operate a health care service plan in this state, the prepaid health plan shall apply for licensure as a health care service plan under this chapter by filing an application for licensure in the form prescribed by the department and verified by an authorized representative of the applicant. The prepaid health plan shall be subject to the provisions of this chapter, and the rules adopted by the director thereunder, as

determined by the director to be applicable. The application shall be accompanied by the fee prescribed by subdivision (a) of Section 1356 and shall demonstrate compliance with the following requirements:

(1) The prepaid health plan is constituted and operating lawfully under the laws of Mexico and, if required by Mexican law, is authorized as an Insurance Institution Specializing in Health by the Mexican Insurance Commission. If the Mexican Insurance Commission determines that the prepaid health plan is not required to be authorized as an Insurance Institution Specializing in Health under the laws of Mexico, the applicant shall obtain written verification from the Mexican Insurance Commission stating that the applicant is not required to be authorized as an Insurance Institution Specializing in Health in Mexico. A Mexican prepaid health plan not required to be an Insurance Institution Specializing in Health shall obtain written verification from the Mexican Ministry of Health that the prepaid health plan and its provider network are operating in full compliance ~~of~~ *with* Mexican law.

(2) The prepaid health plan offers and sells in this state only employer-sponsored group plan contracts exclusively for the benefit of citizens of Mexico legally employed in this state, and for the benefit of their dependents regardless of nationality, that pay for, reimburse the cost of, or arrange for the provision or delivery of health care services that are to be provided or delivered wholly in Mexico, except for the provision or delivery of those health care services set forth in ~~subparagraphs (A) and (B) of~~ paragraph (4).

(3) Solicitation of plan contracts in this state is made only through insurance brokers and agents licensed in this state or a third-party administrator licensed in this state, each of ~~which~~ *whom* is authorized to offer and sell plan group contracts.

(4) Group contracts provide, through a contract of insurance between the prepaid health plan and an insurer admitted in this state, for the reimbursement of emergency and urgent care services provided out of area as required by subdivision (h) of Section 1345.

(5) All advertising, solicitation material, disclosure statements, evidences of coverage, and contracts are in compliance with the appropriate provisions of this chapter and the rules or orders of

the director. The director shall require that each of these documents contain a legend in 10-point type, in both English and Spanish, declaring that the health care service plan contract provided by the prepaid health plan may be limited as to benefits, rights, and remedies under state and federal law.

(6) All funds received by the prepaid health plan from a subscriber are deposited in an account of a bank organized under the laws of this state or in an account of a national bank located in this state.

(7) The prepaid health plan maintains a tangible net equity as required by this chapter and the rules of the director, as calculated under United States generally accepted accounting principles, in the amount of ~~a~~ *at* least one million dollars ($1,000,000). In lieu of an amount in excess of the minimum tangible net equity of one million dollars ($1,000,000), the prepaid health plan may demonstrate a reasonable*,* acceptable alternative reimbursement arrangement that the director may in his or her discretion accept. The prepaid health plan shall also maintain a fidelity bond and a surety bond as required by Section 1376 and the rules of the director.

(8) The prepaid health plan agrees to make all of its books and records, including the books and records of health care providers in Mexico, available to the director in the form and at the time and place requested by the director. Books and records shall be made available to the director no later than 24 hours from the date of the request.

(9) The prepaid health plan files a consent to service of process with the director and agrees to be subject to the laws of this state and the United States in any investigation, examination, dispute, or other matter arising from the advertising, solicitation, or offer and sale of a plan contract, or the management or provision of health care services in this state or throughout the United States. The prepaid health plan shall agree to notify the director, immediately and in no case later than one business day, if it is subject to any investigation, examination, or administrative or legal action relating to the prepaid health plan or the operations of the prepaid health plan initiated by the government of Mexico or the government of any state of Mexico against the prepaid health plan or any officer, director, security holder, or contractor owning 10 percent or more of the securities of the

prepaid health plan. The prepaid health plan shall agree that in the event of conflict of laws in any action arising out of the license, the laws of California and the United States shall apply.

(10) The prepaid health plan agrees that disputes arising from the group contracts involving group contractholders and providers of health care services in the United States shall be subject to the jurisdiction of the courts of this state and the United States.

(b) The prepaid health plan shall pay the application processing fee and other fees and assessments set forth in Section 1356. The director, by order, may designate provisions of this chapter and rules adopted thereunder that need not be applied to a prepaid health plan licensed under the laws of Mexico when consistent with the intent and purpose of this chapter, and in the public interest.

(c) If the plan ceases to operate legally in Mexico, the director shall immediately deliver written notice to the health care service plan that it is not in compliance with the provisions of this section. If this occurs, a health care service plan shall do all of the following:

(1) Provide the director with written proof that the prepaid health plan has complied with the laws of Mexico not later than 45 days after the date the written notice is received by the health care service plan.

(2) If, by the 45th day, the health care service plan is unable to provide written confirmation *that* it is in full compliance with Mexican law, the director shall notify the health care service plan in writing that it is prohibited from accepting any new enrollees or subscribers. The health care service plan shall be given an additional 180 days to comply with Mexican law or to become a licensed health care service plan.

(3) If, at the end of the 180-day notice period in paragraph (2), the health care service plan has not complied with the laws of Mexico or California, the director shall issue an order that the health care service plan cease and desist operations in California.

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

SEC. 116. Section 1596.792 of the Health and Safety Code, as amended by Section 4 of Chapter 664 of the Statutes of 2004, is amended to read:

1596.792. This chapter ~~and Chapters~~, *Chapter* 3.5 (commencing with Section 1596.90), and *Chapter* 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of ~~that~~ *which* may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for *kindergarten and* grades ~~K–12~~ *1 to 12*, inclusive, in the public school district where the program is located, or operated only during periods when students in *kindergarten and* grades ~~K–12~~ *1 to 12*, inclusive, are normally

not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(*l*) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in *kindergarten and* grades ~~K–12~~ *1 to 12*, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) Any crisis nursery, as defined in subdivision (a) of Section 1516.

(o) 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. 117. Section 1596.792 of the Health and Safety Code, as added by Section 5 of Chapter 664 of the Statutes of 2004, is amended to read:

1596.792. This chapter ~~and Chapters~~, *Chapter* 3.5 (commencing with Section 1596.90), and *Chapter* 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of ~~that~~ *which* may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for *kindergarten and* grades ~~K–12~~ *1 to 12*, inclusive, in the public school district where the program is located, or operated only during periods when students in *kindergarten and* grades ~~K–12~~ *1 to 12*, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(*l*) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in *kindergarten and* grades ~~K–12~~ *1 to 12*, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

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

SEC. 118. Section 11571.1 of the Health and Safety Code is amended to read:

11571.1. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, which shall be based upon an arrest report or on another action or report by a regulatory or law enforcement agency, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give ~~30-calendar~~ *30 calendar* days' written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of

Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose.

(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e) of this section.

(C) The notice to the tenant shall also include on the bottom of its front page, in at least 14-point bold type, the following:

"Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be filed in court against you for suspected drug activity, as described above. You should call (insert name and telephone number of the city attorney or prosecutor pursuing the action) or legal aid to stop the eviction action if any of the following is applicable:

(i) You are not the person named in this notice.

(ii) The person named in the notice does not live with you.

(iii) The person named in the notice has permanently moved.

(iv) You do not know the person named in the notice.

(v) You have any other legal defense or legal reason to stop the eviction action.

A list of legal assistance providers is attached to this notice. Some provide free legal help if you are eligible."

(D) The owner shall, within ~~30-calendar~~ *30 calendar* days of the mailing of the written notice, either provide the city prosecutor or city attorney with all relevant information pertaining to the unlawful detainer case, or provide a written explanation setting forth any safety-related reasons for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring an unlawful detainer action against the tenant.

(E) The assignment shall be on a form provided by the city prosecutor or city attorney and may contain a provision for costs of investigation, discovery, and reasonable attorney's fees, in an amount not to exceed six hundred dollars ($600).

(F) If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain all other rights and duties, including the handling of the tenant's personal property,

following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

(2) Upon the failure of the owner to file an action pursuant to this section, or to respond to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney may file and prosecute the action, and join the owner as a defendant in the action. This action shall have precedence over any similar proceeding thereafter brought by the owner, or to one previously brought by the owner and not prosecuted diligently and in good faith. Service of the summons and complaint upon the defendant owner shall be in accordance with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) Nothing in this article shall prevent a local governing body from adopting and enforcing laws, consistent with this article, relating to drug abatement. Where local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this article shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this

subdivision to return to or reenter any portion of the entire premises.

(c) For the purposes of this section, "controlled substance purpose" means the manufacture, cultivation, importation into the state, transportation, possession, possession for sale, sale, furnishing, administering, or giving away, or providing a place to use or fortification of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled substance, in a violation of subdivision (a) of Section 11350, Section 11351, 11351.5, 11352, or 11359, subdivision (a) of Section 11360, or Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383, if the offense occurs on the subject real property and is documented by the observations of a peace officer.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than ~~30-calendar~~ *30 calendar* days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall only apply to the following courts:

(1) In the County of Los Angeles, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Los Angeles or in the City of Long Beach.

(2) In the County of San Diego, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of San Diego.

(3) In the County of Alameda, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Oakland.

(g) (1) The city attorney and city prosecutor of each participating jurisdiction shall provide to the Judicial Council the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) The number of cases filed by an owner, upon notice.

(C) The number of assignments executed by owners to the city attorney or city prosecutor.

(D) The number of three-day, 30-day, or 60-day notices issued by the city attorney or city prosecutor.

(E) The number of cases filed by the city attorney or city prosecutor.

(F) The number of times that an owner is joined as a defendant pursuant to this section.

(G) As to each case filed by an owner, the city attorney, or the city prosecutor, the following information:

(i) The number of judgments ordering an eviction or partial eviction (specify whether default, stipulated, or following trial).

(ii) The number of cases, listed by separate categories, in which the case was withdrawn or in which the tenant prevailed.

(iii) The number of other dispositions (specify disposition).

(iv) The number of defendants represented by counsel.

(v) Whether the case was a trial by the court or a trial by a jury.

(vi) Whether an appeal was taken, and, if so, the result of the appeal.

~~(vi)~~

(vii) The number of cases in which partial eviction was requested, and the number of cases in which the court ordered a partial eviction.

(H) As to each case in which a notice was issued, but no case was filed, the following information:

(i) The number of instances in which a tenant voluntarily vacated the unit.

(ii) The number of instances in which a tenant vacated a unit prior to the providing of the notice.

(iii) The number of cases in which the notice provided pursuant to subdivision (a) was erroneously sent to the tenant. (List reasons, if known, for the erroneously sent notice, such as reliance on information on the suspected controlled substance law violator's name or address that was incorrect; clerical error; or any other reason)

(iv) The number of other resolutions (specify resolution).

(2) (A) Information compiled pursuant to this section shall be reported annually to the Judicial Council on or before January 30 of each year.

(B) The Judicial Council shall thereafter submit a brief report to the Senate and Assembly ~~Judiciary~~ Committees *on the Judiciary* once on or before April 15, 2007, and once on or before April 15, 2009, summarizing the information collected pursuant to this section and evaluating the merits of the pilot programs established by this section.

(h) This section shall remain in effect only until January 1, 2010, and as of that date is repealed unless a later enacted statute deletes or extends that date.

SEC. 119. Section 18070 of the Health and Safety Code is amended to read:

18070. (a) The Legislature finds and declares all of the following:

(1) The financial hardship endured by someone who is buying or selling a manufactured home for the purpose of using it for a primary residence is more profound than the hardship of someone who is selling or purchasing a manufactured home for investment purposes.

(2) It is, therefore, the intent of the Legislature in enacting this chapter that any claims for primary residences submitted, pursuant to this chapter, by a claimant for payment from the fund shall be given priority over claims submitted for investment purposes.

(3) The distinctions made in this chapter between claims made for personal residential purposes and claims made for investment purposes shall reflect the priorities set forth in this paragraph.

(4) The costs of seeking and obtaining civil judgments and related collection efforts to support claims for compensation often exceed the ability of claimants and the amounts received.

(5) The costs and efforts of public entities obtaining criminal or administrative restitution orders could provide further benefits if these orders could be used as the basis for compensation claims.

(b) The following definitions shall apply for the purposes of this chapter:

(1) "Actual and direct loss" includes the following:

(A) The amount of the actual and direct loss, interest at the statutory rate from the date of loss, plus court costs and reasonable ~~attorney~~ *attorney's* fees incurred in pursuit of the judgment, not to exceed 25 percent of the amount of the judgment, if the claim is based on a judgment obtained by a private attorney or an attorney employed by a nonprofit corporation, and not to exceed 35 percent of the amount of the judgment if the claim is based on a judgment obtained by an attorney employed by a public agency.

(B) The amount of the actual and direct loss, if the claim is not based on a judgment. However, the claimant may collect actual and reasonable costs incurred in pursuit of compensation including ~~attorneys~~ *attorney's* fees not exceeding 15 percent of the amount of the claim and court costs, if any.

"Actual and direct loss" does not include any punitive damages or damages awarded for negligent or intentional infliction of emotional distress.

(2) "Claimant" does not include a person holding a lien on, or a person possessing a secondary interest in, a manufactured home.

(3) "Conversion" means the unlawful appropriation of the property of another.

(4) "Judgment" means any of the following:

(A) A final judgment in a court of competent jurisdiction, other than a court in another state, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code.

(B) An order of the director, including an order for restitution, based on an accusation filed pursuant to Article 3 (commencing with Section 18058) of Chapter 7, after an opportunity for a hearing.

(5) "Complaint" means the facts of the underlying transaction upon which the criminal restitution order or administrative order is based.

(6) "Judgment debtor" means any defendant who is the subject of the criminal restitution order or civil judgment, any respondent who is the subject of an administrative accusation and order, or any person responsible for any violation upon which payment is made, as determined by the department.

(c) There is hereby created in the State Treasury the Manufactured Home Recovery Fund. The money in the fund shall be used only for the purposes of this chapter, including payment of the department's administrative costs incurred pursuant to this chapter. The department's costs may include any investigative costs incurred under this chapter, costs incurred to render a decision pursuant to Section 18070.3, and costs incurred in defending a decision on appeal.

(d) The ~~money~~ *moneys* in the fund may be invested pursuant to Chapter 3 (commencing with Section 16430) of Part 2 of Division 4 of Title 2 of the Government Code. All income derived from investments of the fund shall be returned to the fund by the Treasurer as the income is earned.

(e) Notwithstanding Section 13340 of the Government Code, the ~~money~~ *moneys* in the fund ~~is~~ *are* hereby continuously appropriated to make the payments and distributions required by this chapter.

SEC. 120. Section 25395.110 of the Health and Safety Code is amended to read:

25395.110. (a) A person who, before January 1, 2010, qualifies for immunity pursuant to Chapter 6.82 (commencing with Section 25395.60), as that chapter read on December 31, 2009, shall continue to have that immunity on and after January 1, 2010, if the person continues to be in compliance with the requirements of former Chapter 6.82 (commencing with Section 25395.60)*,* including, but not limited to, compliance with all response plans approved pursuant to Article 6 (commencing with Section ~~25395.90~~ *25395.90)* of Chapter ~~6.82)~~ *6.82*, and compliance with all other applicable laws.

(b) This article shall become operative January 1, 2010.

SEC. 121. Section 25395.65 of the Health and Safety Code is amended to read:

25395.65. "All appropriate inquiries" has the following meanings:

(a) Except as provided in subdivision (c), until the date when the standards and practices established by the Administrator of the United States Environmental Protection Agency pursuant to Section 101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii)) are adopted and take effect, "all appropriate inquiries" means:

(1) For property acquired on or before December 1, 2000, compliance with American Society for Testing and Materials Standard ~~El 527-97~~ *El527-97* entitled "Standard Practice for Environmental Site Assessment": Phase 1 Environmental Site Assessment Process.

(2) For property acquired after December 1, 2000, compliance with American Society for Testing and Materials Standard ~~El 527-00~~ *El527-00*.

(b) Except as provided in subdivision (c), on and after the date when the standards and practices established by the Administrator of the United States Environmental Protection Agency pursuant to Section 101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii)) are adopted and take effect, "all appropriate inquiries" means compliance with those standards, except that any portion of the inquiry that includes the practice of engineering or the practice of geology shall be carried out in conformance with applicable state ~~statute~~ *statutes*.

(c) If the property is used solely for residential use and has four or fewer units at the time of acquisition by a nongovernmental or noncommercial entity, "all appropriate inquiries" means that a site inspection and title search does not reveal a basis for further investigation.

SEC. 122. Section 25395.67 of the Health and Safety Code is amended to read:

25395.67. "Appropriate care" means either of the following:

(a) The performance of a response action, with respect to hazardous materials found at a site, for which the agency makes the determination specified in paragraph (1) of subdivision (c) of Section 25395.96 and that meets all of the following conditions:

(1) The response action is determined by an agency to be necessary to prevent an unreasonable risk to human health and safety or the environment, as defined in Section 25395.90.

(2) The response action is performed in accordance with a response plan approved by the agency pursuant to Article 6 (commencing with Section ~~25295.90)~~ *25395.90)*.

(3) The approved response plan includes a provision for oversight and approval of the completed response action by the agency pursuant to Article 6 (commencing with Section ~~25295.90)~~ *25395.90)*.

(b) A determination that no further action is required pursuant to Section 25395.95.

SEC. 123. Section 25395.93 of the Health and Safety Code is amended to read:

25395.93. (a) A person may withdraw from an agreement entered into pursuant to this article by providing a 30-day written notice to the agency and doing both of the following:

(1) Reimbursing the agency for all costs incurred by the agency pursuant to the agreement.

(2) Demonstrating to the satisfaction of the agency~~,~~ that conditions at the site to which the agreement applies do not pose an endangerment to public health and safety or the environment. If the agency determines that conditions at the site pose an endangerment to public health, safety, or the environment, this article does not prevent the agency from exercising its authority to take appropriate response actions or to cause the person or persons responsible for the endangerment to take appropriate response actions.

(b) A person who enters into an agreement with an agency pursuant to this article shall reimburse the agency for all agency costs, including, but not limited to, costs incurred while reviewing a site assessment plan or a response plan or overseeing the implementation of a site assessment or response plan by the person pursuant to this article, except that the department's costs shall be reimbursed pursuant to Chapter 6.66 (commencing with Section 25269) and shall be recoverable pursuant to Section 25360.

(c) The entry into an agreement pursuant to this article shall not constitute an admission of fact or liability or conclusion of law for any purpose or proceeding and ~~no~~ *a* person who enters into an agreement under this article shall not be deemed liable under any other provision of law solely by reason of entering into that agreement.

(d) If the conditions described in paragraph (1) of subdivision (c) of Section 25395.81 or in subdivision (d) of Section 25395.81 occur, an agency may withdraw from an agreement entered into pursuant to this chapter by providing a 30-day written notice to the other party.

SEC. 124. Section 25395.95 of the Health and Safety Code is amended to read:

25395.95. (a) After implementation of the site assessment plan, the person shall submit *to the agency* a report of the findings made pursuant to the plan ~~to the agency~~. Based upon a review of this information, the agency shall determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the site.

(b) If the agency determines~~,~~ that there is no unreasonable risk at the site and that there are no hazardous materials at the site at levels that are not suitable for unrestricted use of the site, the agency shall make a finding that no further action is necessary at the site.

(c) If the agency determines that there are hazardous materials at the site at levels that are not suitable for unrestricted use, but that are suitable for the reasonably anticipated foreseeable use of the site based on current and projected land use and zoning designations, the agency shall find that no further action is necessary at the site except that a land use control that imposes appropriate restrictions pursuant to Section 25395.99 shall be executed and recorded and the public comment and participation requirements of Section 25395.96 shall be met before the execution and recording of any land use control. On or before 15 days after the date when the land use control is recorded pursuant to Section 25395.99, the agency shall state in writing that this act constitutes "appropriate care" for the purposes of Section 25395.67.

SEC. 125. Section 25395.96 of the Health and Safety Code is amended to read:

25395.96. (a) If, upon review of the site assessment prepared pursuant to this article, the agency determines that a response action is necessary to prevent or eliminate an unreasonable risk, the bona fide purchaser, innocent landowner, or contiguous property owner shall submit a response plan to the agency to conduct a response action at the site, in conformance with the

agreement entered into pursuant to Section 25395.92. The response plan shall include all of the following:

(1) (A) An opportunity for the public, other agencies, and the host jurisdiction to participate in decisions regarding the response action, taking into consideration ~~of~~ the nature of the community interest.

(B) If a regional board is the agency, the regional board shall provide access to the proposed response plan and site assessment at the regional board for public review, conduct a public hearing with 30 ~~days~~ *days'* prior notice, provide notice on the agenda of the public hearing, and take action on the response plan in a regularly scheduled regional board meeting.

(C) If the department is the agency, the methods for public participation proposed in the response plan shall include reasonable public notice in English and other languages commonly spoken in the area, access to the proposed response plan and site assessment at the agency and local repositories*,* and reasonable opportunity to comment. The department shall hold a public meeting in the area to receive comments if a public meeting is requested. The department shall consider any comments received prior to acting on the response plan. Methods for public participation may also include, but are not limited to, the use of factsheets, public notices, direct notification of interested parties, public meetings, and an opportunity to comment on the proposed response plan prior to approval.

(D) To the extent possible, the agency shall coordinate its public participation activities with those undertaken by the host jurisdiction and other agencies associated with the development of the property, to avoid duplication to the extent feasible.

(E) It is the intent of the Legislature that the public participation process established pursuant to this subdivision ensures full and robust participation of a community affected by this chapter.

(2) Identification of the release or threatened release that is the subject of the response plan and documentation that the plan is based on an adequate characterization of the site.

(3) An identification of the response plan objectives and the proposed remedy, and an identification of the reasonably anticipated future land uses of the site and of the current and projected land use and zoning designations. This identification

shall include confirmation by the host jurisdiction that the anticipated future land uses and current and projected land uses and zoning designations are accurate.

(4) A description of activities that will be implemented to control any endangerment that may occur during the response action at the site.

(5) A description of any land use control that is part of the response action.

(6) A description of wastes other than hazardous materials at the site and how they will be managed in conjunction with the response action.

(7) Provisions for the removal of containment or storage vessels and other sources of contamination, including soils and free product, that cause an unreasonable risk.

(8) Provisions for the agency to require further response actions based on the discovery of hazardous materials that pose an unreasonable risk to human health and safety or the environment that are discovered during the course of the response action or subsequent development of the site.

(9) Any other information that the agency determines is necessary.

(b) The agency shall evaluate the adequacy of the plan submitted pursuant to subdivision (a) and shall approve the plan if the agency makes all of the following findings:

(1) The plan contains the information required by subdivision (a).

(2) When implemented, the plan will place the site in *a* condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment.

(3) The plan addresses any public comments.

(4) If applicable, the plan provides for long-term operation and maintenance, including land use and engineering controls, that are part of the remedy contained in the response plan.

(c) (1) On or before 60 days after the date an agency receives a response plan, the agency shall make a written determination that proper completion of the response plan constitutes "appropriate care" for purposes of subdivision (a) of Section 25395.67.

(2) Upon approval of the response plan by the agency, the agency shall notify all appropriate persons, including the host jurisdiction.

(d) If the use of the property changes, after a response plan is approved, to a use that requires a higher level of protection, the agency may require the preparation and implementation of a new response plan pursuant to this article.

(e) The owner of a site shall not make any change in use of a site inconsistent with any land use control recorded for the site, unless the change is approved by the agency in accordance with subdivision (f) of Section 25395.99.

SEC. 126. Section 25404 of the Health and Safety Code, as amended by Section 9 of Chapter 880 of the Statutes of 2004, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter

shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) "Secretary" means the Secretary for Environmental Protection.

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a

unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, *are* applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1,

with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9*,* concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the

secretary to be of greatest concern. The secretary, in making this determination, shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(f) 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. 127. Section 25404 of the Health and Safety Code, as amended by Section 10 of Chapter 880 of the Statutes of 2004, is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter

shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Secretary" means the Secretary for Environmental Protection.

(4) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(5) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, *are* applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section ~~25501)~~ *25500)* of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination, shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

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

SEC. 128. Section 25404.3 of the Health and Safety Code is amended to read:

25404.3. (a) The secretary shall, within a reasonable time after submission of a complete application for certification pursuant to Section 25404.2, and regulations adopted pursuant to that section, but not to exceed 180 days, review the application, and, after holding a public hearing, determine if the application should be approved. Before disapproving an application for certification, the secretary shall submit to the applicant agency a notification of the secretary's intent to disapprove the application, in which the secretary shall specify the reasons why the applicant agency does not have the capability or the resources to fully implement and enforce the unified program in a manner that is consistent with the regulations implementing the unified program adopted by the secretary pursuant to this chapter. The secretary shall provide the applicant agency with a reasonable time to respond to the reasons specified in the notification and to correct deficiencies in its application. The applicant agency may request a second public hearing, at which the secretary shall hear

the applicant agency's response to the reasons specified in the notification.

(b) In determining whether an applicant agency should be certified, or designated as certified, the secretary, after receiving comments from the director, the Director of the Office of Emergency Services, the State Fire Marshal, and the Executive Officers and Chairpersons of the State Water Resources Control Board and the California regional water quality control boards, shall consider at least all of the following factors:

(1) Adequacy of the technical expertise possessed by each unified program agency that will be implementing each element of the unified program, including, but not limited to, whether the agency responsible for implementing and enforcing the requirements of Chapter 6.5 (commencing with Section 25100) satisfies the requirements of Section 15260 of Title 27 of the California Code of Regulations.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing requirements related to the handling of hazardous materials and hazardous waste.

(6) Recordkeeping and cost accounting systems.

(7) Compliance with the criteria in Section 15170 of Title 27 of the California Code of Regulations.

(c) (1) In making the determination of whether or not to certify a particular applicant agency as a certified unified program agency, the secretary shall consider the applications of every other applicant agency applying to be a certified unified program agency within the same county, in order to determine the impact of each certification decision on the county. If the secretary identifies that there may be adverse impacts on the county if any particular agency in a county is certified, the secretary shall work cooperatively with each affected agency to address the secretary's concerns.

(2) The secretary shall not certify an agency to be a certified unified program agency unless the secretary finds both of the following:

(A) The unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located.

(B) The administration of the unified program throughout the entire county in which the applicant agency is located will be less fragmented between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in subdivision (c) of Section 25404.

(d) (1) The secretary shall not certify an applicant agency that proposes to allow participating agencies to implement certain elements of the unified program unless the secretary makes all of the following findings:

(A) The applicant agency has adequate authority, and has in place adequate systems, protocols, and agreements, to ensure that the actions of the other agencies proposed to implement certain elements of the unified program are fully coordinated and consistent with each other and with those of the applicant agency, and to ensure full compliance with the regulations implementing the unified program adopted by the secretary pursuant to this chapter.

(B) An agreement between the applicant and other agencies proposed to implement any elements of the unified program contains procedures for removing any agencies proposed and engaged to implement any element of the unified program. The procedures in the agreement shall include, at a minimum, provisions for providing notice, stating causes, taking public comment, making appeals, and resolving disputes.

(C) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(D) All other agencies proposed to implement certain elements of the unified *program* shall maintain an agreement with the applicant agency that ensures that the requirements of Section 25404.2 will be fully implemented.

(E) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency that ensures that the fee system is implemented in a fully consistent

and coordinated manner, and that ensures that each participating agency receives the amount that it determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program that it is responsible for implementing.

(2) After the secretary has certified an applicant agency pursuant to this subdivision, that agency shall obtain the approval of the secretary before removing and replacing a participating agency that is implementing an element of the unified program.

(3) Any state agency, including, but not limited to, the State Department of Health Services, acting as a participating agency, may contract with a unified program agency to implement or enforce the unified program.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 that existed in that city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) Except as provided in subparagraph (C) of paragraph (2) or in Section 25404.8, if no local agency has been certified by January 1, 1997, to implement the unified program within a city, the secretary shall designate either the county in which the city is located or another agency pursuant to subparagraph (A) of paragraph (2) as the unified program agency.

(2) (A) Except as provided in subparagraph (C), if no local agency has been certified by January 1, 2001, to implement the unified program within the unincorporated or an incorporated area of a county, the secretary shall determine how the unified program shall be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work in consultation with the county and cities to determine which state or local agency or combination of state and local agencies should implement the unified program, and shall determine which state or local agency shall be designated as the certified unified program agency.

(B) The secretary shall determine the method by which the unified program shall be implemented throughout the county and

may select any combination of the following implementation methods:

(i) The certification of a state or local agency as a certified unified program agency.

(ii) The certification of an agency from another county as the certified unified program agency.

(iii) The certification of a joint powers agency as the certified unified program agency.

(C) Notwithstanding paragraph (1) and subparagraphs (A) and (B), if the Cities of Sunnyvale, Anaheim, and Santa Ana prevail in litigation filed in 1997 against the secretary, and, to the extent the secretary determines that these three cities meet the requirements for certification, the secretary may certify these cities as certified unified program agencies.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

SEC. 129. Section 44297 of the Health and Safety Code is amended to read:

44297. (a) The state board, acting within its existing authority, shall, at its first opportunity following January 1, 2005, revise the grant criteria and guidelines adopted pursuant to Section 44287 to incorporate projects described in subdivision (c).

(b) The guidelines may define eligible costs to include monitoring and verifying compliance with this article.

(c) Notwithstanding any other provision of this chapter, a project that meets either of the following criteria constitutes a heavy-duty fleet modernization project and thus is eligible for funding under the program, if it complies with the guidelines established by the state board pursuant to subdivision (a):

(1) Replaces an old engine or vehicle with a newer engine or vehicle certified to more stringent emissions standards than the engine or vehicle being replaced, pursuant to paragraph (2) of subdivision (a) of Section 44281.

(2) Provides the equivalent emission reductions as would be gained by a project that combines both of the following:

(A) The purchase of a new very low or zero-emission covered vehicle pursuant to paragraph (1) of subdivision (a) of Section 44281.

(B) The replacement of an old engine or vehicle with a newer engine or vehicle certified to more stringent standards than the engine or vehicle being replaced, pursuant to paragraph (2) of subdivision (a) of Section 44281.

~~(c)~~

(d) In establishing guidelines pursuant to subdivision (a), the state board shall consider any existing heavy-duty fleet modernization program carried out by a district. The state board shall design a program that, to the extent feasible, includes fleet owners, independent truck owners, heavy-duty vehicle dealers, districts, and other participants it determines appropriate from existing local programs.

~~(d)~~

(e) The grants provided pursuant to this article shall provide moneys to offset the incremental cost of projects that reduce emissions of oxides of nitrogen (NO_x) and particulate matter (PM).

~~(e)~~

(f) The state board shall determine an appropriate weighted cost-effectiveness standard for projects intended to reduce particulate matter.

SEC. 130. Section 100425 of the Health and Safety Code is amended to read:

100425. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 1639.5, 1676, 1677, 2202, 2805, 11887, 100860, 106700, 106890, 106925, 107080, 107090, 107095, 107160, 110210, 110470, 111130, 111140, 111630, 112405, 112510, 112750, 112755, 113060, 113065, 113845, 114056, 114065, paragraph (2)~~,~~ of subdivision (c) of Section 114090, *Section* 114140, subdivision (b) of Section 114290, *Sections* 114367,

115035, 115065, 115080, 116205, 117923, 117995, 118045, 118210, and 118245 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. ~~This~~

(c) This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 131. Section 101317 of the Health and Safety Code is amended to read:

101317. (a) For purposes of this article, allocations shall be made to the administrative bodies of qualifying local health jurisdictions described as public health administrative organizations in Section 101185, and pursuant to Section 101315, in the following manner:

(1) (A) For the 2003–04 fiscal year and subsequent fiscal years, to the administrative bodies of each local health jurisdiction, a basic allotment of one hundred thousand dollars ($100,000), subject to the availability of funds appropriated in the annual Budget Act or some other act.

(B) For the 2002–03 fiscal year, the basic allotment of one hundred thousand dollars ($100,000) shall be reduced by the amount of federal funding allocated as part of a basic allotment for the purposes of this article to local health jurisdictions in the 2001–02 fiscal year.

(2) (A) Except as provided in subdivision (c), after determining the amount allowed for the basic allotment as provided in paragraph (1), the balance of the annual appropriation for purposes of this article, if any, shall be allotted

on a per capita basis to the administrative bodies of each local health jurisdiction in the proportion that the population of that local health jurisdiction bears to the population of all eligible local health jurisdictions of the state.

(B) The population estimates used for the calculation of the per capita allotment pursuant to subparagraph (A) shall be based on the Department of Finance's E-1 Report, "City/County Populations Estimates with Annual Percentage~~ Changes"~~ *Changes,"* as of January 1 of the previous year. However, if within a local health jurisdiction there are one or more city health jurisdictions, the local health jurisdiction shall subtract the population of the city or cities from the local health jurisdiction total population for purposes of calculating the per capita total.

(b) If the amounts appropriated are insufficient to fully fund the allocations specified in subdivision (a), the department shall prorate and adjust each local health jurisdiction's allocation so that the total amount allocated equals the amount appropriated.

(c) For the 2002–03 fiscal year and subsequent fiscal years, where the federally approved collaborative state-local plan identifies an allocation method, other than the basic allotment and per capita method described in subdivision (a), for specific funding to a local public health jurisdiction, including, but not limited to, funding laboratory training, chemical and nuclear terrorism preparedness, smallpox preparedness, and information technology approaches, that funding shall be paid to the administrative bodies of those local health jurisdictions in accordance with the federally approved collaborative state-local plan for bioterrorism preparedness and other public health threats in the state.

(d) Funds appropriated pursuant to the annual Budget Act or some other act for allocation to local health jurisdictions pursuant to this article shall be disbursed quarterly to local health jurisdictions beginning July 1, 2002, using the following process:

(1) Each fiscal year, upon the submission of an application for funding by the administrative body of a local health jurisdiction, the department shall make the first quarterly payment to each eligible local health jurisdiction. Initially, that application shall include a plan and budget for the local program that is in accordance with the department's plans and priorities for bioterrorism preparedness and response, and other public health

threats and emergencies, and a certification by the chairperson of the board of supervisors or the mayor of a city with a local health department that the funds received pursuant to this article will not be used to supplant other funding sources in violation of subdivision (d) of Section 101315. In subsequent years, the department shall develop a streamlined process for continuation of funding that will address new federal requirements and will assure the continuity of local plan activities.

(2) The department shall establish procedures and a format for the submission of the local health jurisdiction's plan and budget. The local health jurisdiction's plan shall be consistent with the department's plans and priorities for bioterrorism preparedness and response and other public health threats and emergencies in accordance with requirements specified in the department's federal grant award. Payments to local health jurisdictions beyond the first quarter shall be contingent upon the approval of the department of the local health jurisdiction's plan and the local health jurisdiction's progress in implementing the provisions of the local health jurisdiction's plan, as determined by the department.

(3) If a local health jurisdiction does not apply or submits a noncompliant application for its allocation, those funds provided under this article may be redistributed according to subdivision (a) to the remaining local health jurisdictions.

(e) Funds shall be used for activities to improve and enhance local health jurisdictions' preparedness for and response to bioterrorism and other public health threats and emergencies, and for any other purposes, as determined by the department, that are consistent with the purposes for which the funds were appropriated.

(f) Any local health jurisdiction that receives funds pursuant to this article shall deposit ~~them~~ *those funds* in a special local public health preparedness trust fund established solely for this purpose before transferring or expending the funds for any of the uses allowed pursuant to this article. The interest earned on moneys in the fund shall accrue to the benefit of the fund and shall be expended for the same purposes as other moneys in the fund.

(g) (1) A local health jurisdiction that receives funding pursuant to this article shall submit reports that display cost data and the activities funded by moneys deposited in its local public

health preparedness trust fund to the department on a regular basis in a form and according to procedures prescribed by the department.

(2) The department, in consultation with local health jurisdictions, shall develop required content for the reports required under paragraph (1), which shall include, but shall not be limited to, data and information needed to implement this article and to satisfy federal reporting requirements. The chairperson of the board of supervisors or the mayor of a city with a local health department shall certify the accuracy of the reports and that the moneys appropriated for the purposes of this article have not been used to supplant other funding sources.

(h) The administrative body of a local health jurisdiction may enter into a contract with the department and the department may enter into a contract with that local health jurisdiction for the department to administer all or a portion of the moneys allocated to the local health jurisdiction pursuant to this article. The department may use funds retained on behalf of a local jurisdiction pursuant to this subdivision solely for the purposes of administering the jurisdiction's bioterrorism preparedness activities. The funds appropriated pursuant to this article and retained by the department pursuant to this subdivision are available for expenditure and encumbrance for the purposes of support or local assistance.

(i) The department may recoup from a local health jurisdiction any moneys allocated pursuant to this article that are unspent or that are not expended for purposes specified in subdivision (d). The department may also recoup funds expended by a local health jurisdiction in violation of subdivision (d) of Section 101315. The department may withhold quarterly payments of moneys to a local health jurisdiction if the local health jurisdiction is not in compliance with this article or the terms of that local health jurisdiction's plan as approved by the department. Before any funds are recouped or withheld from a local health jurisdiction, the department shall meet with local health officials to discuss the status of the unspent moneys or the disputed use of the funds, or both.

(j) Notwithstanding any other provision of law, moneys made available for bioterrorism preparedness pursuant to this article in the 2001–02 fiscal year shall be available for expenditure and

encumbrance until June 30, 2003. Moneys made available for bioterrorism preparedness pursuant to this article from July 1, 2002, to August 30, 2003, inclusive, shall be available for expenditure and encumbrance until August 30, 2004. Moneys made available in the 2003–04 Budget Act for bioterrorism preparedness shall be available for expenditure and encumbrance until August 30, 2005.

SEC. 132. Section 101850 of the Health and Safety Code is amended to read:

101850. The Legislature finds and declares the following:

(a) (1) Due to the challenges facing the Alameda County Medical Center arising from changes in the public and private health industries, the Alameda County Board of Supervisors has determined that a transfer of governance of the Alameda County Medical Center to an independent governing body, a hospital authority, is needed to improve the efficiency, effectiveness, and economy of the community health services provided at the medical center. The board of supervisors has further determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County. To accomplish this, it is necessary that the board of supervisors be given authority to create a hospital authority. Because there is no general law under which this authority could be formed, the adoption of a special act and the formation of a special authority is required.

(2) The following definitions shall apply for purposes of this section:

(A) "The county" means the County of Alameda.

(B) "Governing board" means the governing body of the hospital authority.

(C) "Hospital authority" means the separate public agency established by the Board of Supervisors of Alameda County to manage, administer, and control the Alameda County Medical Center.

(D) "Medical center" means the Alameda County Medical Center.

(b) The board of supervisors of the county may, by ordinance, establish a hospital authority separate and apart from the county for the purpose of effecting a transfer of the management, administration, and control of the medical center in accordance with Section 14000.2 of the Welfare and Institutions Code. A hospital authority established pursuant to this chapter shall be strictly and exclusively dedicated to the management, administration, and control of the medical center within parameters set forth in this chapter, and in the ordinance, bylaws, and contracts adopted by the board of supervisors which shall not be in conflict with this chapter, Section 1442.5 of this code, or Section 17000 of the Welfare and Institutions Code.

(c) A hospital authority established pursuant to this chapter shall be governed by a board that is appointed, both initially and continually, by the Board of Supervisors of the County of Alameda. This hospital authority governing board shall reflect both the expertise necessary to maximize the quality and scope of care at the medical center in a fiscally responsible manner and the diverse interest that the medical center serves. The enabling ordinance shall specify the membership of the hospital authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the hospital authority's activities.

(d) The mission of the hospital authority shall be the management, administration, and other control, as determined by the board of supervisors, of the group of public hospitals, clinics, and programs that comprise the medical center, in a manner that ensures appropriate, quality, and ~~cost effective~~ *cost-effective* medical care as required of counties by Section 17000 of the Welfare and Institutions Code, and, to the extent feasible, other populations, including special populations in Alameda County.

(e) The board of supervisors shall adopt bylaws for the medical center that ~~sets~~ *set* forth those matters~~,~~ related to the operation of the medical center by the hospital authority~~,~~ that the board of supervisors deems necessary and appropriate. The bylaws shall become operative upon approval by a majority vote of the board of supervisors. Any changes or amendments to the bylaws shall be by majority vote of the board of supervisors.

(f) The hospital authority created and appointed pursuant to this section is a duly constituted governing body within the meaning of Section 1250 and Section 70035 of Title 22 of the California Code of Regulations as currently written or subsequently amended.

(g) Unless otherwise provided by the board of supervisors by way of resolution, the hospital authority is empowered, or the board of supervisors is empowered on behalf of the hospital authority, to apply as a public agency for one or more licenses for the provision of health care pursuant to statutes and regulations governing licensing as currently written or subsequently amended.

(h) In the event of a change of license ownership, the governing body of the hospital authority shall comply with the obligations of governing bodies of general acute care hospitals generally as set forth in Section 70701 of Title 22 of the California Code of Regulations, as currently written or subsequently amended, as well as the terms and conditions of the license. The hospital authority shall be the responsible party with respect to compliance with these obligations, terms, and conditions.

(i) (1) Any transfer by the county to the hospital authority of the administration, management, and control of the medical center, whether or not the transfer includes the surrendering by the county of the existing general acute care hospital license and corresponding application for a change of ownership of the license, shall not affect the eligibility of the county, or in the case of a change of license ownership, the hospital authority, to do any of the following:

(A) Participate in, and receive allocations pursuant to, the California Healthcare for the Indigent Program (CHIP).

(B) Receive supplemental reimbursements from the Emergency Services and Supplemental Payments Fund created pursuant to Section 14085.6 of the Welfare and Institutions Code.

(C) Receive appropriations from the Medi-Cal Inpatient Payment Adjustment Fund without relieving the county of its obligation to make intergovernmental transfer payments related to the Medi-Cal Inpatient Payment Adjustment Fund pursuant to Section 14163 of the Welfare and Institutions Code.

(D) Receive Medi-Cal capital supplements pursuant to Section 14085.5 of the Welfare and Institutions Code.

(E) Receive any other funds that would otherwise be available to a county hospital.

(2) Any transfer described in paragraph (1) shall not otherwise disqualify the county, or in the case of a change in license ownership, the hospital authority, from participating in any of the following:

(A) Other funding sources either specific to county hospitals or county ambulatory care clinics or for which there are special provisions specific to county hospitals or to county ambulatory care clinics.

(B) Funding programs in which the county, on behalf of the medical center and the Alameda County Health Care Services Agency, had participated prior to the creation of the hospital authority, or would otherwise be qualified to participate in had the hospital authority not been created, and administration, management, and control not been transferred by the county to the hospital authority, pursuant to this chapter.

(j) A hospital authority created pursuant to this chapter shall be a legal entity separate and apart from the county and shall file the statement required by Section 53051 of the Government Code. The hospital authority shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county. The hospital authority shall not be governed by, nor be subject to, the charter of the county and shall not be subject to policies or operational rules of the county, including, but not limited to, those relating to personnel and procurement.

(k) (1) Any contract executed by and between the county and the hospital authority shall provide that liabilities or obligations of the hospital authority with respect to its activities pursuant to the contract shall be the liabilities or obligations of the hospital authority, and shall not become the liabilities or obligations of the county.

(2) Any liabilities or obligations of the hospital authority with respect to the liquidation or disposition of the hospital authority's assets upon termination of the hospital authority shall not become the liabilities or obligations of the county.

(3) Any obligation of the hospital authority, statutory, contractual, or otherwise, shall be the obligation solely of the hospital authority and shall not be the obligation of the county or the state.

(*l*) (1) Notwithstanding any other provision of this section, any transfer of the administration, management, or assets of the medical center, whether or not accompanied by a change in licensing, shall not relieve the county of the ultimate responsibility for indigent care pursuant to Section 17000 of the Welfare and Institutions Code or any obligation pursuant to Section 1442.5 of this code.

(2) Any contract executed by and between the county and the hospital authority shall provide for the indemnification of the county by the hospital authority for liabilities as specifically set forth in the contract, except that the contract shall include a provision that the county shall remain liable for its own negligent acts.

(3) Indemnification by the hospital authority shall not be construed as divesting the county from its ultimate responsibility for compliance with Section 17000 of the Welfare and Institutions Code.

(m) Notwithstanding the provisions of this section relating to the obligations and liabilities of the hospital authority, a transfer of control or ownership of the medical center shall confer onto the hospital authority all the rights and duties set forth in state law with respect to hospitals owned or operated by a county.

(n) (1) A transfer of the maintenance, operation, and management or ownership of the medical center to the hospital authority shall comply with the provisions of Section 14000.2 of the Welfare and Institutions Code.

(2) A transfer of maintenance, operation, and management or ownership to the hospital authority may be made with or without the payment of a purchase price by the hospital authority and otherwise upon the terms and conditions that the parties may mutually agree, which terms and conditions shall include those found necessary by the board of supervisors to ensure that the transfer will constitute an ongoing material benefit to the county and its residents.

(3) A transfer of the maintenance, operation, and management to the hospital authority shall not be construed as empowering

the hospital authority to transfer any ownership interest of the county in the medical center except as otherwise approved by the board of supervisors.

(o) The board of supervisors shall retain control over the use of the medical center physical plant and facilities except as otherwise specifically provided for in lawful agreements entered into by the board of supervisors. Any lease agreement or other agreement between the county and the hospital authority shall provide that county premises shall not be sublet without the approval of the board of supervisors.

(p) The statutory authority of a board of supervisors to prescribe rules that authorize a county hospital to integrate its services with those of other hospitals into a system of community service that offers free choice of hospitals to those requiring hospital care, as set forth in Section 14000.2 of the Welfare and Institutions Code, shall apply to the hospital authority upon a transfer of maintenance, operation, and management or ownership of the medical center by the county to the hospital authority.

(q) The hospital authority shall have the power to acquire and possess real or personal property and may dispose of real or personal property other than that owned by the county, as may be necessary for the performance of its functions. The hospital authority shall have the power to sue or be sued, to employ personnel, and to contract for services required to meet its obligations.

(r) Any agreement between the county and the hospital authority shall provide that all existing services provided by the medical center *shall* continue to be provided to the county through the medical center subject to the policy of the county and consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code.

(s) A hospital authority to which the maintenance, operation, and management or ownership of the medical center is transferred shall be a "district" within the meaning set forth in the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). Employees of a hospital authority are eligible to participate in the County Employees Retirement System to the extent permitted by law.

(t) Members of the governing board of the hospital authority shall not be vicariously liable for injuries caused by the act or omission of the hospital authority to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(u) The hospital authority shall be a public agency subject to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(v) Any transfer of functions from county employee classifications to a hospital authority established pursuant to this section shall result in the recognition by the hospital authority of the employee organization that represented the classifications performing those functions at the time of the transfer.

(w) (1) In exercising its powers to employ personnel, as set forth in subdivision (p), the hospital authority shall implement, and the board of supervisors shall adopt, a personnel transition plan. The personnel transition plan shall require all of the following:

(A) Ongoing communications to employees and recognized employee organizations regarding the impact of the transition on existing medical center employees and employee classifications.

(B) Meeting and conferring on all of the following issues:

(i) The timeframe for which the transfer of personnel shall occur. The timeframe shall be subject to modification by the board of supervisors as appropriate, but in no event shall it exceed one year from the effective date of transfer of governance from the board of supervisors to the hospital authority.

(ii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be appointed to vacant positions with the Alameda County Health Care Services Agency for which they have tenure.

(iii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be considered for reinstatement into positions with the county for which they are qualified and eligible.

(iv) Compensation for vacation leave and compensatory leave accrued while employed with the county in a manner that grants affected employees the option of either transferring balances or receiving compensation to the degree permitted employees laid off from service with the county.

(v) A transfer of sick leave accrued while employed with the county to hospital authority employment.

(vi) The recognition by the hospital authority of service with the county in determining the rate at which vacation accrues.

(vii) The possible preservation of seniority, pensions, health benefits, and other applicable accrued benefits of employees of the county impacted by the transfer of governance.

(2) Nothing in this subdivision shall be construed as prohibiting the hospital authority from determining the number of employees, the number of full-time equivalent positions, the job descriptions, and the nature and extent of classified employment positions.

(3) Employees of the hospital authority are public employees for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code relating to claims and actions against public entities and public employees.

(x) Any hospital authority created pursuant to this section shall be bound by the terms of the memorandum of understanding executed by and between the county and health care and management employee organizations that is in effect as of the date this legislation becomes operative in the county. Upon the expiration of the memorandum of understanding, the hospital authority shall have sole authority to negotiate subsequent memorandums of understanding with appropriate employee organizations. Subsequent memorandums of understanding shall be approved by the hospital authority.

(y) The hospital authority created pursuant to this section may borrow from the county and the county may lend the hospital authority funds or issue revenue anticipation notes to obtain those funds necessary to operate the medical center and otherwise provide medical services.

(z) The hospital authority shall be subject to state and federal taxation laws that are applicable to counties generally.

(aa) The hospital authority, the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the community at the medical center.

(bb) The hospital authority shall not be a "person" subject to suit under the Cartwright Act (Chapter 2 (commencing with

Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

(cc) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, no member of the hospital authority administrative staff shall be considered to be engaged in activities inconsistent and incompatible with his or her duties as a result of employment or affiliation with the county.

(dd) (1) The hospital authority may use a computerized management information system in connection with the administration of the medical center.

(2) Information maintained in the management information system or in other filing and records maintenance systems that is confidential and protected by law shall not be disclosed except as provided by law.

(3) The records of the hospital authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to trade secrets or to payment rates or the determination thereof, or which relate to contract negotiations with providers of health care, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in-camera review, which, at the discretion of the court, may include the parties to the proceeding, and shall not be made a part of the court file unless sealed.

(ee) (1) Notwithstanding any other law, the governing board may order that a meeting held solely for the purpose of discussion or taking action on hospital authority trade secrets, as defined in subdivision (d) of Section 3426.1 of the Civil Code, shall be held in closed session. The requirements of making a public report of actions taken in closed session and the vote or

abstention of every member present may be limited to a brief general description devoid of the information constituting the trade secret.

(2) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(ff) Open sessions of the hospital authority shall constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code. The privileges set forth in that section with respect to official proceedings shall apply to open sessions of the hospital authority.

(gg) The hospital authority shall be a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the hospital authority shall be tax deductible to the extent permitted by state and federal law. Nonproprietary income of the hospital authority shall be exempt from state income taxation.

(hh) Contracts by and between the hospital authority and the state and contracts by and between the hospital authority and providers of health care, goods, or services may be let on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ii) (1) Provisions of the Evidence Code, the Government Code, including the Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the hospital authority. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the hospital authority. If the hospital authority is required by law or contractual obligation to submit to the state or federal

government peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other law, Section 1461 shall apply to hearings on the reports of hospital medical audit or quality assurance committees.

(jj) The hospital authority shall carry general liability insurance to the extent sufficient to cover its activities.

(kk) In the event the board of supervisors determines that the hospital authority should no longer function for the purposes as set forth in this chapter, the board of supervisors may, by ordinance, terminate the activities of the hospital authority and expire the hospital authority as an entity.

(*ll*) A hospital authority which is created pursuant to this section but which does not obtain the administration, management, and control of the medical center or which has those duties and responsibilities revoked by the board of supervisors shall not be empowered with the powers enumerated in this section.

(mm) (1) The county shall establish baseline data reporting requirements for the medical center consistent with the Medically Indigent Health Care Reporting System (MICRS) program established pursuant to Section 16910 of the Welfare and Institutions Code and shall collect that data for at least one year prior to the final transfer of the medical center to the hospital authority established pursuant to this chapter. The baseline data shall include, but not be limited to, all of the following:

(A) Inpatient days by facility by quarter.

(B) Outpatient visits by facility by quarter.

(C) Emergency room visits by facility by quarter.

(D) Number of unduplicated users receiving services within the medical center.

(2) Upon transfer of the medical center, the county shall establish baseline data reporting requirements for each of the medical center inpatient facilities consistent with data reporting requirements of the Office of Statewide Health Planning and

Development, including, but not limited to, monthly average daily census by facility for all of the following:

(A) Acute care, excluding newborns.

(B) Newborns.

(C) Skilled nursing facility, in a distinct part.

(3) From the date of transfer of the medical center to the hospital authority, the hospital authority shall provide the county with quarterly reports specified in paragraphs (1) and (2) and any other data required by the county. The county, in consultation with health care consumer groups, shall develop other data requirements that shall include, at a minimum, reasonable measurements of the changes in medical care for the indigent population of Alameda County that result from the transfer of the administration, management, and control of the medical center from the county to the hospital authority.

(nn) A hospital authority established pursuant to this section shall comply with the requirements of Sections 53260 and 53261 of the Government Code.

SEC. 133. 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 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 57.2 degrees Celsius (135 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) All potentially hazardous food shall be held at or below 5 degrees Celsius (41 degrees Fahrenheit) or shall be kept at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times, except for the following:

(1) Unshucked live molluscan shellfish shall not be stored or displayed at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(2) Frozen potentially hazardous foods shall be stored and displayed in their frozen state unless being thawed in accordance with Section 114085.

(3) 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.

(4) Pasteurized milk and pasteurized milk products in original, sealed containers shall not be held at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(d) Potentially hazardous foods may be held at temperatures other than those specified in this section only under the following circumstances:

(1) While being heated or cooled.

(2) When the food facility operates pursuant to a HACCP plan adopted pursuant to Section 114055 or 114056.

(3) When time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, but only if all of the following conditions are met:

(A) The food shall be marked or otherwise identified to indicate the time that is four hours after the time when the food is removed from temperature control.

(B) The food shall be cooked and served, served if ready-to-eat, or discarded~~,~~ within four hours after the time when the food is removed from temperature control.

(C) Food in unmarked containers or packages, or marked to exceed a four-hour time limit shall be discarded.

(D) Written procedures that ensure compliance with this paragraph and with Section 114002 for food that is prepared, cooked, and refrigerated before time is used as a public health control shall be maintained in the food facility and made available to the enforcement agency upon request.

(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. 134. Section 118275 of the Health and Safety Code is amended to read:

118275. To containerize or store medical waste, a person shall do all of the following:

(a) Medical waste shall be contained separately from other waste at the point of origin in the producing facility. Sharps containers may be placed in biohazard bags or in containers with biohazard bags.

(b) Biohazardous waste, except biohazardous waste as defined in subdivision (g) of Section 117635, shall be placed in a red biohazard bag conspicuously labeled with the words "Biohazardous Waste" or with the international biohazard symbol and the word "BIOHAZARD."

(c) Sharps waste shall be contained in a sharps container pursuant to Section 118285.

(d) (1) Biohazardous waste, which meets the conditions of subdivision (f) of Section 117635 because it is contaminated through contact with, or having previously contained, chemotherapeutic agents, shall be segregated for storage, and, when placed in a secondary container, that container shall be labeled with the words "Chemotherapy Waste," "CHEMO," or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(2) Biohazardous waste, which meets the conditions of subdivision (f) of Section 117635 because it is comprised of human surgery specimens or tissues which have been fixed in formaldehyde or other fixatives, shall be segregated for storage and, when placed in a secondary container, that container shall be labeled with the words "Pathology Waste," "PATH," or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(e) Sharps waste, which meets the conditions of subdivision (f) of Section 117635, shall be placed in sharps containers labeled in

accordance with the industry standard with the words "Chemotherapy Waste," ~~"Chemo,"~~ *"CHEMO,"* or other label approved by the department, and segregated to ensure treatment of the sharps waste pursuant to Section 118222.

(f) Biohazardous waste, which are recognizable human anatomical parts, as specified in Section 118220, shall be segregated for storage and, when placed in a secondary container for treatment as pathology waste, that container shall be labeled with the words "Pathology Waste," "PATH," or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(g) Biohazardous waste, which meets the conditions specified in subdivision (g) of Section 117635, shall be segregated for storage and, when placed in a container or secondary container, that container shall be labeled with the words "INCINERATION ONLY" or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(h) A person may consolidate into a common container all of the wastes in this section provided that the consolidated waste is treated by an extremely high heat technology approved pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 118215. The container shall be labeled with the biohazardous waste symbol and the words "HIGH HEAT ONLY" or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to this subdivision.

SEC. 135. Section 120440 of the Health and Safety Code is amended to read:

120440. (a) For the purposes of this chapter, the following definitions shall apply:

(1) "Health care provider" means any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or a clinic or health facility licensed pursuant to Division 2 (commencing with Section 1200).

(2) "Schools, child care facilities, and family child care homes" means those institutions referred to in subdivision (b) of

Section 120335, regardless of whether they directly provide immunizations to patients or clients.

(3) "WIC service provider" means any public or private nonprofit agency contracting with the department to provide services under the California Special Supplemental Food Program for Women, Infants, and Children, as provided for in Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106.

(4) "Health care plan" means a health care service plan as defined in subdivision (f) of Section 1345, a government-funded program the purpose of which is paying the costs of health care, or an insurer as described in Sections 10123.5 and 10123.55 of the Insurance Code, regardless of whether the plan directly provides immunizations to patients or clients.

(5) "County welfare department" means a county welfare agency administering the California Work Opportunity and Responsibility to Kids (CalWORKs) program, pursuant to Chapter 2 (commencing with Section 11200.5) of Part 3 of Division 9 of the Welfare and Institutions Code.

(6) "Foster care agency" means any of the county and state social services agencies providing foster care services in California.

(b) (1) Local health officers may operate immunization information systems pursuant to their authority under Section 120175, in conjunction with the Immunization Branch of the State Department of Health Services. Local health officers and the State Department of Health Services may operate these systems in either or both of the following manners:

(A) Separately within their individual jurisdictions.

(B) Jointly among more than one jurisdiction.

(2) Nothing in this subdivision shall preclude local health officers from sharing the information set forth in paragraphs (1) to (9), inclusive, of subdivision (c) with other health officers jointly operating the system.

(c) Notwithstanding Sections 49075 and 49076 of the Education Code, Chapter 5 (commencing with Section 10850) of Part 2 of Division 9 of the Welfare and Institutions Code, or any other provision of law, unless a refusal to permit recordsharing is made pursuant to subdivision (e), health care providers, and other agencies, including, but not limited to, schools, child care

facilities, service providers for the California Special Supplemental Food Program for Women, Infants, and Children (WIC), health care plans, foster care agencies, and county welfare departments, may disclose the information set forth in paragraphs (1) to (9), inclusive, from the patient's medical record, or the client's record, to local health departments operating countywide or regional immunization information and reminder systems and the State Department of Health Services. Local health departments and the State Department of Health Services may disclose the information set forth in paragraphs (1) to (9), inclusive, to each other, and upon a request for information pertaining to a specific person, to health care providers taking care of the patient. Local health departments and the State Department of Health Services may disclose the information in paragraphs (1) to (6), inclusive, and paragraphs (8) and (9), to schools, child care facilities, county welfare departments, and family child care homes to which the person is being admitted or in attendance, foster care agencies in assessing and providing medical care for children in foster care, and WIC service providers providing services to the person, health care plans arranging for immunization services for the patient, and county welfare departments assessing immunization histories of dependents of CalWORKs participants, upon request for information pertaining to a specific person. Determination of benefits based upon immunization of a dependent CalWORKs participant shall be made pursuant to Section 11265.8 of the Welfare and Institutions Code. The following information shall be subject to this subdivision:

(1) The name of the patient or client and names of the parents or guardians of the patient or client.

(2) Date of birth of the patient or client.

(3) Types and dates of immunizations received by the patient or client.

(4) Manufacturer and lot number for each immunization received.

(5) Adverse reaction to immunizations received.

(6) Other nonmedical information necessary to establish the patient's or client's unique identity and record.

(7) Current address and telephone number of the patient or client and the parents or guardians of the patient or client.

(8) Patient's or client's gender.

(9) Patient's or client's place of birth.

(d) (1) Health care providers, local health departments, and the State Department of Health Services shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other medical record information with patient identification that they possess. These providers, departments, and contracting agencies are subject to civil action and criminal penalties for the wrongful disclosure of the information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for the following purposes:

(A) To provide immunization services to the patient or client, including issuing reminder notifications to patients or clients or their parents or guardians when immunizations are due.

(B) To provide or facilitate provision of third-party payer payments for immunizations.

(C) To compile and disseminate statistical information of immunization status on groups of patients or clients or populations in California, without identifying information for these patients or clients included in these groups or populations.

(D) In the case of health care providers only, as authorized by Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(2) Schools, child care facilities, family child care homes, WIC service providers, foster care agencies, county welfare departments, and health care plans shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other client, patient, and pupil information that they possess. These institutions and providers are subject to civil action and criminal penalties for the wrongful disclosure of the information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for those purposes provided in subparagraphs (A) to (D), inclusive, of paragraph (1) and as follows:

(A) In the case of schools, child care facilities, family child care homes, and county welfare departments, to carry out their responsibilities regarding required immunization for attendance or participation benefits, or both, as described in Chapter 1

(commencing with Section 120325), and in Section 11265.8 of the Welfare and Institutions Code.

(B) In the case of WIC service providers, to perform immunization status assessments of clients and to refer those clients found to be due or overdue for immunizations to health care providers.

(C) In the case of health care plans, to facilitate payments to health care providers, to assess the immunization status of their clients, and to tabulate statistical information on the immunization status of groups of patients, without including patient-identifying information in these tabulations.

(D) In the case of foster care agencies, to perform immunization status assessments of foster children and to assist those foster children found to be due or overdue for immunization in obtaining immunizations from health care providers.

(e) A patient or a patient's parent or guardian may refuse to permit recordsharing. The health care provider administering immunization and any other agency possessing any patient or client information listed in subdivision (c), if planning to provide patient or client information to an immunization system, as described in subdivision (b), shall inform the patient or client, or the parent or guardian of the patient or client, of the following:

(1) The information listed in subdivision (c) may be shared with local health departments, and the State Department of Health Services. The health care provider or other agency shall provide the name and address of the State Department of Health Services and of the immunization registry with which the provider or other agency will share the information.

(2) Any of the information shared with local health departments and the State Department of Health Services shall be treated as confidential medical information and shall be used only to share with each other, and, upon request, with health care providers, schools, child care facilities, family child care homes, WIC service providers, county welfare departments, foster care agencies, and health care plans. These providers, agencies, and institutions shall, in turn, treat the shared information as confidential, and shall use it only as described in subdivision (d).

(3) The patient or client, or parent or guardian of the patient or client, has the right to examine any immunization-related information shared in this manner and to correct any errors in it.

(4) The patient or client, or the parent or guardian of the patient or client, may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both.

(f) (1) The health care provider administering the immunization and any other agency possessing any patient or client information listed in subdivision (c)~~,~~ may inform the patient or client, or the parent or guardian of the patient or client, by ordinary mail, of the information in paragraphs (1) to (4), inclusive, of subdivision (e). The mailing must include a reasonable means for refusal, such as a return form or contact telephone number.

(2) The information in paragraphs (1) to (4)*, inclusive,* of subdivision (e) may also be presented to the parent or guardian of the patient or client during any hospitalization of the patient or client.

(g) If the patient or client, or parent or guardian of the patient or client, refuses to allow the information to be shared, pursuant to paragraph (4) of subdivision (e), the health care provider or other agency may not share this information in the manner described in subdivision (c), except as provided in subparagraph (D) of paragraph (1) of subdivision (d).

(h) Upon request of the patient or client, or the parent or guardian of the patient or client, in writing or by other means acceptable to the recipient, a local health department or the State Department of Health Services that has received information about a person pursuant to subdivision (c) shall do all of the following:

(1) Provide the name and address of other persons or agencies with whom the recipient has shared the information.

(2) Stop sharing the information in its possession after the date of the receipt of the request.

(i) Upon notification, in writing or by other means acceptable to the recipient, of an error in the information, a local health department or the State Department of Health Services that has information about a person pursuant to subdivision (c) shall correct the error. If the recipient is aware of a disagreement about

whether an error exists, information to that effect may be included.

(j) (1) Any party authorized to make medical decisions for a patient or client, including, but not limited to, those authorized by Section 6922, 6926, or 6927 of, *or* Part 1.5 (commencing with Section 6550), Chapter 2 (commencing with Section 6910) of Part 4, or Chapter 1 (commencing with Section 7000) of Part 6~~,~~ of Division 11 of, the Family Code, Section 1530.6 of the Health and Safety Code, or Sections 727 and 1755.3 of, and Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code, may permit sharing of the patient's or client's record with any of the immunization information systems authorized by this section.

(2) For a patient or client who is a dependent of a juvenile court, the court or a person or agency designated by the court may permit this recordsharing.

(3) For a patient or client receiving foster care, a person or persons licensed to provide residential foster care, or having legal custody, may permit this recordsharing.

(k) For purposes of supporting immunization information systems, the State Department of Health Services shall assist its Immunization Branch in both of the following:

(1) ~~The provision of~~ *Providing* department records containing information about publicly funded immunizations.

(2) Supporting efforts for the reporting of publicly funded immunizations into immunization information systems by health care providers and health care plans.

(*l*) Section 120330 shall not apply to this section.

SEC. 136. The heading of Article 45 (commencing with Section 123620) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code is amended and renumbered to read:

Article ~~45.~~ *4.5.* Fetal Ultrasound

SEC. 137. Section 125001 of the Health and Safety Code is amended to read:

125001. (a) The department shall establish a program for the development, provision, and evaluation of genetic disease testing, and may provide laboratory testing facilities or make grants to, contract with, or make payments to, any laboratory that

it deems qualified and cost-effective to conduct testing or with any metabolic specialty clinic to provide necessary treatment with qualified specialists. The program shall provide genetic screening and followup services for persons who have the screening.

(b) The department shall expand statewide screening of newborns to include tandem mass spectrometry screening for fatty acid oxidation, amino acid, and organic acid disorders and congenital adrenal hyperplasia as soon as possible. The department shall provide information with respect to these disorders and *available* testing resources ~~available,~~ to all women receiving prenatal care and to all women admitted to a hospital for delivery. If the department is unable to provide this statewide screening by August 1, 2005, the department shall temporarily obtain these testing services through a competitive bid process from one or more public or private laboratories that meet the department's requirements for testing, quality assurance, and reporting. If the department determines that contracting for these services is more cost-effective, and meets the other requirements of this chapter, than purchasing the tandem mass spectrometry equipment themselves, the department shall contract with one or more public or private laboratories.

(c) The department shall report to the Legislature regarding the progress of the program on or before July 1, 2006. The report shall include the costs for screening, followup, and treatment as compared to costs and morbidity averted for each condition tested for in the program.

SEC. 138. Section 1215.2 of the Insurance Code is amended to read:

1215.2. (a) No person shall make a tender offer for, or a request or invitation for tenders of, or enter into an agreement to exchange securities for or acquire in the open market, any voting security, or any security convertible into a voting security, of a domestic insurer or of any other person controlling a domestic insurer, if the other person is not substantially engaged either directly or through its affiliates in any businesses other than that of insurance, if, as a result of the consummation thereof, the person would, directly or indirectly, acquire control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer, unless,

at the time copies of the offer ~~or~~, purchase ~~or~~, request, or invitation are first published ~~or~~, sent, or given to security holders or the agreement or transaction is entered into, as the case may be, the person has filed with the commissioner, and has sent to the insurer, a statement containing the following information, and any additional information~~,~~ as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders or shareholders:

(1) The background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger, or other acquisition of control are to be effected.

(2) The source and amount of the funds or other consideration used or to be used in making the purchases or in effecting the exchange, merger, or other acquisition of control, and, if any part of the funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the purchases or effecting the exchange, merger, or other acquisition of control, a description of the transaction and the names of the parties thereto. However, where a source of funds is a loan made in the lender's ordinary course of business, if the person filing the statement so requests, the name of the lender shall not be made available to the public.

(3) Any plans or proposals which those persons may have to liquidate the insurer, to sell its assets or merge it with any person, or to make any other major change in its business or corporate structure or management.

(4) The amount of each class of voting securities or securities which may be converted into voting securities of the insurer or the controlling person which are beneficially owned, and the amount of each class of voting securities or securities which may be converted into voting securities of the insurer or the controlling person concerning which there is a right to acquire beneficial ownership, by each person and by each affiliate of each person, together with the name and address of each affiliate.

(5) Information as to any contracts, arrangements, or understandings with any person with respect to any securities of the insurer or the controlling person, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits,

or the giving or withholding of proxies, naming the persons with whom the contracts, arrangements, or understandings have been entered into, and giving the details thereof.

All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of the voting securities of the insurer or the controlling person made by or on behalf of the person, and a copy of the agreement to exchange or otherwise acquire securities or to merge with or otherwise to acquire control of the insurer, shall be filed with the commissioner and sent to the insurer as a part of the statement and shall contain the information contained in the statement as the commissioner may by rule or regulation prescribe. Copies of any additional material soliciting or requesting the tender offers subsequent to the initial solicitation or request, and copies of any amendment to the agreement, shall contain the information as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders or shareholders, and shall be filed with the commissioner and sent to the insurer not later than the time copies of the material are first published or sent or given to security holders or the amendment is entered into.

(b) If the person required to file the statement referred to in subdivision (a)~~ of this section~~ is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (1) to (5), inclusive, of subdivision (a) shall be given with respect to: (1) each partner of the partnership or limited partnership, (2) each member of the syndicate or group, and (3) each person who controls the partner or member. If a person referred to in paragraph (1), (2), or (3) of this subdivision is a corporation or the person required to file the statement referred to in subdivision (a) is a corporation, the commissioner may require that the information called for by paragraphs (1) to (5), inclusive, of subdivision (a) shall be given with respect to the corporation and each officer and director of the corporation and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

(c) If any tender offer, request, or invitation for tenders, or agreement to exchange or otherwise acquire securities or to merge or otherwise acquire control referred to in subdivision (a)

~~of this section~~, is proposed to be made by means of a registration statement under the federal Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the federal Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subdivision (a) may file that registration statement with the commissioner as full satisfaction of the requirement in subdivision (a).

(d) The purchases, exchanges, mergers, or other acquisitions of control referred to in subdivision (a)~~ of this section~~ may not be made until the commissioner approves the purchases, exchanges, mergers, or other acquisitions of control. The commissioner shall approve or disapprove the transaction within 60 days after the statement required by subdivision (a) has been filed with the commissioner. The commissioner may disapprove the transaction if the commissioner finds any of the following:

(1) After the change of control the domestic insurer referred to in subdivision (a) could not satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(2) The purchases, exchanges, mergers, or other acquisitions of control would substantially lessen competition in insurance in this state or create a monopoly therein.

(3) The financial condition of an acquiring person might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders.

(4) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets, or to merge it with any person, or to make any other major change in its business or corporate structure or management, are not fair and reasonable to policyholders.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders, or the public to permit them to do so.

(e) The commissioner shall require the payment of two thousand three hundred sixty dollars ($2,360) as a fee for filing an application under this section, the amount to accompany the application.

(f) ~~The provisions of this~~ *This* section shall not apply to any offer for or request or invitation for tenders of any voting securities, or any agreement to exchange securities for or otherwise acquire control, if the insurer whose shares are to be acquired remains a direct or indirect subsidiary of the same ultimate controlling company person within the insurer's insurance holding company system, neither the acquiring person nor any affiliate acquires or incurs any debt, guarantee, or other liability related to the transaction, and no shares are purchased by or sold to a person who is not an affiliated person in that insurance holding company system, or if, and to the extent that, the commissioner, by rule or regulation or by order, exempts the offer, request, invitation, or agreement from the provisions of this section as not comprehended within the purposes thereof.

SEC. 139. 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 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, 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. An employee is successful if the court awards an amount greater than zero.

(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 has the same force and effect as, and 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) (1) 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.

(2) 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, 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, is entitled to court costs and reasonable attorney's fees for enforcing the judgment that is rendered pursuant to this section.

SEC. 140. Section 98.6 of the Labor Code is amended to read:

98.6. (a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in any such proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by ~~such~~ *those* acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for ~~such~~ rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in ~~paragraphs~~ *subparagraphs* (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the

employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

SEC. 141. Section 2699.5 of the Labor Code is amended to read:

2699.5. The provisions of subdivision (a) of Section 2699.3 shall apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Section 98.6, 201, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, *or* 212, subdivision (d) of Section 213, *Section* 221, 222, 222.5, 223, *or* 224, subdivision (a) of Section 226, *Section* 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, *or* 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, *Section* 233, 234, 351, 353, *or* 403, subdivision (b) of Section 404, *Section* 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, *or* 1153, subdivision (c) or (d) of Section 1174, *Section* 1194, 1197, 1197.1, 1197.5, *or* 1198, subdivision (b) of Section 1198.3, *Section* 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, *or* 1695, subdivision (a) of Section 1695.5, *Section* 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, *or* 1700.47, paragraph (1), (2), or (3) of subdivision (a) of or subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, *Section* 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, *or*

2673, subdivision (a) of Section 2673.1, *Section* 2695.2, 2800, 2801, 2802, 2806, *or* 2810, subdivision (b) of Section 2929, *or Section* 3095, 6310, 6311, or 6399.7.

SEC. 142. 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 Spanish and, to the extent practicable, other 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, prior to the deadline for individuals to become certified, 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 the deadline for certification, 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 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 the deadline for certification.

SEC. 143. Section 3600.1 of the Labor Code is amended to read:

3600.1. (a) Whenever any firefighter of the state, as defined in Section 19886 of the Government Code, is injured, dies, or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire-suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, he or she or his or her dependents, as the case may be, shall be accorded by his or her employer all of the same benefits of this division that he, she, or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of*,* and been sustained in*,* the course of employment for purposes of workers' compensation and all other benefits.

(b) Nothing in this section shall be deemed to *do either of the following*:

(1) Require the extension of any benefits to a firefighter who*,* at the time of his or her injury, death, or disability*,* is acting for compensation from one other than the state.

(2) Require the extension of any benefits to a firefighter employed by the state where by departmental regulation, whether now in force or hereafter enacted or promulgated, the activity giving rise to the injury, disability, or death~~,~~ is expressly prohibited.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 144. Section 4658.5 of the Labor Code is amended to read:

4658.5. (a) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at ~~state approved~~ *state-approved* or accredited schools, as ~~follow~~ *follows*:

(1) Up to four thousand dollars ($4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars ($6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars ($8,000) for permanent partial disability awards between 26 and 49 percent.

(4) Up to ten thousand dollars ($10,000) for permanent partial disability awards between 50 and 99 percent.

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and any other matters necessary to the proper administration of the supplemental job displacement benefit.

(c) Within 10 days of the last payment of temporary disability, the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information

that provides notice of rights under this section. This notice shall be sent by certified mail.

(d) This section shall apply to injuries occurring on or after January 1, 2004.

SEC. 145. 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 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~~ *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~~ *California State Military Museum and Resource Center* in coordination with the *California State Military Reserve's* California Center for Military History ~~of the California State Military Reserve~~. The foundation shall develop, administer, interpret, and manage museum historical programs and related public services, and acquire and manage funding for museum programs and services.

(c) Volunteers, docents, members of the *California* 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.

(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) (1) The Adjutant General or the California State Military Museum *Foundation* may solicit, receive, and administer donations of funds or property for the support and improvement of the museum. Any grants or donations received may be expended or used for museum purposes.

(2) 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.

(3) Property determined by the California State Military Museum *Foundation* to be in excess of the needs of the museum 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. This paragraph does not apply to property held in trust for the Controller pursuant to Section 1563 of the Code of Civil Procedure.

(g) The Adjutant General or the California State Military Museum *Foundation* may solicit and receive firearms and other

weaponry confiscated by or otherwise in the possession of law enforcement officers as donations to the museum 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 *Foundation*, 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.

(i) (1) The California State Military Museum *Foundation* may enter into agreements with other military museums in California, including, but not limited to, the Legion of Valor Museum, to loan property that is not real property and that is under the direct control of the ~~California State Military Museum~~ *foundation*.

(2) The California State Military Museum may enter into agreements with other military museums in California to loan property held in trust for the Controller pursuant to Section 1563 of the Code of Civil Procedure.

SEC. 146. Section 972.1 of the Military and Veterans Code, as amended by Section 2 of Chapter 138 of the Statutes of 2004, is amended to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for purposes of funding the activities of county veteran service officers pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties that have established and maintain a county veteran service officer in accordance with the staffing level and workload of each county veteran service officer under a formula based upon performance that shall be developed by the Department of Veterans Affairs for these purposes, and that shall allocate county funds in any fiscal year for county ~~veterans~~ *veteran* service officers in an amount not less than the amount allocated in the 1988–89 fiscal year.

(c) The department shall annually determine the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county

veteran service officers. The department shall on or before January 1, prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature. The Department of Finance shall review the department's determination in time to use the information in the annual Budget Act for the budget of the department for the next fiscal year.

(d) (1) The Legislature finds and declares that 50 percent of the amount annually budgeted for county veteran service officers is approximately five million dollars ($5,000,000). The Legislature further finds and declares that it is an efficient and reasonable use of state funds to increase the annual budget for county veteran service officers in an amount not to exceed five million dollars ($5,000,000) if it is justified by the monetary benefits to the state's veterans attributable to the effort of these officers.

(2) It is the intent of the Legislature, after reviewing the department's determination in subdivision (c), to consider an increase in the annual budget for county veteran service officers in an amount not to exceed five million dollars ($5,000,000), if the monetary benefits to the state's veterans attributable to the assistance of county veteran service officers justify that increase in the budget.

(e) This section shall become operative January 1, 2011.

SEC. 147. Section 985 of the Military and Veterans Code is amended to read:

985. As used in this article:

(a) "Farm" means a tract of land, which, in the opinion of the department, is capable of producing sufficiently to provide a living for the purchaser and the purchaser's dependents.

(b) "Home" means any of the following:

~~(A)~~

(1) A parcel of real estate upon which there is a dwelling house ~~and~~ *or* other buildings that will, in the opinion of the department, suit the needs of the purchaser and the purchaser's dependents as a place of abode.

~~(B)~~

(2) Condominium, as defined in subdivision (h).

~~(C)~~

(3) Mobilehome, as defined in subdivision (k).

~~(D)~~

(4) Cooperative housing, as defined in subdivision (m).

(c) "Purchaser" means a veteran or any person who has entered into a contract of purchase of a farm or home from the department.

(d) "Purchase price" means the price which the department pays for any farm or home.

(e) "Selling price" means the price for which the department sells any farm or home.

(f) "Initial payment" means the first payment to be made by a purchaser to the department for a farm or home.

(g) "Progress payment plan" means payment by the department for improvements on real property in installments as work progresses.

(h) "Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential building on the real property, such as an apartment, which, in the opinion of the department, suits the needs of the purchaser and the purchaser's dependents as a place of abode. A condominium may include, in addition, a separate interest in other portions of the real property.

(i) "Effective rate of interest" means the average interest rate of the interest on the unpaid balance due on a participation contract to which the interest of the department is subject and the interest rate on the unpaid balance of the purchase price, as determined by the department.

(j) "Participation contract" means an obligation secured by a deed of trust or mortgage, or other security interest established pursuant to regulations of the department.

(k) "Mobilehome" means either a parcel of real estate, or an undivided interest in common in a portion of a parcel of real property, on which is situated a mobilehome that will, in the opinion of the department, suit the needs of the purchaser and the purchaser's dependents as a place of abode and meets all requirements of local governmental jurisdictions.

(*l*) "Immediate family" means the spouse of a purchaser, the natural or adopted dependent children of the purchaser, and the parents of the purchaser if they are dependent on the purchaser for 50 percent or more of their support.

(m) "Cooperative housing corporation" means a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

SEC. 148. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, *or* 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, *or* subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, ~~or~~ 530.5, 537e, 593d, 593e, or 646.9, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating or conspiring to commit a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, *or* 484g, or subdivision (a), (b), or (d) of Section 484e, ~~subdivision (d) of Section 484e,~~ subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, *or* subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "value" of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should

have known that the property was being used in violation of, or conspiracy to commit a violation of, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, *or* 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, *or* subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed

statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, *or* 480, or subdivision (b) *or (d)* of Section 484e, ~~subdivision (d) of Section 484e,~~ subdivision (a) of Section 484f, subdivision (b) of Section 484i, *or* subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

SEC. 149. Section 679.05 of the Penal Code is amended to read:

679.05. (a) A victim of domestic violence or abuse, as defined in ~~Sections~~ *Section* 6203 or 6211 of the Family Code, or Section 13700 of ~~the Penal Code~~ *this code*, has the right to have a domestic violence counselor and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "domestic violence counselor" is defined in Section 1037.1 of the Evidence Code.

(b) (1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a domestic violence incident, a victim of domestic violence or abuse, as defined in ~~Sections~~ *Section* 6203 or 6211 of the Family Code, or Section 13700 of this code, shall be notified orally or in writing by the attending

law enforcement authority or district attorney that the victim has the right to have a domestic violence counselor and a support person of the victim's choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have a domestic violence counselor and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

SEC. 150. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) Every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 12021.1 of this code or Section 13555 of the Vehicle Code. The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make an application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that in any subsequent prosecution of the defendant for any other offense, the prior

conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

This subdivision applies to convictions which occurred before as well as those occurring after, the effective date of this section.

(b) Subdivision (a) does not apply to any misdemeanor falling within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(c) A person who petitions for a dismissal of a charge under this section may be required to reimburse the county and the court for the cost of services rendered at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed sixty dollars ($60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars ($60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision ~~(f)~~ *(g)* of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) Any determination of amount made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

SEC. 151. Section 11055 of the Penal Code is amended to read:

11055. (a) There is within the Department of Justice the Foreign Prosecution and Law Enforcement Unit designated with the responsibility for assisting local law enforcement agencies with foreign prosecutions, child abduction recoveries and returns under the Hague Convention on the Civil Aspects of International Child Abduction, and law enforcement investigative matters. The unit is also responsible for assisting local law enforcement in obtaining information from foreign officials on foreign prosecution matters.

(b) The Foreign Prosecution and Law Enforcement Unit shall do all of the following:

(1) For those countries having extraterritorial jurisdiction allowing for the prosecution of their citizens for crimes

committed in California, the unit shall, upon request, provide informational assistance to local law enforcement on foreign prosecution protocols and provide technical assistance in preparing investigative materials for forwarding and filing in international ~~jurisdiction~~ *jurisdictions*. The unit shall provide information and assistance on the scope and uses of foreign prosecution to California prosecutors and law enforcement agencies. The unit shall be responsible for tracking foreign prosecution cases presented by California law enforcement agencies. The unit shall collect information on a statewide basis regarding foreign prosecution cases for the primary purpose of analyzing the information it collects and disseminating its conclusions to local law enforcement agencies. Local law enforcement agencies shall retain the authority to prepare and present foreign prosecution cases without the assistance of the unit.

(2) The unit shall assist district attorneys in recovering children from Mexico, and, where appropriate, other countries either in court-ordered returns pursuant to the Hague Convention or voluntary returns.

(3) The unit shall, upon request, assist local law enforcement agencies and foreign law enforcement in formal requests under the Mutual Legal Assistance Treaty. The unit shall, upon request, also assist California law enforcement agencies and foreign officials in informal requests for mutual legal assistance.

(4) The unit, under the direction of the Attorney General, shall provide information to local law enforcement on sensitive diplomatic issues.

SEC. 152. Section 12081 of the Penal Code is amended to read:

12081. (a) Any person who is at least 21 years of age may apply for an entertainment firearms permit from the Department of Justice that authorizes the permitholder to possess firearms loaned to him or her for use solely as a prop in a motion picture, television, video, theatrical, or other entertainment production or event. Upon receipt of an initial or renewal application submitted as specified in subdivision (b), the department shall examine its records, records the department is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, and records of the National

Instant Criminal Background Check System as described in subsection (t) of Section 922 of Title 18 of the United States Code, in order to determine if the applicant is prohibited from possessing or receiving firearms. The department shall issue an entertainment firearms permit only if the records indicate that the applicant is not prohibited from possessing or receiving firearms pursuant to any federal, state, or local law.

(b) (1) Requests for entertainment firearms permits shall be made on application forms prescribed by the Department of Justice that ~~requires~~ *require* applicant information, including*,* but not limited to*,* the following:

(A) Complete name.

(B) Residential and mailing address.

(C) Telephone number.

(D) Date of birth.

(E) Place of birth.

(F) Country of citizenship and, if other than United States, alien number or admission number.

(G) Valid driver's license number or valid identification card number issued by the California Department of Motor Vehicles.

(H) Social security number.

(I) Signature.

(2) All applications must be submitted with the appropriate fee as specified in subdivision (c).

(3) ~~Initial applications~~ *An initial application* for an entertainment firearms permit shall require the submission of fingerprint images and related information in a manner prescribed by the department, for the purpose of obtaining information as to the existence and nature of a record of state or federal level convictions and state or federal level arrests for which the department establishes that the individual was released on bail or on his or her own recognizance pending trial as needed to determine whether the applicant may be issued the permit. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded by the department to the Federal Bureau of Investigation.

(4) The Department of Justice shall review the criminal offender record information specified in subdivision (*l*) of Section 11105 for entertainment firearms permit applicants.

(5) The Department of Justice shall review subsequent arrests, pursuant to Section 11105.2, to determine the continuing validity of the permit as specified in subdivision (d) for all entertainment firearms permitholders.

(6) Any person who furnishes a fictitious name or address or knowingly furnishes any incorrect information or knowingly omits any information required to be provided on this application is guilty of a misdemeanor.

(c) The Department of Justice shall recover the full costs of administering the program by assessing the following application fees:

(1) For the initial application: one hundred four dollars ($104). Of this sum, fifty-six dollars ($56) shall be deposited into the Fingerprint Fee Account, and forty-eight dollars ($48) shall be deposited into the Dealer Record of Sale Account.

(2) For each annual renewal application: twenty-nine dollars ($29), which shall be deposited into the Dealer Record of Sale Account.

(d) The implementation of subdivisions (a), (b), and (c) by the department is exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) The department shall annually review and shall adjust the fees specified in subdivision (c), if necessary, to fully fund, but not to exceed the actual costs of, the permit program provided for by this section, including enforcement of the program.

(f) An entertainment firearms permit issued by the Department of Justice shall be valid for one year from the date of issuance. If at any time during that year the permitholder becomes prohibited from possessing or receiving firearms pursuant to any federal, state, or local law, his or her entertainment firearms permit shall be no longer valid.

SEC. 153. Section 12553 of the Penal Code is amended to read:

12553. *(a) (1)* Any person who changes, alters, removes, or obliterates any coloration or markings that are required for by any applicable state or federal law or regulation, for any imitation firearm, or device described in subdivision (c) of Section 12555, in any way that makes the imitation firearm or device look more like a firearm is guilty of a misdemeanor. ~~This~~

(2) This subdivision shall not apply to *a* manufacturer, importer, or distributor of imitation firearms or to the lawful use in theatrical productions, including motion pictures, television, and stage productions.

(b) Any manufacturer, importer, or distributor of imitation firearms that fails to comply with any applicable federal law or regulation governing the marking of a toy, look-alike or imitation firearm as defined by federal law or regulation is guilty of a misdemeanor.

SEC. 154. Section 6106.5 of the Public Contract Code is amended to read:

6106.5. (a) "State agency," as used in this section, means those departments defined in Section 10106 of the Public Contract Code.

(b) "Contractor," as used in this section, means ~~"Firm," "Architectural~~ *"firm," "architectural*, landscape architectural, engineering, environmental, and land surveying services," ~~"Construction~~ *"construction* project management," and ~~"Environmental~~ *"environmental* services" as defined in Section 4525 of the Government Code.

(c) State agencies shall include a provision in solicitations and in contracts, if the estimated amount to be retained exceeds ten thousand dollars ($10,000), and the retention continues for a period of 60 days beyond the completion of phased services, to permit, upon written request and the expense of the contractor, the payment of retentions earned directly to a ~~state~~ *state-* or federally chartered bank in this state, as the escrow agent. The contractor may direct the investment of the payments into securities, pursuant to ~~paragraph~~ *subdivision* (d), and the contractor shall receive the interest earned on the investments. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. State agencies, relative to contracts entered into prior to the enactment of this section, upon written request of the contractor, and subject to the approval of the state agency, may utilize the provisions of this section.

(d) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, interest-bearing demand deposit accounts, or any other

investment mutually agreed to by the contractor and the state agency.

(e) (1) Any contractor who elects to receive interest on moneys withheld in retention by a state agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a state agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than 5 percent of the contractor's total fee.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(f) An escrow agreement used pursuant to this section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS

This Escrow Agreement is made and entered into by and between

_____

whose address is _____

hereinafter called "owner," _____

whose address is _____

hereinafter called "contractor," and _____

whose address is _____

hereinafter called "escrow agent."

(1) Pursuant to Section 6106.5 of the Public Contract Code of the State of California, upon written request of the contractor, the

owner shall make payments of retention earnings required to be withheld by the owner pursuant to the professional consulting services agreement entered into between the owner and contractor for ____ in the amount of ____ dated ____ hereafter referred to as the "contract."

(2) When the owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities pursuant to Section 6106.5(d) of the Public Contract Code. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(3) The contractor shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account. These expenses and payment terms shall be determined by the contractor and escrow agent.

(4) The contractor shall have the right to withdraw all or any part of the principal or interest in the escrow account only by written notice to the escrow agent accompanied by written authorization from the owner to the escrow agent that the owner consents to the withdrawal of the amount sought to be withdrawn by contractor.

(5) The owner shall have a right to draw upon the escrow account in the event of default by the contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately distribute the cash as instructed by the owner.

(6) Upon receipt of written notification from the owner certifying that the contract is final and complete, and that the contractor has complied with all requirements and procedures applicable to the contract, the escrow agent shall release to the contractor all deposits and interest on deposits less escrow fees and charges of the escrow account. The escrow shall be closed immediately upon disbursement of all moneys on deposit and payments of fees and charges.

(7) The escrow agent shall rely on the written notifications from the owner and the contractor pursuant to Sections (1) to (6), inclusive, of this agreement and the owner and contractor shall

hold the escrow agent harmless from the escrow agent's release, conversion, and disbursement of the securities and interest as set forth above.

(8) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the owner and on behalf of the contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the owner:	On behalf of the contractor:
_____	_____
Title	Title
_____	_____
Name	Name
_____	_____
Address	Address
_____	_____

On behalf of the escrow agent:

_____

Title

_____

Name

_____

Signature

_____

Address

_____

At the time the escrow account is opened, the owner and contractor shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner	Contractor
_____	_____
Title	Title
_____	_____
Name	Name
_____	_____
Signature	Signature
_____	_____

SEC. 155. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents ~~or~~, employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice determine the contractor's compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited apparel, garments or corresponding accessories, equipment, materials, or supplies were laundered or provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty which shall be the greater of one thousand dollars ($1,000) or an amount equaling 20 percent of the value of the apparel, garments or corresponding accessories, equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with the requirements under paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency

and, as the head of the agency determines appropriate, to either the Director of Industrial Relations or the Department of Justice.

(e) (1) For purposes of this section, the term "forced labor" shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) "Abusive forms of child labor" means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

(B) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily, or under a contract, the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) "Exploitation of children in sweatshop labor" means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association.

(4) "Sweatshop labor" means all work or service extracted from or performed by any person in violation of more than one law of the country of manufacture governing wages, employee benefits, occupational health, occupational safety, nondiscrimination, or freedom of association.

(5) "Apparel, garments or corresponding accessories" includes, but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, "forced labor" and "convict labor" do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) "State agency" means any state agency in this state.

(f) (1) On or before February 1, 2004, the Department of Industrial Relations shall establish a contractor responsibility program, including a Sweatfree Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Sweatfree Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The Sweatfree Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Upon implementation in the manner described in paragraph (4), every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Sweatfree Code of Conduct that no apparel, garments or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor.

(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Sweatfree Code of Conduct. Sweatfree Code of Conduct procurement policies involving apparel, garments and corresponding accessories may be permitted a phasein period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phasein goals and timetables of up to three years in order to achieve compliance with the principles of the Sweatfree Code of Conduct.

(4) In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore

mechanisms employed by other governmental entities, including, but not limited to, New Jersey Executive Order 20~~,~~ of 2002, to ensure that businesses that contract with this state are in compliance with this section and any regulations or requirements promulgated in conformance with this section, as amended by the act adding this paragraph. The mechanisms explored may include, but not be limited to, authorization to contract with a competent nonprofit organization that is neither funded nor controlled, in whole or in part, by a corporation that is engaged in the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies. The Department of Industrial Relations, in complying with this paragraph, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Sweatfree Code of Conduct.

(5) To ensure public access and confidence, the Department of Industrial Relations shall ensure public awareness and access to proposed contracts by postings on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The appropriate agencies shall establish a mechanism for soliciting and reviewing any information indicating violations of the Sweatfree Code of Conduct by prospective or current bidders, contractors, or subcontractors. The agencies shall make their findings public when they reject allegations against bidding or contracting parties.

(6) Contractors shall ensure that their subcontractors comply in writing with the Sweatfree Code of Conduct, under penalty of perjury. Contractors shall attach a copy of the Sweatfree Code of Conduct to the certification required by subdivision (a).

(g) No state agency may enter into a contract with any contractor unless the contractor meets the following requirements:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards*,* as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For contractors whose locations for manufacture or assembly are outside the United States, those contractors shall ensure that their

subcontractors comply with the appropriate laws of countries where the facilities are located.

(2) Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes that are not regulated by the National Labor Relations Board.

(3) Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed. Whenever a state agency expends funds for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, the applicable labor standards established by the local jurisdiction through the exercise of either local police powers or local spending powers in which the labor, in compliance with the contract or purchase order for which the expenditure is made, is performed shall apply with regard to the contract or purchase order for which the expenditure is made, unless the applicable local standards are in conflict with, or are explicitly preempted by, state law. A state agency may not require, as a condition for the receipt of state funds or assistance, that a local jurisdiction refrain from applying the labor standards that are otherwise applicable to that local jurisdiction. The Department of Industrial Relations may, without incurring additional expenses, access information from any nonprofit organization, including, but not limited to, the World Bank, that gathers and disseminates data with respect to wages paid throughout the world, to allow the Department of Industrial Relations to determine whether contractors and subcontractors are compensating their employees at a level that enables those employees to live above the applicable poverty level.

(4) All contractors and subcontractors ~~must~~ *shall* comply with the overtime laws and regulations of the country in which their employees are working.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of

compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located. In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for the minimum age of employment, the age for completing education shall apply to this section.

(7) There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

(8) The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state, and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

(9) There may be no discrimination in hiring, salary, benefits, performance evaluation, discipline, promotion, retirement*,* or dismissal on the basis of age, sex, pregnancy, maternity leave status, marital status, race, nationality, country of origin, ethnic origin, disability, sexual orientation, gender identity, religion, or political opinion.

(10) No worker may be subjected to any physical, sexual, psychological, or verbal ~~harrassment~~ *harassment* or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.

(11) No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents, that endanger reproductive health.

(12) Contractors and bidders shall list the names and addresses of each subcontractor to be utilized in the performance of the contract, and list each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, which shall be maintained and updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

(h) Any person who certifies as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(i) The provisions of this section, as amended by ~~the act adding this subdivision~~ *Chapter 711 of the Statutes of 2003*, shall be in addition to any other provisions that authorize the prosecution and enforcement of local labor laws and may not be interpreted to prohibit a local prosecutor from bringing a criminal or civil action against an individual or business that violates the provisions of this section.

SEC. 156. Section 10411 of the Public Contract Code is amended to read:

10411. (a) No retired, dismissed, separated, or formerly employed person of any state agency or department employed under the state civil service or otherwise appointed to serve in state government may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the ~~decision-making~~ *decisionmaking* process relevant to the contract while employed in any capacity by any state agency or department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left state employment.

(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from state service, no person employed under state civil service or otherwise appointed to serve in state government may enter into a contract with any state agency, if he or she was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. The prohibition of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract for the continuation of an attorney's services on a matter *with which* he or she was involved ~~with~~ prior to leaving state service.

SEC. 157. Section 5018.1 of the Public Resources Code is amended to read:

5018.1. (a) Notwithstanding any other provision of law, the Department of Finance may delegate to the department the right to exercise the same authority granted to the Division of the State Architect and the Real Estate Services Division in the

Department of General Services, to plan, design, construct, and administer contracts and professional services for legislatively approved capital outlay projects.

(b) Any right afforded to the department pursuant to subdivision (a) to exercise project planning, design, construction, and administration of contracts and professional services may be revoked, in whole or in part, by the Department of Finance at any time prior to January 1, 2009.

(c) This ~~act~~ *section* shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 158. Section 14530.1 of the Public Resources Code is amended to read:

14530.1. There is hereby created within the department a recycling financial analysis and policy development unit, to develop, analyze, consolidate, and evaluate economic and policy proposals to carry out the objectives of this division, including, but not limited to, all of the following:

(a) Evaluate the solvency of the fund ~~and the account~~ on an ongoing basis in order to make recommendations and report to the Legislature.

(b) Identify the fiscal impacts of proposed recycling programs, or changes to existing recycling programs.

(c) Assess the economic impacts of recycling proposals and programs on the state's citizens and businesses, including the impact of adding new container types into existing law.

(d) Develop recommendations to better integrate the various recycling alternatives available from state government, local government, and private industry with the objective of reducing recycling costs to citizens and businesses and meeting the ~~80 percent~~ *80-percent* recycling goal established by this division.

SEC. 159. Section 14539 of the Public Resources Code is amended to read:

14539. (a) The department shall certify processors pursuant to this section. The director shall adopt, by regulation, requirements and standards for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(1) The processor demonstrates to the satisfaction of the department that the processor will operate in accordance with this division.

(2) If one or more certified entities have operated at the same location within the past five years, the operations at the location of the processor exhibit, to the satisfaction of the department, a pattern of operation in compliance with the requirements of this division and regulations adopted pursuant to this division.

(3) The processor notifies the department promptly of any material change in the nature of the processor's operations that conflicts with the information submitted in the operator's application for certification.

(b) A certified processor shall comply with all of the following requirements for operation:

(1) The processor shall not pay a refund value for, or receive a refund value from the department for, any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(2) The processor shall take those actions that satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(3) Unless exempted pursuant to subdivision (b) of Section 14572, the processor shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type, for which the processor is certified.

(4) A processor shall not pay any refund values, processing payments, or administrative fees to a noncertified recycler. A processor may pay refund values, processing payments, or administrative fees to any entity that is identified by the department on its list of certified recycling centers.

(5) A processor shall not pay any refund values, processing payments, or administrative fees on empty beverage containers or other containers that the processor knew, or should have known, were coming into the state from out of the state.

(6) A processor shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the processor knew, or should have known, were received

from noncertified recyclers or on beverage containers that the processor knew, or should have known, come from out of the state. A processor may claim refund values, processing payments, or administrative fees on any empty beverage container that does not come from out of the state and that is received from any entity that is identified by the department on its list of certified recycling centers.

(7) A processor shall take the actions necessary and approved by the department to cancel containers to render them unfit for redemption.

(8) A processor shall prepare or maintain the following documents involving empty beverage containers, as specified by the department by regulation:

(A) Shipping reports that are required to be prepared by the processor or that are required to be obtained from recycling centers.

(B) Processor invoice reports.

(C) Cancellation verification documents.

(D) Documents authorizing recycling centers to cancel empty beverage containers.

(E) Processor-to-processor transaction receipts.

(F) Rejected container receipts on materials subject to this division.

(G) Receipts for transactions with beverage manufacturers on materials subject to this division.

(H) Receipts for transactions with distributors on materials subject to this division.

(I) Weight tickets.

(9) In addition to the requirements of paragraph (7), a processor shall cooperate with the department and make available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

~~(10)~~

(c) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, any payments made by the department to the processor pursuant to Section 14573 that are based on the documents specified in paragraph (8), that are not prepared or maintained in compliance

with the department's regulations, and that do not allow the department to verify claims for program payments.

SEC. 160. Section 14551 of the Public Resources Code is amended to read:

14551. (a) The department shall establish reporting periods for the reporting of redemption rates and recycling rates. Each reporting period shall be six months. The department shall determine all of the following for each reporting period and shall issue a report on its determinations, within 130 days of the end of each reporting period:

(1) Sales of beverages in aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers.

(2) Returns for recycling, and returns not for recycling, of empty aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers returned to distributors pursuant to Section ~~14572~~ *14572.5*. These numbers shall be calculated using the average current weights of beverage containers, as determined and reported by the department. To these numbers shall be added and separately reported the following, if greater than, or equal to, zero:

(A) All empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling, and reported by weight to the department which do not have a refund value less the number specified in subparagraph (B).

(B) The number of beverage containers which comprise the first five percentage points of the redemption rate without including the empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling and reported by weight to the department which do not have a refund value.

(3) An aluminum beverage container redemption rate, the numerator of which shall be the number of empty aluminum beverage containers returned, including refillable aluminum beverage containers and empty postfilled aluminum food or drink packaging material included in paragraph (2), and the

denominator of which shall be the number of aluminum beverage containers sold in this state.

(4) An aluminum beverage container recycling rate, the numerator of which shall be the number of empty aluminum beverage containers returned for recycling, including refillable aluminum beverage containers, and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(5) A bimetal beverage container redemption rate, the numerator of which shall be the number of empty bimetal beverage containers returned, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(6) A bimetal beverage container recycling rate, the numerator of which shall be the number of empty bimetal containers returned for recycling, including refillable bimetal beverage containers, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(7) A glass beverage container redemption rate, the numerator of which shall be the number of empty glass beverage containers returned, including refillable glass beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of glass beverage containers sold in this state.

(8) A glass beverage container recycling rate, the numerator of which shall be the number of empty glass beverage containers returned for recycling, including refillable glass beverage containers, and the denominator of which shall be the number of glass beverage containers sold in this state.

(9) A plastic beverage container redemption rate, the numerator of which shall be the number of empty plastic beverage containers returned, including refillable plastic beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of plastic beverage containers sold in this state.

(10) A plastic beverage container recycling rate, the numerator of which shall be the number of empty plastic beverage containers returned for recycling, including refillable plastic beverage containers, and the denominator of which shall be the number of plastic beverage containers sold in this state.

(11) A redemption rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(12) A recycling rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned for recycling, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(13) The department may define categories of other beverage containers, and report a redemption rate and a recycling rate for each such category of other beverage containers.

(14) The volumes of materials collected from certified recycling centers, by city or county, as requested by the city or county, if the reporting is consistent with the procedures established pursuant to Section 14554 to protect proprietary information.

(b) The department shall determine the manner of collecting the information for the reports specified in subdivision (a), including establishing procedures, to protect any proprietary information concerning the sales and purchases.

SEC. 161. 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 qualified 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. 162. Section 21159.24 of the Public Resources Code is amended to read:

21159.24. (a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

(1) The project is a residential project on an infill site.

(2) The project is located within an urbanized area.

(3) The project satisfies the criteria of Section 21159.21.

(4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

(5) The site of the project is not more than four acres in total area.

(6) The project does not contain more than 100 residential units.

(7) Either of the following criteria are met:

(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop.

(9) The project does not include any single level building that exceeds 100,000 square feet.

(10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density

housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as *a* result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

SEC. 163. Section 30310 of the Public Resources Code is amended to read:

30310. In making their appointments pursuant to this division, the Governor, the Senate ~~Rules~~ Committee *on Rules*, and the Speaker of the Assembly shall make good faith efforts to assure that their appointments, as a whole, reflect, to the greatest extent feasible, the economic, social, and geographic diversity of the state.

SEC. 164. 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, and may electronically file with the Legislature, 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 Part 4 (commencing with Section 71300) of Division 34, 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~~ *Department of General Services*, 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. 165. Section 42648.6 of the Public Resources Code is amended to read:

42648.6. If a large venue or large event has contiguous parcels located in both the City of Los Angeles and the County of Los Angeles, the requirements of this chapter shall apply only to the local agency containing the majority of the property for that large venue or *large* event.

SEC. 166. The heading of Chapter 4 (commencing with Section 71069) of Part 2 of Division 34 of the Public Resources Code, as added by Chapter 644 of the Statutes of 2004, is amended and renumbered to read:

CHAPTER ~~4.~~ *3.5.* REPORT AND INFORMATION MANAGEMENT

SEC. 167. Section 353.2 of the Public Utilities Code is amended to read:

353.2. (a) As used in this article, ~~"ultra-clean~~ *"ultraclean* and low-emission distributed generation" means any electric generation technology that meets both of the following criteria:

(1) Commences initial operation between January 1, 2003, and December 31, 2008.

(2) Produces zero emissions during its operation or produces emissions during its operation that are equal to or less than the 2007 State Air Resources Board emission limits for distributed generation, except that technologies operating by combustion

must operate in a combined heat and power application with a 60-percent system efficiency on a higher heating value.

(b) In establishing rates and fees, the commission may consider energy efficiency and emissions performance to encourage early compliance with air quality standards established by the State Air Resources Board for ~~ultra-clean~~ *ultraclean* and low-emission distributed generation.

SEC. 168. Section 379.6 of the Public Utilities Code is amended to read:

379.6. (a) The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall administer, until January 1, 2008, the self-generation incentive program for distributed generation resources originally established pursuant to Chapter 329 of the Statutes of 2000. Except as provided in subdivision (b), the program shall be administered in the same form as it existed on January 1, 2004.

(b) Eligibility for the self-generation incentive program's level 3 incentive category shall be subject to the following conditions:

(1) Commencing January 1, 2005, all combustion-operated distributed generation projects using fossil fuel shall meet an oxides of nitrogen (NO_x) emissions rate standard of 0.14 pounds per megawatthour.

(2) Commencing January 1, 2007, all combustion-operated distributed generation projects using fossil fuel shall meet a NO_x emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100 percent load.

(3) Combined heat and power units that meet the ~~60 percent~~ *60-percent* efficiency standard may take a credit to meet the applicable NO_x emissions standard of 0.14 pounds per megawatthour or 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British thermal units (Btus) of heat recovered.

(4) Notwithstanding paragraphs (1) and (2), a project that does not meet the applicable NO_x emission standard is eligible if it meets both of the following requirements:

(A) The project operates solely on waste gas. The commission shall require a customer that applies for an incentive pursuant to

this paragraph to provide an affidavit or other form of proof, that specifies that the project shall be operated solely on waste gas. Incentives awarded pursuant to this paragraph shall be subject to refund and shall be refunded by the recipient to the extent the project does not operate on waste gas. As used in this paragraph, "waste gas" means natural gas that is generated as a byproduct of petroleum production operations and is not eligible for delivery to the utility pipeline system.

(B) The air quality management district or air pollution control district, in issuing a permit to operate the project, determines that operation of the project will produce an onsite net air emissions benefit, compared to permitted onsite emissions if the project does not operate. The commission shall require the customer to secure the permit prior to receiving incentives.

(c) In administering the self-generation incentive program, the commission may adjust the amount of rebates, include other ultraclean and low-emission distributed generation technologies, as defined in Section 353.2, and evaluate other public policy interests, including, but not limited to, ratepayers, and energy efficiency and environmental interests.

SEC. 169. 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 subdivision (a) of Section 25744 of the Public Resources Code. 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 Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code. 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~~ *electrical* 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. 170. Section 2827.10 of the Public Utilities Code is amended to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) "Electrical corporation" means an electrical corporation, as defined in Section 218.

(2) "Eligible fuel cell electrical generating facility" means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant's operation or its energy conversion.

(3) "Eligible fuel cell customer-generator" means a customer of an electrical corporation that meets all the following criteria:

(A) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator's own electrical requirements.

(B) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(C) Uses technology that meets the definition of an ~~"ultra-clean~~ *"ultraclean* and low-emission distributed generation" in subdivision (a) of Section 353.2.

(4) "Net energy metering" has the same meaning as that term is defined in Section 2827.9.

(b) Every electrical corporation shall, not later than March 1, 2004, file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a ~~first-come-first-served~~ *first-come, first-served* basis, until the total cumulative rated generating capacity used by the eligible fuel cell customer-generators equals 45 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand above 10,000 megawatts, or equals 22.5 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand of 10,000 megawatts or below. The combined statewide cumulative rated generating capacity used by the eligible fuel cell customer-generators in the service territories of all electrical corporations in the state may not exceed 112.5 megawatts.

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical service area, preference

shall be given to facilities which, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator's costs beyond those of other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting ~~the act adding this section~~ *Chapter 661 of the Statutes of 2003*, and may not form a part of net energy metering tariffs.

(e) The net metering calculation shall be carried out in accordance with Section 2827.9.

(f) 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. 171. Section 2828 of the Public Utilities Code is amended to read:

2828. (a) As used in this section, the following terms have the following meanings:

(1) "Environmental attributes" associated with the Hetch Hetchy Water and Power solar generation include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Hetch Hetchy Water and Power photovoltaic electricity generation facility owned by the City and County of San Francisco.

(2) "HHWP solar generation" means the electricity generated by Hetch Hetchy Water and Power photovoltaic electricity generation facilities owned by the City and County of San Francisco, designated by the City and County of San Francisco pursuant to subdivision (b) and not to exceed five megawatts of peak generation capacity in total.

(3) "Interconnection Agreement" means the 1987 agreement between Pacific Gas and Electric Company and the City and County of San Francisco, as filed with and accepted by the Federal Energy Regulatory Commission (FERC), and as amended from time to time with FERC approval, which provides for rates for transmission, distribution, and sales of supplemental electricity to the City and County of San Francisco. Nothing in this section shall waive or modify the rights of parties under the Interconnection Agreement or the jurisdiction of the FERC over rates set forth in the Interconnection Agreement.

(4) "Appropriate TOU tariff" means the Time-of-Use tariff that would be applicable to the City and County of San Francisco account at the photovoltaic project site if the facility at the site were a Pacific Gas and Electric Company bundled customer, as determined by Pacific Gas and Electric Company.

(b) The City and County of San Francisco may elect to designate specific photovoltaic electricity generation facilities as HHWP solar generation, if all of the following conditions are met:

(1) No single photovoltaic generation project exceeds one megawatt of peak generation capacity.

(2) The photovoltaic project utilizes a meter, or multiple meters, capable of separately measuring electricity flow in both directions. All meters shall provide "time-of-use" measurement information. If the existing meter at the site of the photovoltaic project is not capable of providing time-of-use information or is not capable of separately measuring total flow of energy in both directions, the City and County of San Francisco is responsible for all expenses involved in purchasing and installing a meter or meters that are both capable of providing time-of-use information and able to separately measure total electricity flow in both directions.

(3) The amount of all electricity delivered to the electric grid by the designated HHWP solar generation is the property of Pacific Gas and Electric Company.

(4) The City and County of San Francisco does not sell electricity delivered to the electric grid from the designated HHWP solar generation to a third party.

(5) Ownership and use of the environmental attributes associated with the electricity delivered to the electric grid by HHWP solar generation shall be determined by the commission in accordance with Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1.

(c) For each site of a photovoltaic project that comprises the HHWP solar generation, Pacific Gas and Electric Company shall identify the appropriate TOU tariff for that site. Any electricity exported to the Pacific Gas and Electric Company grid at that site shall, for each time-of-use period, result in a monetary credit to be applied monthly as a credit or offset against the invoice created pursuant to the Interconnection Agreement and shall be valued at the generation component of the appropriate TOU tariff. The commission shall determine if it is appropriate to increase the credit to reflect any additional value derived from the location or the environmental attributes of, the designated HHWP solar generation.

(d) Monthly charges and credit amounts are interim and subject to an accounting true-up, consistent with commission policies and practices. The true-up shall be performed annually or upon the termination, for any reason, of the Interconnection Agreement. The true-up shall accomplish the following:

(1) If the total electricity delivered to the site by Pacific Gas and Electric Company since the previous true-up equals or exceeds the total electricity exported to the grid by the Hetch Hetchy photovoltaic electricity generation facility at the site, the City and County of San Francisco is a net electricity consumer at that site. For any site where the City and County of San Francisco is a net electricity consumer, a credit or offset shall be applied to reduce the obligations of the City and County of San Francisco to an invoice prepared pursuant to the Interconnection Agreement. If there is no invoiced obligation to be reduced, there is no applicable credit.

(2) If the total electricity delivered to the site by Pacific Gas and Electric Company since the previous true-up is less than the total electricity exported to the grid by the Hetch Hetchy photovoltaic electricity generation facility at the site, the City and County of San Francisco is a net electricity producer at that site. For any site where the City and County of San Francisco is a net electricity producer, the City and County of San Francisco shall receive no credit or offset for the electricity exported to the grid in excess of the electricity delivered to the site from the grid. For any site where the City and County of San Francisco is a net electricity producer, the City and County of San Francisco shall receive a credit or offset up to the amount of electricity delivered to the site from the grid. The credit or offset shall be applied to reduce the obligations of the City and County of San Francisco to an invoice prepared pursuant to the Interconnection Agreement. If there is no invoiced obligation to be reduced, there is no applicable credit or offset. Pacific Gas and Electric Company shall use the last-in, first-out method to determine what electricity delivered to the grid from the site will not earn a credit or offset.

(e) Notwithstanding any other provision of this section, if the City and County of San Francisco engages in retail sales to customers within the service territory of Pacific Gas and Electric Company, as a result of becoming a community choice aggregator, as a result of municipalization, or otherwise, all other provisions of this section *shall* become inoperative.

(f) Pursuant to this section, the offset to charges under the Interconnection Agreement is the medium to convey credits earned under this section. Nothing in this section shall be construed to affect in any way the rights and obligations of the City and County of San Francisco and Pacific Gas and Electric Company under the Interconnection Agreement.

(g) Pacific Gas and Electric Company shall file an advice letter with the commission, that complies with this section, not later than 10 days after the City and County of San Francisco first designates the specific generation facilities that will comprise HHWP solar generation. The commission, within 30 days of the date of filing of the advice letter, shall approve the advice letter or specify conforming changes to be made by

Pacific Gas and Electric Company to be filed in an amended advice letter within 30 days.

(h) The City and County of San Francisco may terminate its election pursuant to subdivisions (b), (c), and (d), upon providing Pacific Gas and Electric Company with a minimum of 60 days' written notice.

SEC. 172. Section 21661.5 of the Public Utilities Code is amended to read:

21661.5. (a) No political subdivision, any of its officers or employees, or any person may submit any application for the construction of a new airport to any local, regional, state, or federal agency unless the plan for construction is first approved by the board of supervisors of the county, or the city council of the city, in which the airport is to be located and unless the plan is submitted to the appropriate commission exercising powers pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9, and acted upon by that commission in accordance with the provisions of that article.

(b) A county board of supervisors or a city council may, pursuant to Section 65100 of the Government Code, delegate its responsibility under this section for the approval of *a* plan for construction of new helicopter landing and takeoff areas, to the county or city planning agency.

SEC. 173. Section 90300 of the Public Utilities Code is amended to read:

90300. (a) Employees have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. It is declared to be in the public interest that the district not express any preference for one union over another.

(1) (A) Notwithstanding any other provision of this act, if a majority of the employees employed by a district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the district, after determining pursuant to subdivision (f) that the labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited

representative of those employees governing wages, salaries, hours, and working conditions.

(B) (i) If a dispute arises over wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the district and the labor organization, then upon the request of either party, the district and the labor organization may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(ii) The arbitration board shall be composed of two representatives of the district, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the district and labor organization.

(iii) If the representatives of the district and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service within the Department of Industrial Relations. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator. The decision of a majority of the arbitration board shall be final and binding upon the parties.

(iv) The expenses of arbitration shall be borne equally by the parties. Each party shall bear the party's own costs.

(b) If the board and the representatives of the employees do not agree to submit the dispute to an arbitration board as provided in subdivision (a), either party may notify the California State Mediation and Conciliation Service that a dispute exists and that there is no agreement to arbitrate. The California State Mediation and Conciliation Service shall determine whether or not the dispute can be resolved by the parties and, if not, the issues that are the subject of the dispute. After making its determination, the service shall certify its findings to the Governor who shall, within 10 days of receipt of certification, appoint a factfinding commission consisting of three persons. The factfinding commission shall immediately convene and

investigate the issues involved in the dispute. The commission shall report to the Governor within 30 days of the date of its creation.

(c) After the creation of the commission and for 30 days after the date the commission made its report to the Governor, the parties to the controversy shall not make any change, except by mutual agreement, in the conditions out of which the dispute arose. Service to the public shall be provided during that time.

(d) A contract or agreement shall not be made, or assumed, with any labor organization, association, group, or individual that denies membership to, or in any manner discriminates against, any employee on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(e) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(f) (1) Any questions regarding whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, shall be submitted to the California State Mediation and Conciliation Service for disposition. The California State Mediation and Conciliation Service shall promptly hold a public hearing after due notice to all interested parties to determine the unit appropriate for the purposes of collective bargaining. In making that determination and in establishing rules and regulations governing petitions and the conduct of hearings and elections, the California State Mediation and Conciliation Service shall be guided by relevant federal law and administrative practice, developed under the Labor-Management Relations Act of 1947 (29 U.S.C. Sec. 141 et seq.).

(2) The California State Mediation and Conciliation Service shall provide for an election to determine the question of representation and shall certify the results to the parties. A

certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within the collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later. However, no collective bargaining agreement shall be construed to be a bar to representation proceedings for a period of more than two years.

(g) If the district acquires existing facilities from a publicly or privately owned public utility, either in proceedings by eminent domain or otherwise, the district shall assume and observe all existing labor contracts.

(1) To the extent necessary for operation of facilities, all of the employees of the acquired public utility whose duties pertain to the facilities acquired shall be appointed to comparable positions in the district without examination, subject to all the rights and benefits of this act. Those employees shall be given sick leave, seniority, vacation, and pension credits in accordance with the records and labor agreements of the acquired public utility.

(2) Members and beneficiaries of any pension or retirement system, or other benefits established by the public utility, shall continue to have the rights, privileges, benefits, obligations, and status with respect to the established system. No employee of any acquired public utility may be subject to a reduction in wages, seniority, pension, vacation, or other benefits as a result of the acquisition.

(3) The district may extend the benefits of this section to officers or supervisory employees of the acquired utility.

(h) The district shall not do any of the following:

(1) Acquire any existing system or part of an existing system, whether by purchase, lease, condemnation, or otherwise.

(2) Dispose of or lease any transit system or part of the transit system.

(3) Merge, consolidate, or coordinate any transit system or part of the transit system.

(4) Reduce or limit the lines or service of any existing system or of the district's system unless the district has first made adequate provision for any employees who are or may be

displaced. The terms and conditions of that provision shall be a proper subject of collective bargaining.

(i) Notwithstanding any provision of the Government Code, the district may make deductions from the wages and salaries of its employees who authorize the deductions for the following purposes:

(1) Pursuant to a collective bargaining agreement with a duly designated or certified labor organization, for the payment of union dues, fees, or assessments.

(2) For the payment of contributions pursuant to any health and welfare plan, or pension or retirement plan.

(3) For any purpose for which employees of any private employer may authorize deductions.

(j) (1) The obligation of the district to bargain in good faith with a duly designated or certified labor organization and to execute a written collective bargaining agreement with that labor organization covering the wages, hours, and working conditions of the employees represented by that labor organization in an appropriate unit, and to comply with the terms of the collective bargaining agreement, shall not be limited or restricted by any provision of law. The obligation of the district to bargain collectively shall extend to all subjects of collective bargaining that are or may be proper subjects of collective bargaining with a private employer, including retroactive provisions.

(2) Notwithstanding any other provision of law, the district shall make deductions from the wages and salaries of its employees, upon receipt of authorization to make those deductions, for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan, or for any other purpose for which employees of any private employer may authorize deductions, where those deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

(k) The district may provide for a retirement system, provided that the adoption, terms, and conditions of any retirement system covering employees of the district represented by a labor organization in accordance with this section shall be pursuant to a collective bargaining agreement between the ~~or~~ *labor* organization and the district.

(*l*) The district shall take any steps that may be necessary to obtain coverage for the district and its employees under Title II of the Federal Social Security Act (42 U.S.C. Sec. 401 et seq.), and the related provisions of the Federal Insurance Contributions Act (26 U.S.C. Sec. 3101 et seq.).

(m) The district shall take any steps that may be necessary to obtain coverage for the district and its employees under the workers' compensation (Division 4 (commencing with Section 3200) and Division 4.5 (commencing with Section 6100) of the Labor Code), unemployment compensation disability (Part 2 (commencing with Section 2691) of Division 1 of the Unemployment Insurance Code), and unemployment insurance (Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code) laws of the State of California.

SEC. 174. Section 130054.1 of the Public Utilities Code is amended to read:

130054.1. The Ventura County Transportation Commission shall consist of the following members:

~~(1)~~

(a) Five members of the Ventura County Board of Supervisors.

~~(2)~~

(b) One member from each incorporated city within Ventura County who shall be the mayor of the city or a member of its city council. The term of a member under this subdivision terminates when he or she ceases to hold that office or when replaced by the city council.

~~(3)~~

(c) One citizen member appointed by the Ventura County Board of Supervisors, who shall not be an elected official, but who shall be a resident of Ventura County.

~~(4)~~

(d) One citizen member appointed by the Ventura County City Selection Committee, who shall not be an elected official, but who shall be a resident of Ventura County.

~~(5)~~

(e) One nonvoting member appointed by the Governor.

SEC. 175. Section 130630 of the Public Utilities Code is amended to read:

130630. The role of the board as it relates to the MTA is as follows:

(a) The board provides counsel and direction to management and shall not be involved in the day-to-day affairs of the MTA.

(b) Board members do not have individual power or authority over the MTA. That power and ~~decision-making~~ *decisionmaking* authority lie with the full board.

SEC. 176. Section 170042 of the Public Utilities Code is amended to read:

170042. (a) The board may act only by ordinance or resolution for the regulation of the authority and undertaking all acts necessary and convenient for the exercise of the authority's powers.

(b) The authority may adopt and enforce rules and regulations for the administration, maintenance, operation, and use of its facilities and services.

(c) (1) A person who violates a rule, regulation, or ordinance adopted by the board is guilty of a misdemeanor punishable pursuant to Section 19 of the Penal Code, or an infraction under the circumstances set forth in paragraph (1) or (2) of subdivision (d) of Section ~~1~~ *17* of the Penal Code.

(2) The authority may employ necessary personnel to enforce this section.

(d) A majority of the membership of the board shall constitute a quorum for the transaction of business.

SEC. 177. Section 69.4 of the Revenue and Taxation Code is amended to read:

69.4. (a) (1) Notwithstanding any other provision of law, pursuant to the authority of subdivision (i) of Section 2 of Article XIII A of the California Constitution, the base year value of qualified contaminated property may be transferred, subject to the conditions and limitations of that subdivision and this section, to a comparable replacement property of equal or lesser value that is located in the same county and is acquired or newly constructed as a replacement for the contaminated property, pursuant to subparagraph (A) of paragraph (1) of that subdivision.

(2) The limitation in paragraph (1) requiring that the qualified contaminated property and the replacement property be located in the same county does not apply in a county in which the

county board of supervisors adopts a resolution making the provisions of this section applicable to replacement properties acquired to replace qualified contaminated properties located in another county within this state. The resolution shall specify the date on and after which its provisions are applicable. The specified date may be a date earlier than the date on which the county adopts the ordinance, but no earlier than November 3, 1998.

(b) The replacement property shall be acquired or newly constructed within five years after the original property is sold or otherwise transferred.

(c) (1) Upon the sale or transfer of the original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article ~~XII A~~ *XIII A* of the California Constitution and Section 110.1.

(2) This section does not apply unless the sale or transfer of the original property is a change in ownership that does either of the following:

(A) Subjects the original property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803.

(B) Results in a base year value determined in accordance with this section, Section 69, Section 69.3, or Section 69.5 because the property qualifies under this section, Section 69, Section 69.3, or Section 69.5 as a replacement dwelling or property.

(d) Property tax relief under this section is not available for a replacement property if the owner or owners of the original property do either of the following:

(1) Receive property tax relief under Section 74.7.

(2) Sign a claim under Section 63.1 allowing the base year value to stay with the original property.

(e) For purposes of this section:

(1) The "original property" means the qualified contaminated property.

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

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

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

(C) One hundred fifteen percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the third year following the date of the sale of the original property.

(D) One hundred twenty percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the fourth year following the date of the sale of the original property.

(E) One hundred twenty-five percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the fifth year following the date of the sale of the original property.

For purposes of this paragraph, if the replacement property is, in part, purchased and, in part, newly constructed, the date the replacement property is "acquired or newly constructed" is the date of acquisition or the date of completion of construction, whichever is later.

(3) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(4) "Fair market value of the replacement property" means the full cash value of the replacement property determined in accordance with Section 110.1 as of the date on which that property was acquired or new construction was completed. If the replacement property is, in part, acquired and, in part, newly constructed, "fair market value of the replacement property"

means the fair market value of the land and the improvements as of the date of completion.

(5) "Fair market value of the qualified contaminated property" means the full cash value of the qualified contaminated property, as if that property was not contaminated, determined in accordance with Section 110.1, as of the date of its sale or transfer by the claimant.

(6) "Claimant" means any owner of qualified contaminated property claiming the property tax relief provided by this section.

(7) "Comparable replacement property" means a property that is similar in utility and function to the property that it replaces. Property is similar in function and utility if it is, or is intended to be, used in the same manner as the qualified contaminated property.

(f) (1) A claimant is not eligible for the property tax relief provided by this section unless a claim is filed within three years of the date the replacement property was purchased or the new construction of the replacement property was completed.

(2) The claimant shall provide to the assessor the following information:

(A) Proof that the claimant did not participate or acquiesce in any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is related to any individual or entity that committed that act or omission.

(B) Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(3) The State Board of Equalization shall design the form for claiming eligibility.

(g) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value as of the date the replacement property is acquired or the date the new construction of the replacement property is completed, whichever is later.

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

when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement properties acquired prior to the sale or transfer of the qualified contaminated property.

(h) This section applies only to replacement property that is acquired or newly constructed on or after January 1, 1995.

SEC. 178. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration

shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of

paragraphs (1) to (5), inclusive. The owner of the other organization also shall file with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(E) Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in

subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, limited liability companies, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, ~~the~~ existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and

moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner or eligible limited liability company~~,~~ is an eligible nonprofit corporation, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which either of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars ($20,000) of tax.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000–01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, limited liability companies, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of ~~Sections~~ *Section* 4 and *Section* 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, "educational purposes" means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

(k) In the case of property used exclusively for the exempt purposes specified in this section, owned and operated by limited liability companies that are organized and operated for those purposes, the State Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for those companies to qualify for the exemption provided by this section.

(*l*) The amendments made by ~~the act adding this subdivision~~ *Chapter 354 of the Statutes of 2004* shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 179. Section 217 of the Revenue and Taxation Code is amended to read:

217. (a) Except as provided in subdivision (d), the following articles of personal property that have been made available for display in a publicly owned art gallery or museum, or a museum that is regularly open to the public and that is operated by a nonprofit organization that qualifies for exemption pursuant to Section 23701d, shall be exempt from taxation:

(1) Original paintings in oil, mineral, water, vitreous enamel, or other colors, pastels, original mosaics, original drawings and sketches in pen, ink, pencil, or watercolors, or works of the free fine arts in any other media including applied paper and other materials, manufactured or otherwise, that are used on collages, artists' proof etchings unbound, and engravings and woodcuts unbound, lithographs, or prints made by other hand transfer processes unbound, *or* original sculptures or statuary. As used in this subdivision:

(A) "Sculpture" and "statuary" shall include professional productions of sculptors only whether in round or in relief, in bronze, marble, stone, terra cotta, ivory, wood, metal, or other materials, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, stone, alabaster, or from metal, or other materials, or cast in bronze or other metal or substance, or from wax or plaster, or constructed from any material or made in any form as the professional productions of sculptors, only.

(B) "Original" when used to modify the words "sculptures" and "statuary" shall include the original work or model and the first 10 castings, replicas, or reproductions made from the sculptor's original work or model, with or without a change in

scale, regardless of whether or not the sculptor is alive at the time the castings, replicas, or reproductions are completed.

(C) "Painting," "mosaic," "drawing," "work of the free fine arts," "sketch," "sculpture," and "statuary" shall not include any articles of utility, articles designed for industrial use, or any articles that are made wholly or in part by stenciling or any other mechanical process.

(D) "Etchings," "engravings," ~~and~~ "woodcuts," "lithographs," or "prints made by other hand transfer processes," shall include only works that are printed by hand from plates, stones or blocks etched, drawn, or engraved with handtools and do not include works that are printed from plates, stones or blocks etched, drawn, or engraved by photochemical or other mechanical processes.

(2) Original works of the free fine arts, that are not described in paragraph (1) ~~of this subdivision~~, are subject to regulations, as the board may prescribe, to prove that the article represents some school, kind, or medium of the free fine arts. As used in this paragraph, "original works of the free fine arts" shall not include any article of utility or any article designed for industrial use.

(b) When making a claim for an exemption pursuant to this section, a person claiming the exemption shall provide all information required and answer all questions in an affidavit, under penalty of perjury. The assessor may require other proof of the facts stated before allowing the exemption. The affidavit shall be accompanied by a certificate of the director or other officer of the art gallery or museum in which the property for which an exemption is claimed under this section was made available for display that the property was available for public display in the art gallery or museum for the period specified in subdivision (e).

(c) ~~The provisions of~~ Sections 255 and 260 shall be applicable to the exemption provided by this section.

(d) The exemption provided by subdivision (a) shall not apply to any work of art loaned by any person who holds works of art primarily for purposes of sale.

(e) The exemption provided by this section shall not apply unless the property was made available for public display in the art gallery or museum for a period of 90 days during the 12-month period immediately preceding the lien date for the year for which the exemption is claimed.

If the property was first made available for public display less than 90 days prior to the lien date, the exemption may be granted if the person claiming the exemption certifies in writing that the property will be made available for public display for at least 90 days during the 12-month period commencing with the first day the property was made available for public display.

(f) For purposes of this section, "regularly open to the public" means that the gallery or museum was open to the public not less than 20 hours per week for not less than 35 weeks of the 12-month period immediately preceding the lien date for the year for which the exemption is claimed.

If the gallery or museum has been open for less than 35 weeks during the 12-month period immediately preceding the lien date or for less than 20 hours per week during that period, the exemption may be granted if the director or other officer of the gallery or museum certifies in writing that the gallery or museum will be open for not less than 20 hours per week for not less than 35 weeks during the 12-month period beginning with the day the gallery or museum was first opened.

(g) If a person certifies in writing that the property will be made available and the gallery or museum open for the periods specified in subdivisions (e) and (f), and the property is not so made available or the gallery or museum is not so opened, the exemption shall be canceled, and an escape assessment may be made as provided in Section 531.1.

SEC. 180. Section 2508 of the Revenue and Taxation Code is amended to read:

2508. If any negotiable paper is returned unpaid to the bank with which it was deposited pursuant to any requirement of this division, the bank shall return it to the officer who deposited it and, if its amount has been included in any cashier's check given by the bank, the bank is entitled to a refund in the amount of the unpaid negotiable paper. Any negotiable paper redeemed by or charged back to the county treasurer by reason of nonpayment shall be returned to the officer who deposited it ~~with him~~ in exchange for currency~~,~~ *or* other negotiable paper or for the warrant of the county auditor drawn on the fund into which the original deposit was made.

SEC. 181. Section 3811 of the Revenue and Taxation Code is amended to read:

3811. On execution of the deed to the taxing agency or nonprofit organization, the tax collector shall report the following to the Controller, the assessor, and the auditor:

(a) The name of the purchaser.

(b) The effective date of the sale and the date of the transfer of the deed to the taxing agency or nonprofit organization.

(c) The amount for which the property was sold.

(d) The description of the property conveyed.

SEC. 182. Section 7105 of the Revenue and Taxation Code is amended to read:

7105. (a) The Transportation Deferred Investment Fund is hereby created in the State Treasury.

(b) On or before June 30, 2009, the Controller shall transfer an amount from the General Fund to the Transportation Deferred Investment Fund that is equal to the amount that was not transferred from the General Fund to the Transportation Investment Fund for the 2003–04 fiscal year because of the partial suspension of the transfer pursuant to Section 14557 of the Government Code, plus interest calculated at the Pooled Money Investment Account rate relative to the amounts that would otherwise have been available for the transportation programs described in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104. The amount to be transferred from the General Fund to the Transportation Deferred Investment Fund shall be reduced by the amount of any payment made to the Transportation Deferred Investment Fund from any funding source, excluding subdivision (d). The ~~money~~ *moneys* deposited in the Transportation Deferred Investment Fund pursuant to this subdivision is continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(c) The Controller, from the ~~money~~ *moneys* deposited in the Transportation Deferred Investment Fund pursuant to subdivision (b), shall make transfers and apportionments of those funds in the same manner and amounts that would have been made in the 2003–04 fiscal year from the Transportation Investment Fund pursuant to Section 7104, as that section read on January 1, 2003, if the transfer of funds from the General Fund to the Transportation Investment Fund had not been partially suspended for the 2003–04 fiscal year pursuant to Section 14557 of the

Government Code. However, in making those transfers and apportionments, the Controller shall take into account and deduct therefrom any transfers and apportionments that were made from the Transportation Investment Fund in the 2003–04 fiscal year from funds made available pursuant to subdivision (b) of Section 14557 of the Government Code. It is the intent of the Legislature that, upon completion of the transfer of funds pursuant to subdivision (b) from the General Fund to the Transportation Deferred Investment Fund ~~that~~, each of the transportation programs that was to have been funded during the 2003–04 fiscal year from the Transportation Investment Fund pursuant to Section 7104 of ~~the Revenue and Taxation Code~~ *this code* shall have received the amount of funding that the program would have received in the absence of the suspension of the transfer pursuant to Section 14557 of the Government Code.

(d) To the extent that funds are provided under clauses (iii) and (v) of subparagraph (A) *of paragraph (1)* of subdivision (c) of Section 63048.65 of the Government Code to the Traffic Congestion Relief Fund for apportionment pursuant to subparagraphs (B) and (C) of paragraph (2) of subdivision (c) of Section 7104, paragraph (4) of subdivision (c) of Section 7104, and paragraph (5) of subdivision (c) of Section 7104, the Controller shall deduct an equal amount from any transfer of funds from the Transportation Deferred Investment Fund made for those apportionments and transfer that amount instead to the Traffic Congestion Relief Fund.

(e) The interest that is to be deposited in the Transportation Deferred Investment Fund pursuant to subdivision (b) shall be allocated proportionately to each program element in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104, based on the amount that each program did not receive in the 2003–04 fiscal year due to suspension of the transfer pursuant to Section 14557 of the Government Code.

(f) The Legislature finds and declares that continued investment in transportation is essential for the California economy. That investment reduces traffic congestion, assists in economic development, improves the condition of local streets and roads, and provides high-quality public transportation.

SEC. 183. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of this state for the entire taxable year and for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $3,650	1% of the taxable income
Over $3,650 but not over $8,650	$36.50 plus 2% of the excess over $3,650
Over $8,650 but not over $13,650	$136.50 plus 4% of the excess over $8,650
Over $13,650 but not over $18,950	$336.50 plus 6% of the excess over $13,650
Over $18,950 but not over $23,950	$654.50 plus 8% of the excess over $18,950
Over $23,950	$1,054.50 plus 9.3% of the excess over $23,950

(b) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for

any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $7,300	1% of the taxable income
Over $7,300 but not over $17,300	$73 plus 2% of the excess over $7,300
Over $17,300 but not over $22,300	$273 plus 4% of the excess over $17,300
Over $22,300 but not over $27,600	$473 plus 6% of the excess over $22,300
Over $27,600 but not over $32,600	$791 plus 8% of the excess over $27,600
Over $32,600	$1,191 plus 9.3% of the excess over $32,600

(d) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (c) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year

resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g) (1) Section 1(g) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income, shall apply, except as otherwise provided.

(2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code, relating to income included on parent's return, is modified, for purposes of this part, by substituting "1 percent" for "15 percent."

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(i) (1) For purposes of this part, the term "taxable income of a nonresident or part-year resident" includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of gross income and all deductions, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, gross income and deductions derived from sources within this state, determined in accordance

with Article 9 of Chapter 3 (commencing with Section ~~17301~~ *17301)* and Chapter 11 (commencing with Section 17951).

(2) For purposes of computing "taxable income of a nonresident or part-year resident" under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at taxable income of a nonresident or part-year resident.

(3) For purposes of computing "taxable income of a nonresident or part-year resident" under paragraph (1), any carryover items, deferred income, suspended losses, or suspended deductions shall only be includable or allowable to the extent that the carryover item, deferred income, suspended loss, or suspended deduction was derived from sources within this state, calculated as if the nonresident or part-year resident, for the portion of the year he or she was a nonresident, had been a nonresident for all prior years.

SEC. 184. 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 adjusted gross income is:	The percentage of credit is:
$40,000 or less	63%
Over $40,000 but not over $70,000	53%
Over $70,000 but not over $100,000	42%
Over $100,000	0%

(2) For taxable years beginning on or after January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
$40,000 or less	50%
Over $40,000 but not over $70,000	43%
Over $70,000 but not over $100,000	34%
Over $100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, adjusted gross income means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

(e) The credit authorized by this section shall be limited to employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, but only for child care services or care provided in this state and only to the extent of earned income (within the meaning of Section 21(d) of the Internal Revenue Code) from sources within this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3) of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a "custodial parent" (within the meaning of Section 152(e) of the Internal Revenue Code, as

applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who ~~live~~ *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~~ *Chapter 757 of the Statutes of 2002* shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 185. Section 18648 of the Revenue and Taxation Code is amended to read:

18648. (a) Section 6112 of the Internal Revenue Code, relating to organizers and sellers of potentially abusive tax shelters that must keep lists of investors, applies except as otherwise provided.

(b) Section 6112 of the Internal Revenue Code is modified by substituting the phrase "Secretary or the Franchise Tax Board" for the word "Secretary" each place it appears.

(c) The requirement to maintain lists under this section shall apply to any organizer, seller*,* or material advisor of a potentially abusive tax shelter (within the meaning of Section 6112 of the Internal Revenue Code, as modified by this section) that additionally satisfies any of the following conditions:

(1) Organized in this state.

(2) Doing business in this state.

(3) Deriving income from sources in this state.

(4) At least one of its investors is a California taxpayer.

(d) (1) Notwithstanding any regulation issued under Section 6112 of the Internal Revenue Code, the list required to be maintained by this section for listed transactions, as defined in subdivision (a) *of* Section 18407, shall be maintained in the form and manner prescribed by the Franchise Tax Board.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any requirement prescribed by the Franchise Tax Board under this section.

(3) For transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6011(a) of the Internal Revenue Code) at any time, the lists shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.

(B) Sixty days after the transaction becomes a listed transaction.

(C) April 30, 2004.

(4) For transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board for California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a "listed transaction" at any time, the list shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.

(B) Sixty days after the transaction becomes a listed transaction.

(C) April 30, 2004.

(e) The terms "organizer," "seller," and "material advisor" mean a person that meets any of the requirements of this section or of Section 6112 of the Internal Revenue Code or regulations issued thereunder.

SEC. 186. Section 18706 of the Revenue and Taxation Code is amended to read:

18706. There is in the State Treasury the California Military Family Relief Fund to receive contributions made pursuant to Section 18705. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18705 to be transferred to the California Military Family Relief Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Military Family Relief Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18705 for payment into that fund. The California Military Family Relief Fund shall also accept contributions from sources other than the tax form, at ~~anytime~~ *any time*.

SEC. 187. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) (A) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty, except as otherwise provided.

(B) (i) Except for understatements relating to tax shelter items to which paragraph (5) applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting "40 percent" for "20 percent."

(ii) Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a corporation, other than an "S" corporation, that has been contacted by the Franchise Tax

Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars ($2,500)).

(B) Five million dollars ($5,000,000).

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19773 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(5) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6662(d)(2)(B)(i) of the Internal Revenue Code is modified to substitute the phrase "the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment" for the phrase "the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment" contained therein.

(b) For purposes of Section 6662(d) of the Internal Revenue Code, Section 6664 of the Internal Revenue Code (as modified by subdivision (d)), Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or other published positions. In addition, the "listed transactions" identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board. This subdivision applies only to *a* list of positions relating to abusive tax shelters, within the meaning of Section 19777.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal

Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

(1) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6664 of the Internal Revenue Code is modified to additionally provide that no penalty shall be imposed under Section 19773 with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for that portion and that the taxpayer acted in good faith with respect to that portion.

(2) Paragraph (1) does not apply to any reportable transaction understatement unless all of the following requirements are met:

(A) (i) The relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under Section 6011 of the Internal Revenue Code, as modified by Section 18407.

(ii) A taxpayer failing to adequately disclose in accordance with Section 6011 of the Internal Revenue Code, as modified by Section 18407, shall be treated as meeting the requirements of this subparagraph, if the penalty for that failure was rescinded under subdivision (e) of Section 19772.

(iii) For taxable years beginning on or before January 1, 2003, "adequately disclosed" includes the disclosure of the tax shelter identification number on the taxpayer's return, as required by subdivision (c) of Section 18628.

(B) There is or was substantial authority for that treatment.

(C) The taxpayer reasonably believed that treatment was more likely than not the proper treatment.

(3) For purposes of subparagraph (C) of paragraph (2) all of the following shall apply:

(A) A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if that belief meets both of the following requirements:

(i) Is based on the facts and law that exist at the time the return of tax that includes that tax treatment is filed.

(ii) Relates solely to the taxpayer's chances of success on the merits of that treatment and does not take into account the

possibility that the return will not be audited, that the treatment will not be raised on audit, or that the treatment will be resolved through settlement if it is raised.

(B) (i) An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if either of the following conditions are met:

(I) The tax advisor is described in clause (ii).

(II) The opinion is described in clause (iii).

(ii) A tax advisor is described in this clause if the tax advisor meets any of the following conditions:

(I) Is a material advisor (within the meaning of subdivision (d) of Section 18648) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of Section 267(b) or 707(b)(1) of the Internal Revenue Code) to any person who so participates.

(II) Is compensated directly or indirectly by a material advisor with respect to the transaction.

(III) Has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained.

(IV) As determined under regulations prescribed by either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board, has a continuing financial interest with respect to the transaction.

(iii) For purposes of clause (i), an opinion is disqualified if the opinion meets any of the following conditions:

(I) Is based on unreasonable, factual, or legal assumptions (including assumptions as to future events).

(II) Unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person.

(III) Does not identify and consider all relevant facts.

(IV) Fails to meet any other requirement as either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board may by forms and instructions prescribe.

(e) Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply, except as otherwise provided.

(f) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 461(i)(3)(C) of the Internal Revenue Code is modified by substituting a reference

to "Section 1274(b)(3)(B) of the Internal Revenue Code, as modified by subdivision (g) of Section 19164" instead of the reference to "Section 6662(d)(2)(C)(iii)" contained therein.

(g) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 1274(b)(3)(B)(i) of the Internal Revenue Code is modified to provide that for purposes of Section 1274(b)(3)(B) of the Internal Revenue Code, the term "tax shelter" means (1) a partnership or other entity, (2) any investment plan or arrangement, or (3) any other plan or arrangement, if a significant purpose of the partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax or the tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 188. Section 20583 of the Revenue and Taxation Code is amended to read:

20583. (a) "Residential dwelling" means a dwelling occupied as the principal place of residence of the claimant, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, owned by the claimant, the claimant and spouse, or by the claimant and either another individual eligible for postponement under this chapter or an individual described in subdivision (a), (b)*,* or (c) of Section 20511 and located in this state. It shall include condominiums and mobilehomes that are assessed as realty for local property tax purposes. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built. In the case of a mobilehome not assessed as real property that is located on land owned by the claimant, ~~residential "dwelling"~~ *"residential dwelling"* includes the land on which the mobilehome is situated and so much of the land surrounding it as reasonably necessary for use of the mobilehome as a home.

(b) As used in this chapter in reference to ownership interests in residential dwellings, "owned" includes (1) the interest of a vendee in possession under a land sale contract provided that the contract or memorandum thereof is recorded and only from the date of recordation of the contract or memorandum thereof in the office of the county recorder where the residential dwelling is located, (2) the interest of the holder of a life estate provided that the instrument creating the life estate is recorded and only from

the date of recordation of the instrument creating the life estate in the office of the county recorder where the residential dwelling is located, but "owned" does not include the interest of the holder of any remainder interest or the holder of a reversionary interest in the residential dwelling, (3) the interest of a joint tenant or a tenant in common in the residential dwelling or the interest of a tenant where title is held in tenancy by the entirety or a community property interest where title is held as community property, and (4) the interest in the residential dwelling in which the title is held in trust, as described in subdivision (d) of Section 62, provided that the Controller determines that the state's interest is adequately protected.

(c) For purposes of this chapter, the registered owner of a mobilehome shall be deemed to be the owner of the mobilehome.

(d) Except as provided in subdivision (c), and Chapter 3 (commencing with Section 20625), ownership must be evidenced by an instrument duly recorded in the office of the county where the residential dwelling is located.

(e) "Residential dwelling" does not include any of the following:

(1) Any residential dwelling in which the owners do not have an equity of at least 20 percent of the full value of the property as determined for purposes of property taxation or at least 20 percent of the fair market value as determined by the Controller and where the Controller determines that the state's interest is adequately protected. The ~~20 percent~~ *20-percent* equity requirement shall be met at the time the claimant or authorized agent files an initial postponement claim and tenders to the tax collector the initial certificate of eligibility described in Sections 20602, 20639.6, and 20640.6.

(2) Any residential dwelling in which the claimant's interest is held pursuant to a contract of sale or under a life estate, unless the claimant obtains the written consent of the vendor under the contract of sale, or the holder of the reversionary interest upon termination of the life estate*,* for the postponement of taxes and the creation of a lien on the real property in favor of the state for amounts postponed pursuant to this act.

(3) Any residential dwelling on which the claimant does not receive a secured tax bill.

(4) Any residential dwelling in which the claimant's interest is held as a possessory interest, except as provided in Chapter 3.5 (commencing with Section 20640).

(5) (A) Except as provided in this section, any residential dwelling on which the property taxes, as defined in Section 20584, are delinquent at the time the application for postponement under this chapter is made or on which any other property tax or special assessment imposed by a special district or other tax code area is delinquent at the time the application for postponement under this chapter is made.

(B) Any taxes or assessments described in subparagraph (A) that are delinquent on July 1, 1977, will not disqualify an otherwise eligible dwelling for postponement under this chapter. An application for postponement under this chapter to postpone the payment of property taxes for the 1977–78 fiscal year, shall also constitute an application for the postponement of all those delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from that delinquency and those amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by Section 16100 of the Government Code and shall be added to and become part of the obligation secured by the lien provided by Section 16182 of the Government Code; provided, however, that upon payment of delinquent taxes and assessments for *the 1976–77* fiscal year ~~1976–77~~ out of the amount appropriated by Section 16100, any delinquent penalties, interest, fees or other charges resulting from the delinquency of those taxes and assessments for *the 1976–77* fiscal year ~~1976–77~~ shall be canceled.

(C) For *the* 1978–79 *fiscal year* and *each fiscal year* thereafter, any taxes or assessments described in subparagraph (A) that became delinquent after the claimant was 62 and before the claimant first has established a lien pursuant to Section 16182 of the Government Code will not disqualify an otherwise eligible dwelling for postponement under this chapter. An application to postpone taxes for *the* 1978–79 *fiscal year* or *for any fiscal year* thereafter shall also constitute an application for the postponement of all delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from the delinquency and those amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by

Section 16100 of the Government Code and shall be added to and become part of the obligation secured by the lien provided by Section 16182 of the Government Code.

(6) All taxes or assessments described in subparagraph (A) of paragraph (5) that are delinquent on the date this bill takes effect will not disqualify an otherwise eligible blind or disabled applicant's dwelling from postponement under this chapter. A blind or disabled citizen's application for postponement of property taxes will not constitute an application for the postponement of any delinquent taxes and assessments, or any penalties, interest, fees or other charges resulting from delinquency. Delinquent taxes of blind or disabled applicants are not subject to postponement under this chapter.

SEC. 189. Section 527 of the Streets and Highways Code is amended to read:

527. (a) Route 227 is from Route 1 south of Oceano to Route 101 in San Luis Obispo.

(b) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Arroyo Grande the portion of Route 227 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, including, but not limited to, a condition that the City of Arroyo Grande maintain within its jurisdiction signs directing motorists to the continuation of Route 227.

(2) A relinquishment under this subdivision shall become effective immediately following the recording by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 227 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 227 relinquished under this subdivision may not be considered for future adoption under Section 81.

(c) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of San Luis Obispo the portion of Route 227 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, including, but not limited to, a condition that the City of San Luis Obispo maintain within its jurisdiction signs directing motorists to the continuation of Route 227.

(2) A relinquishment under this subdivision shall become effective immediately following the recording by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 227 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 227 relinquished under this subdivision may not be considered for future adoption under Section 81.

(4) For the portions of Route 227 that *are* relinquished, the City of San Luis Obispo shall maintain within its jurisdiction signs directing motorists to the continuation of Route 227.

SEC. 190. Section 36705 of the Streets and Highways Code is amended to read:

36705. As used in this part:

(a) "Activities" means, but is not limited to, all of the following:

(1) Providing security services supplemental to those normally provided by the city.

(2) Maintaining, including irrigating, landscaping.

(3) Providing sanitation, graffiti removal, street and sidewalk cleaning, and other public services supplemental to those normally provided by the city.

(4) Marketing, advertising, and promoting economic development, including the retention and recruitment of businesses and tenants.

(5) Providing managerial services for multifamily residential businesses.

(6) Providing building inspection and code enforcement services for multifamily residential businesses supplemental to those normally provided by the city.

(b) "Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and

promoting activities which will benefit the properties or businesses located within a multifamily improvement district.

(c) "Business" means all types of businesses, including, but not limited to, the operation of multifamily residential properties, retail stores, commercial properties, financial institutions, and professional offices.

(d) "City" means a city, county, city and county, or an agency or entity created pursuant to the Joint Exercise of Powers Act, Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county.

(e) "City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

(f) "Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more, including, but not limited to:

(1) Parking facilities.

(2) Benches, booths, kiosks, display cases, pedestrian shelters, signs, and entry monuments.

(3) Trash receptacles.

(4) Street lighting.

(5) Street decorations.

(6) Parks.

(7) Fountains.

(8) Planting areas.

(9) Closing, opening, widening, or narrowing of existing streets.

(10) Facilities or equipment, or both, to enhance the security of persons and property within the district.

(11) Ramps, sidewalks, plazas, and pedestrian malls.

(12) Rehabilitation or removal of existing structures.

(g) "Management district plan" or "plan" means a proposal as described in Section 36713.

(h) "Multifamily improvement district," or "district," means a multifamily improvement district established pursuant to this part.

(i) "Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

(j) "Property" means real property situated within a multifamily improvement district.

(k) "Property owner" or "owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. The city council has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this subdivision requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient.

(*l*) "Tenant" means an occupant pursuant to a lease or a rental agreement of commercial space or a dwelling unit, other than an owner.

SEC. 191. Section 36733 of the Streets and Highways Code is amended to read:

36733. The city council may execute baseline service contracts that would establish levels of city services that would continue after a *district* has been formed.

SEC. 192. Section 36737 of the Streets and Highways Code is amended to read:

36737. (a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36716, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance

of bonds, although proceedings under the *Improvement* Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36716, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 20 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

SEC. 193. Section 1052 of the Unemployment Insurance Code is amended to read:

1052. Upon receipt of the application the separate account, actual contribution and benefit experience and payrolls of the predecessor or that part thereof, as determined by authorized regulations, which pertains to the organization, trade, or business, or portion thereof acquired, shall be transferred to the successor employer for the purpose of determining its rate of contribution after ~~such~~ *the* acquisition with the same effect for ~~such~~ *that* purpose as if the operations of the predecessor had at all times been carried on by the successor. ~~Such~~ *The* separate account shall be transferred by the director to the successor employer and, as of the date of the acquisition, shall become the separate account or part of the separate account, as the case may be, of the successor employer, and the benefits thereafter chargeable to the predecessor employer on account of employment relating to the transferred organization, trade, or business or transferred portion thereof prior to the date of the acquisition shall be charged to the separate account. This section shall not apply to any acquisition which is determined by the director to have been made for the purpose of obtaining a more favorable rate of contributions under Section 977.

SEC. 194. Section 4000.1 of the Vehicle Code, as amended by Section 3 of Chapter 704 of the Statutes of 2004, is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) With respect to new motor vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, the department shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code shall control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) The initial application for transfer is submitted within the 90-day validity period of a smog certificate as specified in Section 44015 of the Health and Safety Code.

(2) The transferor is the parent, grandparent, sibling, child, grandchild, or spouse of the transferee.

(3) A motor vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(4) The transfer is between companies ~~whose~~ *the* principal business *of which* is leasing motor vehicles, if there is no change in the lessee or operator of the motor vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the motor vehicle.

(5) The transfer is between the lessor and lessee of the motor vehicle, if there is no change in the lessee or operator of the motor vehicle.

(6) The motor vehicle was manufactured prior to the 1976 model-year.

(7) Beginning January 1, 2005, the transfer is for a motor vehicle that is four or less model-years old. The department shall impose a fee of eight dollars ($8) on the transferee of a motor vehicle that is four or less model-years old. Revenues generated from the imposition of that fee shall be deposited into the Vehicle Inspection and Repair Fund.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

(f) Subdivision (a) does not apply to a motor vehicle when an additional individual is added as a registered owner of the motor vehicle.

(g) For purposes of subdivision (a), any collector motor vehicle, as defined in Section 259, is exempt from those portions of the test required by subdivision (f) of Section 44012 of the Health and Safety Code, if the collector motor vehicle meets all of the following criteria:

(1) Submission of proof that the motor vehicle is insured as a collector motor vehicle, as shall be required by regulation of the bureau.

(2) The motor vehicle is at least 35 model-years old.

(3) The motor vehicle complies with the exhaust emissions standards for that motor vehicle's class and model year as prescribed by the department, and the motor vehicle passes a functional inspection of the fuel cap and a visual inspection for liquid fuel leaks.

SEC. 195. Section 4466 of the Vehicle Code, as amended by Section 1 of Chapter 430 of the Statutes of 2004, is amended to read:

4466. (a) The department shall not issue a duplicate or substitute certificate of title or license plate if, after a search of the records of the department, the registered owner's address, as submitted on the application, is different from that which appears in the records of the department, unless the registered owner applies in person and presents all of the following:

(1) Proof of ownership of the vehicle that is acceptable to the department. Proof of ownership may be the certificate of title, registration certificate, or registration renewal notice, or a facsimile of any of those documents, if the facsimile matches the vehicle record of the department.

(2) A driver's license or identification card containing a picture of the licensee or cardholder issued to the registered owner by the department pursuant to Chapter 1 (commencing with Section 12500) of Division 6. The department shall conduct a search of its records to verify the authenticity of any document submitted under this paragraph.

(A) If the registered owner is a resident of another state or country, the registered owner shall present a driver's license or identification card issued by that state or country. In addition, the registered owner shall provide photo documentation in the form of a valid passport, military identification card, identification card issued by a state or United States government agency, student identification card issued by a college or university, or identification card issued by a California-based employer. If a resident of another state is unable to present the required photo identification, the department shall verify the authenticity of the driver's license or identification card by contacting the state that issued the driver's license or identification card.

(B) If the registered owner is not an individual, the person submitting the application shall submit the photo identification required under this paragraph, as well as documentation acceptable to the department that demonstrates that the person is employed by an officer of the registered owner.

(3) If the application is for the purpose of replacing a license plate that was stolen, a copy of a police report identifying the plate as stolen.

(4) If the application is for the purpose of replacing a certificate of title or license plate that was mutilated or destroyed, the remnants of the mutilated or destroyed document or plate.

(5) If the department has a record of a prior issuance of a duplicate or substitute certificate of title or license plate for the vehicle within the past 90 days, a copy of a report from the Department of the California Highway Patrol verifying the vehicle identification number of the vehicle.

(b) Subdivision (a) does not apply if either of the following apply:

(1) The registered owner's name, address, and driver's license or identification card number submitted on the application match the name, address, and driver's license or identification card number contained in the department's records.

(2) An application for a duplicate or substitute certificate of title or license plate is submitted by or through one of the following:

(A) A legal owner, if the legal owner is not the same person as the registered owner or as the lessee under Section 4453.5.

(B) A dealer or an agent of the dealer.

(C) A dismantler.

(D) An insurer or an agent of the insurer.

(E) A salvage pool.

(c) At the discretion of the department, the requirements of subdivision (a) shall not apply in any of the following circumstances:

(1) An application for a duplicate or substitute certificate of title or license plate is submitted by a licensed registration service representing any of the following:

(A) A person, including, but not limited to, a person listed in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (b).

(B) A business entity recognized under the laws of this state or the laws of any foreign or domestic jurisdiction whose laws are in parity with the laws of this state.

(C) A court-appointed bankruptcy referee.

(D) A person who is an individual, is not included in subparagraphs (A) to (C), inclusive, and submits to the licensed registration service an application with a signature that is validated by a notary public. The licensed registration service shall maintain full and complete records of its transactions conducted pursuant to this subparagraph and shall make those records available for inspection by an investigator of the Department of Motor Vehicles, investigator of the Department of the California Highway *Patrol*, a city police department, a county sheriff's office, or a district attorney's office, if the investigator requests access to the record and the request is for the purpose of a criminal investigation.

(2) The vehicle is registered under the International Registration Plan pursuant to Section 8052 or under the Permanent Fleet Registration program pursuant to Article 9.5 (commencing with Section 5301) of Chapter 1.

(3) The vehicle is an implement of husbandry, as defined in Section 36000, or a tow dolly, or has been issued an identification plate under Section 5014 or 5014.1.

(d) The department shall issue one or more license plates only to the registered owner or lessee. The department shall issue the certificate of title only to the legal owner, or if none, then to the registered owner, as shown on the department's records.

(e) This section 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.

SEC. 196. Section 5205.5 of the Vehicle Code is amended to read:

5205.5. (a) For the purposes of implementing Section 21655.9, the department shall make available for issuance, for a fee determined by the department to be sufficient to reimburse the department for the actual costs incurred pursuant to this section, distinctive decals, labels, and other identifiers that clearly distinguish the following vehicles from other vehicles:

(1) A vehicle that meets California's super ultra-low emission vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations.

(2) A vehicle that was produced during the 2004 model year or earlier and meets California ultra-low emission vehicle (ULEV) standard for exhaust emissions and the federal ILEV standard.

(3) A hybrid vehicle or an alternative fuel vehicle that meets California's advanced technology partial zero-emission vehicle (AT PZEV) standard for criteria pollutant emissions and has a 45 miles per gallon or greater fuel economy highway rating.

(4) A hybrid vehicle that was produced during the 2004 model year or earlier and has a 45 miles per gallon or greater fuel economy highway rating, and meets California's ultra-low emission vehicle (ULEV), super ultra-low emission vehicle (SULEV), or partial zero-emission vehicle (PZEV) standards.

(b) Neither an owner of a hybrid vehicle that meets the AT PZEV standard, with the exception of a vehicle that meets the federal ILEV standard, nor an owner of a hybrid vehicle described in paragraph (4) of subdivision (a), is entitled to a decal, label, or other identifier pursuant to this section unless, and until, the federal government acts to approve the use of high-occupancy vehicle lanes by vehicles of the types identified in paragraph (3) or (4) of subdivision (a), regardless of the number of occupants.

(c) The department shall include a summary of the provisions of this section on each motor vehicle registration renewal notice, or on a separate insert, if space is available and the summary can be included without incurring additional printing or postage costs.

(d) The Department of Transportation shall remove individual high-occupancy vehicle (HOV) lanes, or portions of those lanes, during periods of peak congestion from the access provisions provided in subdivision (a), following a finding by the Department of Transportation as follows:

(1) The lane, or portion thereof, exceeds a level of service C, as discussed in subdivision (b) of Section 65089 of the Government Code.

(2) The operation or projected operation of the vehicles described in subdivision (a) in these lanes, or portions thereof, will significantly increase congestion.

The finding also shall demonstrate the infeasibility of alleviating the congestion by other means, including, but not limited to, reducing the use of the lane by noneligible vehicles, or further increasing vehicle occupancy.

(e) The State Air Resources Board shall publish and maintain a listing of all vehicles eligible for participation in the programs described in this section. The board shall provide that listing to the department.

(f) For purposes of subdivision (a), the Department of the California Highway Patrol and the department, in consultation with the Department of Transportation, shall design and specify the placement of the decal, label, or other identifier on the vehicle. Each decal, label, or other identifier issued for a vehicle shall display a unique number, which number shall be printed on, or affixed to, the vehicle registration.

(g) (1) For purposes of subdivision (a), the department shall issue no more than 75,000 distinctive decals, labels, or other identifiers that clearly distinguish the vehicles specified in paragraphs (3) and (4) of subdivision (a).

(2) The department shall notify the Department of Transportation immediately after the date on which the department has issued 50,000 decals, labels, and other identifiers under this section for the vehicles described in paragraphs (3) and (4) of subdivision (a).

(3) The Department of Transportation shall determine whether significant high-occupancy vehicle lane breakdown has occurred throughout the state, in accordance with the following timeline:

(A) For lanes that are nearing capacity, the Department of Transportation shall make the determination not later than 90 days after the date provided by the department under paragraph (2).

(B) For lanes that are not nearing capacity, the Department of Transportation shall make the determination not later than 180 days after the date provided by the department under paragraph (2).

(4) In making the determination that significant high-occupancy vehicle lane breakdown has occurred, the Department of Transportation shall consider the following factors in the HOV lane:

(A) Reduction in level of service.

(B) Sustained stop-and-go conditions.

(C) Slower than average speed than the adjacent mixed flow lanes.

(D) Consistent increase in travel time.

(5) After making the determinations pursuant to subparagraphs (A) and (B) of paragraph (3), if the Department of Transportation determines that significant high-occupancy vehicle lane breakdown has occurred throughout the state, the Department of Transportation shall immediately notify the department of that determination, and the department, on the date of receiving that notification, shall discontinue issuing the decals, labels, or other identifiers for the vehicles described in paragraphs (3) and (4) of subdivision (a).

(h) If the Metropolitan Transportation Commission, serving as the Bay Area Toll Authority, grants toll-free and reduced-rate

passage on toll bridges under its jurisdiction to any vehicle pursuant to Section 30102.5 of the Streets and Highways Code, it shall also grant the same toll-free and reduced-rate passage to a vehicle displaying an identifier issued by the department pursuant to paragraph (1) or (2) of subdivision (a) and to a vehicle displaying a valid identifier issued by the department pursuant to paragraph (3) or (4) of subdivision (a) if either of the following apply:

(1) The vehicle is registered to an address outside of the region identified in Section 66502 of the Government Code.

(2) If the vehicle is registered to an address inside the region, the owner of the vehicle complies with subdivision (i) unless subdivision (j) is applicable.

(i) An owner of a vehicle specified in paragraph (3) or (4) of subdivision (a) whose vehicle is registered to an address in the region identified in Section 66502 of the Government Code and who seeks a vehicle identifier under subdivision (a) shall obtain an account to operate within the automatic vehicle identification system described in Section 27565 of the Streets and Highways Code and shall submit to the department a form, approved by the department and issued by the Bay Area Toll Authority, that contains the vehicle owner's name, the license plate number and vehicle identification number of the vehicle, the vehicle make and year model, and the automatic vehicle identification system account number, as a condition to obtaining a vehicle identifier pursuant to subdivision (a) that allows for the use of that vehicle in high-occupancy vehicle lanes regardless of the number of occupants.

(j) If the automatic vehicle identification system readers on all high-occupancy vehicle lanes on all of the toll bridges identified in subdivision (a) of Section 30910 of the Streets and Highways Code are not fully operational and fully funded with bridge tolls controlled by the Bay Area Toll Authority within 90 days of the federal government approval described in subdivision (b), then subdivision (i) shall not be applicable and both of the following shall apply:

(1) The Metropolitan Transportation Commission, acting as the Bay Area Toll Authority, shall grant toll-free and reduced-rate passage to all vehicles displaying an identifier issued by the department pursuant to subdivision (a).

(2) The department shall not require documentation that the owner of a vehicle registered to an address in the region identified in Section 66502 of the Government Code has obtained an automatic vehicle identification system account as a condition to the issuance of an identifier under subdivision (a).

(k) 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. 197. Section 9400.1 of the Vehicle Code is amended to read:

9400.1. (a) (1) In addition to any other required fee, there shall be paid the fees set forth in this section for the registration of commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more. Pickup truck and electric vehicle weight fees are not calculated under this section.

(2) The weight of a vehicle issued an identification plate pursuant to an application under Section 5014, and the weight of an implement of husbandry as defined in Section 36000, shall not be considered when calculating, pursuant to this section, the declared gross vehicle weight of a towing commercial motor vehicle that is owned and operated exclusively by a farmer or an employee of a farmer in the conduct of agricultural operations.

(3) Tow trucks that are utilized to render assistance to the motoring public or to tow or carry impounded vehicles shall pay fees in accordance with this section, except that the fee calculation shall be based only on the gross vehicle weight rating of the towing or carrying vehicle. Upon each initial or transfer application for registration of a tow truck described in this paragraph, the registered owner or lessee or that owner's or

lessee's designee, shall certify to the department the gross vehicle weight rating of the tow truck:

Gross Vehicle Weight Range	Fee
10,001-15,000	$ 257
15,001-20,000	353
20,001-26,000	435
26,001-30,000	552
30,001-35,000	648
35,001-40,000	761
40,001-45,000	837
45,001-50,000	948
50,001-54,999	1,039
55,000-60,000	1,173
60,001-65,000	1,282
65,001-70,000	1,398
70,001-75,000	1,650
75,001-80,000	1,700

(b) The fees specified in subdivision (a) apply to both of the following:

(1) An initial or original registration occurring on or after December 31, 2001, to December 30, 2003, inclusive, of a commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more.

(2) The renewal of registration of a commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001, to December 30, 2003, inclusive.

(c) (1) For both an initial or original registration occurring on or after December 31, 2003, of a commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more, and the renewal of registration of a commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2003, there shall be paid fees as follows:

Gross Vehicle Weight Range	Weight Code	Fee
10,001-15,000	A	$ 332
15,001-20,000	B	447
20,001-26,000	C	546
26,001-30,000	D	586
30,001-35,000	E	801
35,001-40,000	F	937
40,001-45,000	G	1,028
45,001-50,000	H	1,161
50,001-54,999	I	1,270
55,000-60,000	J	1,431
60,001-65,000	K	1,562
65,001-70,000	L	1,701
70,001-75,000	M	2,004
75,001-80,000	N	2,064

(2) For the purpose of obtaining "revenue neutrality" as described in Sections 1 and 59 of Senate Bill 2084 of the 1999–2000 Regular Session (Chapter 861 of the Statutes of 2000), the Director of Finance shall review the final 2003–04 Statement of Transactions of the State Highway Account. If that review indicates that the actual truck weight fee revenues deposited in the State Highway Account do not total at least seven hundred eighty-nine million dollars ($789,000,000), the Director of Finance shall instruct the department to adjust the schedule set forth in paragraph (1), but not to exceed the following fee amounts:

Gross Vehicle Weight Range	Weight Code	Fee
10,001-15,000	A	$ 354
15,001-20,000	B	482
20,001-26,000	C	591
26,001-30,000	D	746
30,001-35,000	E	874
35,001-40,000	F	1,024
40,001-45,000	G	1,125
45,001-50,000	H	1,272
50,001-54,999	I	1,393
55,000-60,000	J	1,571
60,001-65,000	K	1,716
65,001-70,000	L	1,870
70,001-75,000	M	2,204
75,001-80,000	N	2,271

(d) (1) In addition to the fees set forth in subdivision (a), a Cargo Theft Interdiction Program ~~Fee~~ *fee* of three dollars ($3) shall be paid at the time of initial or original registration or renewal of registration of each motor vehicle subject to weight fees under this section.

(2) This subdivision does not apply to vehicles used or maintained for the transportation of persons for hire, compensation or profit, and tow trucks.

(3) For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee imposed under this subdivision shall be apportioned as required for registration fees under that article.

(4) Funds collected pursuant to the Cargo Theft Interdiction Program shall not be proportionately reduced for each month and shall be transferred to the Motor Carriers Safety Improvement Fund.

(e) Notwithstanding Section 42270 or any other provision of law, of the moneys collected by the department under this section, one hundred twenty-two dollars ($122) for each initial, original, and renewal registration shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund. All other moneys collected by the department under this section shall be deposited to the credit of

the State Highway Account in the State Transportation Fund. One hundred twenty-two dollars ($122) of the fee imposed under this section shall not be proportionately reduced for each month. For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee shall be apportioned as required for registration under that article.

(f) (1) The department, in consultation with the Department of the California Highway Patrol, shall design and make available a set of distinctive weight decals that reflect the declared gross combined weight or gross operating weight reported to the department at the time of initial registration, registration renewal, or when a weight change is reported to the department pursuant to Section 9406.1. A new decal shall be issued on each renewal or when the weight is changed pursuant to Section 9406.1. The decal for a tow truck that is subject to this section shall reflect the gross vehicle weight rating or weight code.

(2) The department may charge a fee, not to exceed ten dollars ($10), for the department's actual cost of producing and issuing each set of decals issued under paragraph (1).

(3) The weight decal shall be in sharp contrast to the background and shall be of a size, shape, and color that is readily legible during daylight hours from a distance of 50 feet.

(4) Each vehicle subject to this section shall display the weight decal on both the right and left sides of the vehicle.

(5) A person may not display upon a vehicle a decal issued pursuant to this subdivision that does not reflect the declared weight reported to the department.

(6) Notwithstanding subdivision (e) or any other provision of law, the moneys collected by the department under this subdivision shall be deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund.

(7) This subdivision shall apply to vehicles subject to this section at the time of an initial registration, registration renewal, or reported weight change that occurs on or after July 1, 2004.

(8) The following shall apply to vehicles registered under the permanent fleet registration program pursuant to Article 9.5 (commencing with Section 5301) of Chapter 1:

(A) The department, in consultation with the Department of the California Highway Patrol, shall distinguish the weight decals

issued to permanent fleet registration vehicles from those issued to other vehicles.

(B) The department shall issue the distinguishable weight decals only to the following:

(i) A permanent fleet registration vehicle that is registered with the department on January 1, 2005.

(ii) On and after January 1, 2005, a vehicle for which the department has an application for initial registration as a permanent fleet registration vehicle.

(iii) On and after January 1, 2005, a permanent fleet registration vehicle that has a weight change pursuant to Section 9406.1.

(C) The weight decal issued under this paragraph shall comply with the applicable provisions of paragraphs (1) to (6), inclusive.

SEC. 198. 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 and 6 months and enrolled and participating in an integrated driver education program as provided in subparagraph (B) of paragraph (3) of subdivision (a) of Section 12814.6.

(4) Is over the age of 16 years and is applying for a restricted driver's license pursuant to Section 12814.7.

(5) Is over the age of 17 years and 6 months.

(b) The applicant shall qualify for, and be issued, an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Except as provided in Section 12814.6, a person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), may operate a motor vehicle, other than a motorcycle, motorized scooter, or a motorized bicycle, when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) A person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), who is age 15 years and 6 months or 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 a person, while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle, motorized scooter, or a motorized bicycle, except that the person shall not operate a motorcycle, motorized scooter, or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade, and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(f) A person while having in his or her immediate possession a valid permit issued pursuant to paragraph (4) of subdivision (a), may only operate a government-owned motor vehicle, other than

a motorcycle, motorized scooter, or a motorized bicycle, when taking a driver training instruction administered by the California National Guard.

(g) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(h) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 199. Section 13352 of the Vehicle Code, as added by Chapter 595 of the Statutes of 2004, is amended to read:

13352. (a) The department shall immediately suspend or revoke the privilege of a person to operate a motor vehicle upon the receipt of an abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon the receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense specified in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Sections 15300 to 15302, inclusive. For the purposes of this section, suspension or revocation shall be as follows:

(1) Except as required under Section 13352.4, upon a conviction or finding of a violation of Section 23152 punishable under Section 23536, the privilege shall be suspended for a period of six months. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code described in subdivision (b) of Section 23538. If the court, as authorized under paragraph (3) of subdivision (b) of Section 23646, elects to order a person to enroll *in*, participate *in,* and complete either program described in paragraph (4) of subdivision (b) of Section 23542, the

department shall require that program in lieu of the program described in subdivision (b) of Section 23538. For the purposes of this paragraph, enrollment *in*, participation *in*, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given to any program activities completed prior to the date of the current violation.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23554, the privilege shall be suspended for a period of one year. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in subdivision (b) *of* Section 23556. If the court, as authorized under paragraph (3) of subdivision (b) of Section 23646, elects to order a person to enroll *in*, participate *in*, and complete either program described in paragraph (4) of subdivision (b) of Section 23542, the department shall require that program in lieu of the program described in Section 23556. For the purposes of this paragraph, enrollment *in*, participation *in*, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given to any program activities completed prior to the date of the current violation.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23540, the privilege shall be suspended for two years. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in subdivision (b) of Section 23542. For the purposes of this paragraph, enrollment *in*, participation *in*, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 12 months of the suspension period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the

person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily provided, subsequent to the violation date of the current underlying conviction, either of the following:

(i) Proof of enrollment in an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) Proof of enrollment in a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in subparagraph (A).

(C) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(D) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(E) The person provides proof of financial responsibility, as defined in Section 16430.

(F) The person pays all administrative fees or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(4) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23560, the privilege shall be revoked for a period of three years. The privilege may not be reinstated until the person gives proof of financial responsibility, and the person gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23562. For the purposes of this paragraph, enrollment *in*, participation *in*, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 18 months of the revocation period, which may include credit for any suspension

period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in that 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(F) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(5) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23546, the privilege shall be revoked for a period of three years. The privilege may not be reinstated until the person files proof of financial responsibility and gives proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) or (c) of Section 23548, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment *in*, participation *in*, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to

any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 18 months of the revocation period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) An individual convicted of a violation of Section 23152 punishable under Section 23546 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(6) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section

23550.5 or 23566, the privilege shall be revoked for a period of five years. The privilege may not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23568 or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment *in*, participation *in*, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 30 months of the revocation period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(ii) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if a 30-month program is unavailable in the person's county of residence or employment.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23153 punishable under Section 23566 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(7) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23550 or 23550.5, or Section 23153 punishable under Section 23550.5, the privilege shall be revoked for a period of four years. The privilege may not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment *in*, participation *in*, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 24 months of the revocation period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) An individual convicted of a violation of Section 23152 punishable under Section 23550 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 that is punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if ordered by the court. The privilege may not be reinstated until the person gives proof of financial responsibility, as defined in Section 16430.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 that is punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if ordered by the court. The privilege may not be reinstated until the person gives proof of financial responsibility, as defined in Section 16430.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) A judge of a juvenile court, juvenile hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense that, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

(e) For the purposes of the restriction conditions specified in paragraphs (3) to (7), inclusive, of subdivision (a), the department shall terminate the restriction imposed pursuant to this section and shall suspend or revoke the person's driving privilege upon receipt of notification from the driving-under-the-influence program that the person has failed to comply with the program requirements. The person's driving privilege shall remain suspended or revoked for the remaining period of the original suspension or revocation imposed under this section and until all reinstatement requirements described in this section are met.

(f) For the purposes of this section, completion of a program is the following:

(1) Satisfactory completion of all program requirements approved pursuant to program licensure, as evidenced by a certificate of completion issued, under penalty of perjury, by the licensed program.

(2) Certification, under penalty of perjury, by the director of a program specified in Section 8001 of the Penal Code, that the person has completed a program specified in Section 8001 of the Penal Code.

(g) The holder of a commercial driver's license who was operating a commercial motor vehicle, as defined in Section 15210, at the time of a violation that resulted in a suspension or revocation of the person's noncommercial driving privilege under this section is not eligible for the restricted driver's license authorized under paragraphs (3) to (7), inclusive, of subdivision (a).

(h) This section shall become operative on September 20, 2005.

SEC. 200. Section 15250 of the Vehicle Code is amended to read:

15250. (a) (1) A person may not operate a commercial motor vehicle unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class.

(2) A person may not operate a commercial motor vehicle while transporting hazardous materials unless that person has in his or her possession a valid commercial driver's license with a hazardous materials endorsement. An instruction permit does not authorize the operation of a vehicle transporting hazardous materials.

(b) (1) Before an application for an original or renewal of a commercial driver's license with a hazardous materials endorsement is submitted to the United States Transportation Security Administration for the processing of a security threat assessment, as required under Part 1572 of Title 49 of the Code of Federal Regulations, the department shall complete a check of the applicant's driving record to ensure that the person is not subject to a disqualification under Part 383.51 of Title 49 of the Code of Federal Regulations.

(2) A person may not be issued a commercial driver's license until he or she has passed a written and driving test for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) and Part 383 of Title 49 of the Code of Federal Regulations, and has satisfied all other requirements of that act as well as any other requirements imposed by this code.

(c) The tests shall be prescribed and conducted by or under the direction of the department. The department may allow a

third-party tester to administer the driving test part of the examination required under this section and Section 15275 if all of the following conditions are met:

(1) The tests given by the third party are the same as those that would otherwise be given by the department.

(2) The third party has an agreement with the department ~~including~~ *that includes*, but *is* not limited to, the following provisions:

(A) Authorization for the United States Secretary of Transportation, or his or her representative, and the department, or its representative, to conduct random examinations, inspections, and audits without prior notice.

(B) Permission for the department, or its representative, to conduct onsite inspections at least annually.

(C) A requirement that all third-party testers meet the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests in compliance with the requirements of Part 383 of Title 49 of the Code of Federal Regulations.

(D) The department may cancel, suspend, or revoke the agreement with a third-party tester if the third-party tester fails to comply with the standards for the commercial driver's license testing program, or with any other term of the third-party agreement, upon 15 ~~days~~ *days'* prior written notice of the action to cancel, suspend, or revoke the agreement by the department to the third party. Any action to appeal or review any order of the department canceling, suspending, or revoking a third-party testing agreement shall be brought in a court of competent jurisdiction under Section 1085 of the Code of Civil Procedure, or as otherwise permitted by the laws of this state. The action shall be commenced within 90 days from the effective date of the order.

(E) Any third-party tester whose agreement has been canceled pursuant to subparagraph (D) may immediately apply for a third-party testing agreement.

(F) A suspension of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of less than 12 months as determined by the department. After the period of suspension, the agreement shall be reinstated upon request of the third-party tester.

(G) A revocation of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of not less than one year. A third-party tester may apply for a new third-party testing agreement after the period of revocation and upon submission of proof of correction of the circumstances causing the revocation.

(H) Authorization for the department to charge the third-party tester a fee, as determined by the department, which is sufficient to defray the actual costs incurred by the department for administering and evaluating the third-party testing program, and for carrying out any other activities deemed necessary by the department to ensure sufficient training for the drivers participating in the program.

(3) Except as provided in Section 15250.3, the tests given by the third party shall not be accepted in lieu of tests prescribed and conducted by the department for applicants for a passenger vehicle endorsement specified in paragraph (2) of subdivision (a) of Section 15278, if the applicant operates or will operate a tour bus.

(d) Commercial driver's license applicants who take and pass driving tests administered by a third party shall provide the department with certificates of driving skill satisfactory to the department that the applicant has successfully passed the driving tests administered by the third party.

(e) Implementation dates for the issuance of a commercial driver's license pursuant to this chapter may be established by the department as it determines is necessary to accomplish an orderly commercial driver's license program.

SEC. 201. Section 15275 of the Vehicle Code is amended to read:

15275. (a) A person may not operate a commercial motor vehicle described in this chapter unless that person has in his or her possession a valid commercial driver's license for the appropriate class, and an endorsement issued by the department to permit the operation of the vehicle unless exempt from the requirement to obtain an endorsement pursuant to subdivision (b) of Section 15278.

(b) (1) An endorsement to drive vehicles specified in this article shall be issued only to applicants *who are* qualified by examinations prescribed by the department and who meet the

minimum standards established in Part 383 of Title 49 of the Code of Federal Regulations.

(2) A hazardous materials endorsement shall be issued only to applicants who comply with paragraph (1) and the requirements set forth in Part 1572 of Title 49 of the Code of Federal Regulations.

(c) The department may deny, suspend, revoke, or cancel an endorsement to drive vehicles specified in this article when the applicant does not meet the qualifications for the issuance or retention of the endorsement.

(d) If the department denies, suspends, revokes, or cancels a hazardous materials endorsement because the department received notification that the applicant poses a security threat pursuant to Part 1572 of Title 49 of the Code of Federal Regulations*,* and, upon appeal by the United States Transportation Security Administration, that endorsement is ordered reinstated, the department shall issue or restore the hazardous materials endorsement to the applicant within the period specified under those federal regulations.

SEC. 202. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) In addition to any other provisions of law, the court may require that a person convicted of a first offense violation of Section 23152 or 23153 to install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court shall give heightened consideration to applying this sanction to *a* first offense ~~violators~~ *violator* with 0.20 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or ~~of~~ *to* persons who refused the chemical tests at arrest. If the court orders the ignition interlock device restriction, the term shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(2) The court shall require a person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(b) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement and term for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

(c) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(d) A person whose driving privilege is restricted by the court pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. The installer shall notify the court if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation for the installer to notify the court if the person has complied with all of the requirements of this article.

(e) The court shall monitor the installation and maintenance of any ignition interlock device restriction ordered pursuant to subdivision (a) or (*l*). If a person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.

(f) (1) Pursuant to Section 13352, if a person is convicted of a violation of Section 23152 or 23153, and the offense occurred

within 10 years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately terminate the restriction issued pursuant to Section 13352 and shall immediately suspend or revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352. The privilege shall remain suspended or revoked for the remaining period of the originating suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(g) A person whose driving privilege is restricted by the Department of Motor Vehicles pursuant to Section 13352 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this section.

(h) Nothing in this section permits a person to drive without a valid driver's license.

(i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of

suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.

(j) Pursuant to this section, an out-of-state resident who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. An ignition interlock device is not required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(*l*) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for a ~~persons~~ *person* to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(m) For the purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.

(n) For the purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating vehicles that are not owned by the person subject to this section.

(o) For the purposes of this section, ~~bypass~~ *"bypass"* includes, but is not limited to, either of the following:

(1) Any combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) Any incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning *off* the ~~vehicles's~~ *vehicle's* engine ~~off~~.

SEC. 203. Section 23593 of the Vehicle Code is amended to read:

23593. (a) The court shall advise a person convicted of a violation of Section 23103, as specified in Section 23103.5, or a violation of Section 23152 or 23153, as follows:

"You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder."

(b) The advisory statement may be included in a plea form, if used, or the fact that the advice was given may be ~~specied~~ *specified* on the record.

(c) The court shall include on the abstract of the conviction or violation submitted to the department under Section 1803 or 1816, the fact that the person has been advised as required under subdivision (a).

SEC. 204. Section 27362 of the Vehicle Code is amended to read:

27362. (a) A manufacturer, wholesaler, or retailer shall not sell, offer for sale, or install in a motor vehicle, a child passenger restraint system that does not conform to all applicable federal motor vehicle safety standards on the date of manufacture. Responsibility for compliance with this section shall rest with the individual selling the system, offering the system for sale, or installing the system. A person who violates this section is guilty of a misdemeanor and shall be punished as follows:

(1) Upon a first conviction, by a fine not exceeding four hundred dollars ($400), or by imprisonment in ~~the~~ *a* county jail for a period of not more than 90 days, or both.

(2) Upon a second or subsequent conviction, by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in ~~the~~ *a* county jail for a period of not more than 180 days, or both.

(b) The fines collected for a violation of this section shall be allocated as follows:

(1) (A) Sixty percent to the county or city health department where the violation occurred, to be used for a child passenger restraint low-cost purchase or loaner program which shall include, but not be limited to, education on the proper installation and use of a child passenger restraint system. The county health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the superior court to facilitate the transfer of funds to the program. The county may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall receive information relating to the importance of utilizing that system.

(B) As the proceeds from fines become available, county health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency and the courts, birthing centers, community child health and disability prevention programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

SEC. 205. Section 521 of the Water Code is amended to read:

521. The Legislature further finds and declares all of the following:

(a) Water furnished or used without any method of determination of the quantities of water used by the person to whom the water is furnished has caused, and will continue to cause, waste and unreasonable use of water, and that this waste and unreasonable use should be identified, isolated, and eliminated.

(b) Water metering and volumetric pricing are among the most efficient conservation tools, providing information on how much water is being used and pricing to encourage conservation.

(c) Without water meters, it is impossible for homeowners and businesses to know how much water they are using, thereby inhibiting conservation, punishing those who conserve, and rewarding those who waste water.

(d) Existing law requires the installation of a water meter as a condition of water service provided pursuant to a connection installed on or after January 1, 1992, but the continuing widespread absence of water meters and the lack of volumetric pricing could result in the inefficient use of water for municipal and industrial uses.

(e) The benefits to be gained from metering infrastructure are not recovered if urban water suppliers do not use this infrastructure.

(f) This chapter addresses a subject matter of statewide concern. It is the intent of the Legislature that this chapter supersede and preempt all enactments and other local action of cities and counties, including charter cities and charter counties, and other local public agencies that conflict with this chapter, other than enactments or local ~~action~~ *actions* that impose additional or more stringent requirements regarding matters set forth in this chapter.

(g) An urban water supplier should take any available necessary step consistent with state law to ensure that the implementation of this chapter does not place an unreasonable burden on low-income families.

SEC. 206. Section 525 of the Water Code is amended to read:

525. (a) Notwithstanding any other provision of law, every water purveyor who sells, leases, rents, furnishes, or delivers water service to any person shall require, as a condition of new water service on and after January 1, 1992, that a suitable water meter to measure the water service shall be installed on the water service facilities in accordance with this chapter. The cost of installation of the meter shall be paid by the user of the water, and any water purveyor may impose and collect charges for those costs.

(b) Subdivision (a) applies only to potable water.

(c) Subdivision (a) does not apply to a community water system which serves ~~less~~ *fewer* than 15 service connections used by yearlong residents or regularly serves ~~less~~ *fewer* than 25 yearlong residents, or a single well ~~which~~ *that* services the water supply of a single-family residential home.

SEC. 207. Section 527 of the Water Code is amended to read:

527. (a) An urban water supplier that is not subject to Section 526 shall do both *of* the following:

(1) Install water meters on all municipal and industrial service connections located within its service area on or before January 1, 2025.

(2) (A) Charge each customer that has a service connection for which a water meter has been installed~~,~~ based on the actual volume of deliveries~~,~~ as measured by the water meter, beginning on or before January 1, 2010.

(B) Notwithstanding subparagraph (A), in order to provide customers with experience in volume-based water service charges, an urban water supplier that is subject to this subdivision may delay, for one annual seasonal cycle of water use, the use of meter-based charges for service connections that are being converted from nonvolume-based billing to volume-based billing.

(b) A water purveyor, including an urban water supplier, may recover the cost of providing services related to the purchase, installation, and operation of a water meter from rates, fees, or charges.

SEC. 208. 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~~

~~2001–02 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 and its water delivery obligations under subdivision (c) of Section 2081.7 of the Fish and Game Code, 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) During the initial term in which the Quantification Settlement Agreement is in effect, any water transferred by the Imperial Irrigation District shall be subject to an ecosystem restoration fee established by the Department of Fish and Game, in consultation with the board, to cover the proportional impacts to the Salton Sea of the additional water transfer. The fee shall not exceed 10 percent of the amount of any compensation received for the transfer of the water. The fee shall be deposited in the Salton Sea Restoration Fund. This fee shall not apply to the following transfers:

(1) Transfers to meet water delivery obligations under the Quantification Settlement Agreement and related agreements, as defined in that agreement.

(2) Transfers to comply with subdivision (c) of Section 2081.7 of the Fish and Game Code.

(3) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between the Imperial Irrigation District and the Metropolitan Water District of Southern California.

(g) Subdivisions (c), (d), (e), and (f) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before October 12, 2003.

(h) 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. 209. Section 12997 of the Water Code is amended to read:

12997. (a) Not later than June 30, 2005, the director shall establish the Alluvial Fan Task Force with broad membership, to the maximum extent possible, from local, state, and federal government and other stakeholders to review the state of knowledge regarding alluvial fan ~~floodplains~~ *flood plains*, determine future research needs, and prepare recommendations relating to alluvial fan ~~floodplain~~ *flood plain* management, with an emphasis on alluvial fan ~~floodplains~~ *flood plains* that are

being considered for development in accordance with local general plans. The director, in consultation with representatives of the Counties of San Bernardino, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern, Orange, Imperial, and San Diego, may enter into an interagency agreement with the California State University, the University of California, or other appropriate agency*,* to oversee the task force.

(b) The director shall determine the composition of the task force. The task force may include, but need not be limited to, representatives from all of the following entities or groups, subject to the consent of those entities or groups:

(1) City and county governments in the Counties of San Bernardino, Riverside, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern, Orange, Imperial, and San Diego.

(2) The department.

(3) Other local, state, and federal government agencies and stakeholders that represent relevant environmental, agricultural, and construction interests.

(c) The Alluvial Fan Task Force shall develop a model ordinance on alluvial fan flooding to be made available to communities subject to alluvial fan flooding.

(d) The Alluvial Fan Task Force shall prepare and submit a report, with findings and recommendations, to the Legislature not later than June 30, 2006.

SEC. 210. Section 13305 of the Water Code is amended to read:

13305. (a) Upon determining that a condition of pollution or nuisance exists ~~which~~ *that* has resulted from a nonoperating industrial or business location within its region, a regional board may cause notice of the condition to be posted upon the property in question. The notice shall state that the condition constitutes either a condition of pollution or nuisance ~~which~~ *that* is required to be abated by correction of the condition, or ~~it~~ *a condition that* will be corrected by the city, county, other public agency, or regional board at the property owner's expense. The notice shall further state that all property owners having any objections to the proposed correction of the condition may attend a hearing to be held by the regional board at a time not less than 10 days from the posting of the notice.

(b) Notice of the hearing prescribed in this section shall be given in the county where the property is located pursuant to Section 6061 of the Government Code.

(c) In addition to posting and publication, notice as required in this section shall be mailed to the property owners as their names and addresses appear from the last equalized assessment roll.

(d) At the time stated in the notices, the regional board shall hear and consider all objections or protests, if any, to the proposed correction of the condition, and may continue the hearing from time to time.

(e) (1) After final action is taken by the regional board on the disposition of any protests or objections, or if no protests or objections are received, the regional board shall request the city, county, or other public agency in which the ~~conditions~~ *condition* of pollution or ~~the~~ nuisance exists to abate ~~those conditions or the nuisance~~ *the condition or nuisance*.

(2) If the city, county, or other public agency does not abate the condition within a reasonable time, the regional board shall cause the condition to be abated. The regional board may proceed by force account, contract or other agreement*,* or any other method deemed most expedient by the regional board, and shall apply to the state board for the necessary funds.

(3) The regional board shall be permitted reasonable access to the affected property as necessary to perform any cleanup, abatement, or other remedial work. Access shall be obtained with the consent of the owner or possessor of the property, or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, the regional board may enter the property without consent or the issuance of a warrant.

(f) The owner of the property on which the condition exists, or is created, is liable for all reasonable costs incurred by the regional board or any city, county, or public agency in abating the condition. The amount of the cost for abating the condition upon the property in question constitutes a lien upon the property so posted upon the recordation of a notice of lien, which identifies the property on which the condition was abated ~~and~~*,* the amount the lien, and the owner of record of the property, in

the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property so posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice unless sooner released or otherwise discharged. The lien may be foreclosed by an action brought by the city, county, other public agency, or state board, on behalf of the regional board, for a money judgment. Money recovered by a judgment in favor of the state board shall be returned to the State Water Pollution Cleanup and Abatement Account.

(g) The city, county, other public agency, or state board on behalf of a regional board, may, at any time, release all, or any portion, of the property subject to a lien imposed pursuant to subdivision (f) from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount owed is sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount owed. A certificate by the state board, city, county, or other public agency to the effect that any property has been released from the lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

(h) As used in this section, the words "nonoperating" or "not in operation" ~~means~~ *mean* the business is not conducting routine operations usually associated with that kind of business.

(i) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

SEC. 211. Section 13387 of the Water Code is amended to read:

13387. (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances that the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which ~~pollutant or hazardous substance~~ causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than twenty-five thousand dollars ($25,000), for each day in which the violation occurs, or by imprisonment for not more than one year in a county jail, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars ($50,000) for each day in which the violation occurs, or by imprisonment ~~of~~ *for* not more than two years, or by both.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than fifty thousand dollars ($50,000), for each day in which the violation occurs, or by imprisonment in the state prison for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars ($100,000) for each day in which the violation occurs, or by imprisonment in the state prison ~~of~~ *for* not more than six years, or by both.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time

that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars ($250,000) or imprisonment in the state prison ~~of~~ *for* not more than 15 years, or both. A person that is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars ($1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the maximum punishment shall be a fine of not more than five hundred thousand dollars ($500,000) or imprisonment in the state prison ~~of~~ *for* not more than 30 years, or both. A person that is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars ($2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars ($25,000), or by imprisonment in the state prison for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars ($25,000) per day of violation, or by imprisonment in the state prison ~~of~~ *for* not more than four years, or by both.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, "organization," "serious bodily injury," "person," and "hazardous substance" shall have the same meaning as in Section 309(c) of the Clean Water Act (33 U.S.C. Sec. 1319(c)), as amended.

(h) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

SEC. 212. Section 35539.13 of the Water Code is amended to read:

35539.13. (a) The districts may convey water in a drainage course within the boundaries of each respective district for the purposes of treating and reusing that water, if the conveyance, treatment, and reuse meet the requirements of state and federal law.

(b) For purposes of this section, "drainage course" refers to a drainage course with regard to which ~~the~~ each respective district has a right of use.

(c) For purposes of this section, "water" refers to water with regard to which ~~the~~ each respective district has a right of use.

SEC. 213. Section 294 of the Welfare and Institutions Code is amended to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The fathers, presumed and alleged.

(3) The child, if the child is 10 years of age or older.

(4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(5) The grandparents of the child, if their address is known and if the parent's whereabouts are unknown.

(6) All counsel of record.

(7) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) The following persons shall not be notified of the hearing:

(1) A parent who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.

(3) A parent whose parental rights have been terminated.

(c) (1) Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication.

(2) In the case of an Indian child, notice to the Indian custodian and the tribe shall be completed at least 10 days before the hearing.

(3) In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(4) Service of notice in cases where publication is ordered shall be completed at least 30 days before the date of the hearing.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

(1) The date, time, and place of the hearing.

(2) The right to appear.

(3) The parents' right to counsel.

(4) The nature of the proceedings.

(5) The recommendation of the supervising agency.

(6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(f) Notice to the parents may be given in any one of the following manners:

(1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, ~~their~~ *his or her* right to counsel, the nature of the proceedings, and ~~the requirement~~ that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the

parent be notified thereafter by first-class mail to the parent's usual place of residence or business only.

(2) Certified mail, return receipt requested, to the parent's last known mailing address. This notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent.

(3) Personal service to the parent named in the notice.

(4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(5) If the residence of the parent is outside the state, service may be made as described in paragraph (1), (3), or (4) or by certified mail, return receipt requested.

(6) If the recommendation of the probation officer or social worker is legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(7) If the parent's whereabouts are unknown and the parent cannot, with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive, the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating the name of the parent and describing the efforts made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends adoption, service shall be to that parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does not have an attorney of record, the court shall order that service be made by publication of citation requiring the parent to appear at the date, time, and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the parent. Publication shall be made once a week for four consecutive weeks. Whether notice is to the attorney of record or by publication, the court shall also order that notice be given to the grandparents of the child by first-class mail.

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice is required to the parent,

but the court shall order that notice be given to the grandparents of the child by first-class mail.

(C) In any case where the residence of the parent becomes known, notice shall immediately be served upon the parent as provided for in either paragraph (2), (3), (4), (5), or (6).

(8) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child.

(g) Notice to the child and all counsel of record shall be by first-class mail.

(h) In the case of an Indian child, notice to the tribe shall be by registered mail, return receipt requested.

(i) Notwithstanding subdivision (a), if the attorney of record is present at the time the court schedules a hearing pursuant to Section 366.26, no further notice is required, except as required by subparagraph (A) of paragraph (7) of subdivision (f).

(j) This section shall also apply to children adjudged wards pursuant to Section 727.31.

SEC. 214. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care and individuals who

are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county

adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself ~~to~~ *of* services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a

court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make

substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a

compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and may not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care at a group home, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include *all of the following*:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, ~~child specific~~ *child-specific* recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 215. Section 387 of the Welfare and Institutions Code is amended to read:

387. (a) An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(b) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(c) Notwithstanding subdivision (a), dependency jurisdiction shall be resumed for a child as to whom dependency jurisdiction has been suspended pursuant to Section 366.5 if the jurisdiction established pursuant to Section 601 or 602 is terminated and if, after the issuance of a joint assessment pursuant to Section 366.5, the court determines that the ~~child's~~ *court's* dependency jurisdiction should be resumed.

(d) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the social worker shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 290.1 and 291.

(e) An order for the detention of the child pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 216. Section 636 of the Welfare and Institutions Code is amended to read:

636. (a) If it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the minor's welfare, the court may make its order that the minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court. The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained.

(b) If the court finds that the criteria of Section 628.1 are applicable, the court shall place the minor on home supervision for a period not to exceed 15 judicial days, and shall enter the order together with its findings of fact in support thereof in the records of the court. If the court releases the minor on home supervision, the court may continue, modify, or augment any conditions of release previously imposed by the probation officer, or may impose new conditions on a minor released for the first time. If there are new or modified conditions, the minor shall be required to sign a written promise to obey those conditions pursuant to Section 628.1.

(c) If the probation officer is recommending that the minor be detained, the probation officer shall submit to the court documentation, as follows:

(1) Documentation that continuance in the home is contrary to the minor's welfare shall be submitted to the court as part of the detention report prepared pursuant to Section 635.

(2) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the minor from the home and documentation of the nature and results of the services provided shall be submitted to the court either as part of the detention report prepared pursuant to Section 635, or as part of a

case plan prepared pursuant to Section 636.1, but in no case later than 60 days from the date of detention.

(d) Before detaining the minor, the court shall determine whether continuance in the home is contrary to the minor's welfare and whether there are available services that would prevent the need for further detention. The court shall make that determination on a case-by-case basis and shall make reference to the documentation provided by the probation officer or other evidence relied upon in reaching its decision.

(1) If the minor can be returned to the custody of his or her parent or legal guardian at the detention hearing, through the provision of services to prevent removal, the court shall release the minor to the physical custody of his or her parent or legal guardian and order that those services ~~shall~~ be provided.

(2) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall state the facts upon which the detention is based. The court shall make the following findings on the record and reference the probation officer's report or other evidence relied upon to make its determinations:

(A) Whether continuance in the home of the parent or legal guardian is contrary to the minor's welfare.

(B) Whether reasonable efforts have been made to safely maintain the minor in the home of his or her parent or legal guardian and to prevent or eliminate the need for removal of the minor from his or her home. This finding shall be made at the detention hearing if possible, but in no case later than 60 days following the minor's removal from the home.

(3) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall make the following orders:

(A) The probation officer shall provide services as soon as possible ~~which will~~ *to* enable the minor's parent or legal guardian to obtain ~~such~~ *any* assistance as may be needed to enable the parent or guardian to effectively provide the care and control necessary for the minor to return to the home.

(B) The minor's placement and care shall be the responsibility of the probation department pending disposition or further order of the court.

(4) If the matter is set for rehearing pursuant to Section 637, or continued pursuant to Section 638, or continued for any other reason, the court shall find that the continuance of the minor in the parent's or guardian's home is contrary to the minor's welfare at the initial petition hearing or order the release of the minor from custody.

(e) Whether the minor is returned home or detained, the court shall order the minor's parent or guardian to cooperate with the probation officer in obtaining those services described in paragraph (1) or in subparagraph (A) of paragraph (3).

SEC. 217. Section 740 of the Welfare and Institutions Code is amended to read:

740. (a) Any minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 and who is placed in a community care facility shall be placed in a community care facility within his or her county of residence, unless both of the following apply:

(1) He or she has identifiable needs requiring specialized care that cannot be provided in a local facility, or his or her needs dictate physical separation from his or her family.

(2) The county of residence agrees to pay the placement county the costs of providing services to the minor, pursuant to Section 1566.25 of the Health and Safety Code.

(b) (1) Before the placement of a minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 in any community care facility outside the ward's county of residence, the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall send written notice of the placement, including the name of the ward, the juvenile record of the ward (including any known prior offenses), and the ward's county of residence, to the probation officer of the county in which the community care facility is located~~; with regard to this requirement, it~~. *It* is the intention of the Legislature*, in regard to this requirement,* that the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall make his or her best efforts to send, or to hand deliver, the notice at the same time the placement is made. When ~~such a~~ *that* placement is terminated, the probation officer of the county making the

placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall send notice thereof to any person or agency receiving notification of the placement.

(2) When it has been determined that it is necessary for a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program~~,~~ to be placed in a county other than the ward's parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the ward's case plan. If the reason is lack of resources in the sending county to meet the specific needs of the ward, those specific resources needs shall be documented in the case plan.

(3) When it has been determined that a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program~~,~~ is to be placed out-of-county and that the sending county is to maintain responsibility for supervision and visitation of the ward, the sending county shall develop a plan of supervision and visitation activities to be performed, and shall specify that the sending county is responsible for performing those activities. The sending county shall send to the receiving county a copy of the plan of supervision and visitation, in addition to the notice of placement required in paragraph (1), prior to placement of the ward. If placement occurs on a holiday or weekend, the plan of supervision and visitation and the notice of placement shall be provided to the receiving county on or before the end of the next business day.

(4) When it has been determined that a ward whose placement is funded through the Aid to Families with Dependent Children-Foster Care program~~,~~ is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the ward, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the ward, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the ward in the receiving county. Additionally, the notice of placement required by paragraph (1)

shall be provided to the receiving county prior to placement of the ward in that county. Upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county.

(5) The probation department of a receiving county that has a group home in which a minor is placed by the probation department of another county, after adjudication of the minor for any felony offense, may disclose to the sheriff of the receiving county or to the municipal police department of the city in which the group home is located, the name of the minor, the felony offense or offenses for which the minor has been adjudicated, and the address of the group home. This information shall be utilized only for law enforcement purposes and may not be utilized in any manner that is inconsistent with the rehabilitative program in which the minor has been placed or with the progress the minor may be making in the placement program. Notwithstanding any other provision of law, the information provided by the probation department to a law enforcement agency under this paragraph may be provided to other law enforcement personnel for the limited law enforcement purposes described in this paragraph, but shall otherwise remain confidential.

(c) A minor, the parent or guardian of any minor, and counsel representing a minor or the parent or guardian of a minor may petition the juvenile court for the review of any placement decision concerning the minor made by the probation officer pursuant to subdivision (a). The petition shall state the petitioner's relationship to the minor and shall set forth in concise language the grounds on which the review is sought. The court shall order that a hearing shall be held on the petition and shall give prior notice, or cause prior notice to be given, to the persons and by the means as prescribed by Section 776, and, in instances in which the means of giving notice is not prescribed by that section, then by any means as the court prescribes.

(d) If a minor is placed in a community care facility out of his or her county of residence and is then arrested and placed in juvenile hall pending a jurisdictional hearing, the county of residence shall pay to the probation department of the county of placement all reasonable costs resulting directly from the minor's

stay in the juvenile hall, provided that these costs exceed one hundred dollars ($100).

(e) If, as a result of the hearing in subdivision (d), the minor is remanded back to his or her county of residence, the county of residence shall pay to the probation department of the county of placement, in addition to any payment made pursuant to subdivision (d), all reasonable costs resulting directly from transporting the minor to the county of residency, provided that these costs exceed one hundred dollars ($100).

(f) Claims made by the probation department in the county of placement~~,~~ to the county of residence, pursuant to subdivisions (d) and (e), shall be paid within 30 days of the submission of these claims and the probation department in the county of placement shall bear the remaining expense.

(g) As used in this section:

(1) "Community care facility" shall be defined as provided in Section 1502 of the Health and Safety Code.

(2) "Group home" has the same meaning as provided in paragraph (1) of subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations.

SEC. 218. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties,~~ and~~ judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000),

and Part 5 (commencing with Section 7900) of Division 12*,* of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) ~~To authorized~~ *Authorized* legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons*,* or agencies providing treatment or supervision of the minor.

(K) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court

mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(L) A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.

(M) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(N) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(O) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion

thereof is detrimental to the safety, protection, or physical~~,~~ or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (N), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in

connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's

probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18 *years*, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been

destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 219. Section 4637.5 of the Welfare and Institutions Code is amended to read:

4637.5. (a) The State Department of Developmental Services shall provide data, by regional center, regarding all vendors providing services to regional center consumers for each fiscal year beginning with the 2003–04 fiscal year. The data shall include a list of the services provided by each vendor~~;~~ *and,* to the extent data is available, an unduplicated count of consumers receiving the services, the total amount paid to each vendor for each service, and the average cost for each service. For parent voucher services, the department shall summarize the information for each regional center.

(b) The department shall compile the data and submit the information to the chairs and vice chairs of each fiscal committee by March 1 of the fiscal year following the close of the prior fiscal year. The data shall not include personal or confidential consumer information.

(c) The department shall evaluate and report on the adequacy of the data provided through March 1, 2008, and recommend changes, if needed. By March 1, 2008, the report shall be provided to the chair and vice chair of each fiscal committee.

(d) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 220. Section 4688.5 of the Welfare and Institutions Code is amended to read:

4688.5. (a) Notwithstanding any other provision of law to the contrary, the department may approve a proposal or proposals by Golden Gate Regional Center, Regional Center of the East Bay, and San Andreas Regional Center to provide for, secure, and assure the payment of a lease or leases on housing, developed pursuant to this section, based on the level of occupancy in each home, if all of the following conditions are met:

(1) The acquired or developed real property is occupied by individuals eligible for regional center services and is integrated with housing for people without disabilities.

(2) The regional center has approved the proposed ownership entity, management entity, and developer or development entity for each project, and, prior to granting the approval, has consulted with the department and has provided to the department a proposal that includes the credentials of the proposed entities.

(3) The costs associated with the proposal are reasonable.

(4) The proposal includes a plan for a transfer at a time certain of the real property's ownership to a nonprofit entity to be approved by the regional center.

(b) Prior to approving a regional center proposal pursuant to subdivision (a), the department, in consultation with the California Housing Finance Agency and the Department of Housing and Community Development*,* shall review all of the following:

(1) The terms and conditions of the financing structure for acquisition ~~and/or~~*,* development*, or both,* of the real property.

(2) Any and all agreements that govern the real property's ownership, occupancy, maintenance, management, and operation, to ensure that the use of the property is maintained for the benefit of persons with developmental disabilities.

(c) No sale*,* encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange*,* or transfer in any other form of the real property, or of any of its interest therein, shall occur without the prior written approval of the department and the *California* Health and Human Services Agency.

(d) Notice of the restrictions pursuant to this section shall be recorded against the acquired or developed real property subject to this section.

(e) At least 45 days prior to granting approval under subdivision (c), the department shall provide notice to the chairs and vice chairs of the fiscal committees of the Assembly and the Senate, the Secretary of ~~the~~ *California* Health and Human Services ~~Agency~~, and the Director of Finance.

(f) The regional center shall not be eligible to acquire or develop real property for the purpose of residential housing.

SEC. 221. Section 7200.06 of the Welfare and Institutions Code is amended to read:

7200.06. (a) Of the 1,362 licensed beds at Napa State Hospital, at least 20 percent of these beds shall be available in any given fiscal year for use by counties for contracted services. Of the remaining beds, in no case shall the population of patients whose placement has been required pursuant to the Penal Code exceed 980.

(b) After construction of the perimeter security fence is completed at Napa State Hospital, no patient whose placement has been required pursuant to the Penal Code shall be placed outside the perimeter security fences, with the exception of placements in the ~~General Acute Care and Skilled Nursing Units~~ *general acute care and skilled nursing units*. The State Department of Mental Health shall ensure that appropriate security measures are in place for the general acute care and skilled nursing units.

(c) Any alteration to the security perimeter structure or policies shall be made in conjunction with representatives of the City of Napa, the County of Napa, and local law enforcement agencies.

SEC. 222. Section 11404 of the Welfare and Institutions Code is amended to read:

11404. (a) Except as provided in Section 11405, a child is not eligible for AFDC-FC unless responsibility for placement and care of the child is with the county welfare department or Indian tribe that entered into an agreement pursuant to Section 10553.1, the county probation department which has an agreement with the county welfare department, or a licensed

public adoption agency, licensed private adoption agency*,* or the department.

(b) In order for the child to be eligible for AFDC-FC, the agency with responsibility for the child's placement and care shall*,* in accordance with departmental regulations *do all of the following*:

(1) For children removed after October 1, 1983, document that it provided preplacement preventive services to the child prior to the child's placement in foster care, and document why provisions of these services were not successful in maintaining the child in his or her home, unless it is documented that these services were not provided due to *either of the following*:

(A) ~~Either the~~ *The* voluntary relinquishment of the child by one or both parents or court action declaring a child free from the custody and control of one or both parents.

(B) The child's residence with a nonrelated legal guardian.

(2) Develop a written assessment of the reasons necessitating the child's placement in foster care and the treatment needs of the child while in foster care to be updated by the agency no less frequently than once every six months. Where the child is a parent who has a child living with him or her in the same eligible facility, the assessment shall also address the needs of his or her child.

(3) Develop a case plan for the child within a maximum of 60 days of placement.

(4) Ensure that services are provided to return the child to his or her own home or establish an alternative permanent placement for the child if ~~return~~ *returning* home is not possible or is inappropriate.

SEC. 223. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(3) (A) The department shall determine, consistent with the requirements of this chapter and other relevant requirements under law, the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department.

(B) The department shall adopt regulations to implement this paragraph. The adoption, amendment, repeal, or readoption of a regulation authorized by this paragraph is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement to describe specific facts showing the need for immediate action.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each RCL has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the

department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider, for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the fieldwork portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be

final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings, within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for the 2002–03, 2003–04, and 2004–05 fiscal years is:

Rate Classification Level	Point Ranges	FY 2002–03, 2003–04, and 2004–05 Standard Rate
1	Under 60	$1,454
2	60– 89	1,835
3	90–119	2,210
4	120–149	2,589
5	150–179	2,966
6	180–209	3,344
7	210–239	3,723
8	240–269	4,102
9	270–299	4,479
10	300–329	4,858
11	330–359	5,234
12	360–389	5,613
13	390–419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03, 2003–04, and 2004–05 fiscal years, the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for the 2002–03, 2003–04, and 2004–05 Fiscal Years
1	Under 54
2	54– 81
3	82–110
4	111–138
5	139–167
6	168–195
7	196–224
8	225–253
9	254–281
10	282–310
11	311–338
12	339–367
13	368–395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03, 2003–04, and 2004–05 fiscal years shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level (RCL) for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program that received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program that received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider, or for an existing program at a new location of an existing provider, unless the provider submits a letter of recommendation from the host county, the primary placing county, or a regional consortium of counties that includes all of the following:

(A) That the program is needed by that county.

(B) That the provider is capable of effectively and efficiently operating the program.

(C) That the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(D) That, if the letter of recommendation is not being issued by the host county, the primary placing county has notified the host county of its intention to issue the letter and the host county was given ~~the opportunity~~ 30 days to respond to this notification and to discuss options with the primary placing county.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, "program change" means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 2000, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3) (A) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of

counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The department determines that the new program or program change will result in a reduction of referrals to state hospitals during the 1998–99 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 of each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group *home* care that may have significant fiscal impact on providers of group ~~homes~~ *home* care. The committee may, in *the 1993–94* 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. 224. Section 14016.5 of the Welfare and Institutions Code is amended to read:

14016.5. (a) At the time of determining or redetermining the eligibility of a Medi-Cal *program* or ~~aid to families with dependent children~~ *Aid to Families with Dependent Children* (AFDC) *program* applicant or beneficiary who resides in an area served by a managed health care plan or pilot program in which beneficiaries may enroll, each applicant or beneficiary shall

personally attend a presentation at which the applicant or beneficiary is informed of the managed care and fee-for-service options available regarding methods of receiving Medi-Cal benefits. The county shall ensure that each beneficiary or applicant attends this presentation.

(b) The health care options presentation described in subdivision (a) shall include all of the following elements:

(1) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in the fee-for-service sector.

(2) Each beneficiary or eligible applicant shall be provided with the name, address, telephone number, and specialty, if any, of each primary care provider, and each clinic participating in each prepaid managed health care plan, pilot project, or fee-for-service case management provider option. This information shall be provided under geographic area designations, in alphabetical order by the name of the primary care provider and clinic. The name, address, and telephone number of each specialist participating in each prepaid managed *health* care ~~health~~ plan, pilot project, or fee-for-service case management provider option shall be made available by ~~either~~ contacting *either* the health care options contractor or the prepaid managed *health* care ~~health~~ plan, pilot project, or fee-for-service case management provider.

(3) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider or clinic contracting with any of the prepaid managed health care plans, pilot projects, or fee-for-service case management provider options available, has available capacity, and agrees to continue to treat that beneficiary or applicant.

(4) In areas specified by the director, each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, or does not certify that he or she has an established relationship with a primary care provider or clinic, he or she shall be assigned to, and enrolled in, a prepaid managed health care plan, pilot ~~projects~~ *project*, or fee-for-service case management provider.

(c) No later than 30 days following the date a Medi-Cal or AFDC beneficiary or applicant is determined eligible, the beneficiary or applicant shall indicate his or her choice in writing, as a condition of coverage for Medi-Cal benefits, of either of the following health care options:

(1) To obtain benefits by receiving a Medi-Cal card, which may be used to obtain services from individual providers, that the beneficiary would locate, who choose to provide services to Medi-Cal beneficiaries.

The department may require each beneficiary or eligible applicant, as a condition for electing this option, to sign a statement certifying that he or she has an established patient-provider relationship, or in the case of a dependent, the parent or guardian shall make that certification. This certification shall not require the acknowledgment or guarantee of acceptance, by any indicated Medi-Cal provider or health facility, of any beneficiary making a certification under this section.

(2) (A) To obtain benefits by enrolling in a prepaid managed health care plan, pilot program, or fee-for-service case management provider that has agreed to make Medi-Cal services readily available to enrolled Medi-Cal beneficiaries.

(B) At the time the beneficiary or eligible applicant selects a prepaid managed health care plan, pilot project, or fee-for-service case management provider, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider or clinic contracting with the selected prepaid managed health care plan, pilot project, or fee-for-service case management provider.

(d) (1) In areas specified by the director, a Medi-Cal or AFDC beneficiary or eligible applicant who does not make a choice, or who does not certify that he or she has an established relationship with a primary care provider or clinic, shall be assigned to and enrolled in an appropriate Medi-Cal managed care plan, pilot project, or fee-for-service case management provider providing service within the area in which the beneficiary resides.

(2) If it is not possible to enroll the beneficiary under a Medi-Cal managed care plan ~~or~~, pilot project, or a fee-for-service case management provider because of a lack of capacity or availability of participating contractors, the beneficiary shall be provided with a Medi-Cal card and informed about

fee-for-service primary care providers who do all of the following:

(A) The providers agree to accept Medi-Cal patients.

(B) The providers provide information about the provider's willingness to accept Medi-Cal patients as described in Section 14016.6.

(C) The providers provide services within the area in which the beneficiary resides.

(e) If a beneficiary or eligible applicant does not choose a primary care provider or clinic*,* or does not select any primary care provider who is available, the managed health care plan, pilot project, or fee-for-service case management provider that was selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(f) (1) The managed care plan shall have a valid Medi-Cal contract, adequate capacity, and appropriate staffing to provide health care services to the beneficiary.

(2) The department shall establish standards for all of the following:

(A) The maximum distances a beneficiary is required to travel to obtain primary care services from the managed care plan, fee-for-service ~~managed care~~ *case management* provider, or pilot project in which the beneficiary is enrolled.

(B) The conditions under which a primary care service site shall be accessible by public transportation.

(C) The conditions under which a managed care plan, fee-for-service ~~managed care~~ *case management* provider, or pilot project shall provide nonmedical transportation to a primary care service site.

(3) In developing the standards required by paragraph (2), the department shall take into account, on a geographic basis, the means of transportation used and distances typically traveled by Medi-Cal beneficiaries to obtain fee-for-service primary care services and the experience of managed care plans in delivering services to Medi-Cal enrollees. The department shall also consider the provider's ability to render culturally and linguistically appropriate services.

(g) To the extent possible, the arrangements for carrying out subdivision (d) shall provide for the equitable distribution of Medi-Cal beneficiaries among participating managed care plans, fee-for-service case management providers, and pilot projects.

(h) If, under the provisions of subdivision (d), a Medi-Cal beneficiary or applicant does not make a choice or does not certify that he or she has an established relationship with a primary care provider or clinic, the person may, at the option of the department, be provided with a Medi-Cal card or be assigned to and enrolled in a managed care plan providing service within the area in which the beneficiary resides.

(i) Any Medi-Cal or AFDC beneficiary who is dissatisfied with the provider or managed care plan, pilot project, or fee-for-service case management provider shall be allowed to select or be assigned to another provider or managed care plan, pilot project, or fee-for-service case management provider.

(j) The department or its contractor shall notify a managed care plan, pilot project, or fee-for-service case management provider when it has been selected by or assigned to a beneficiary. The managed care plan, pilot project, or fee-for-service case management provider that has been selected by, or assigned to, a beneficiary, shall notify the primary care provider or clinic that it has been selected or assigned. The managed care plan, pilot project, or fee-for-service case management provider shall also notify the beneficiary of the managed care plan, pilot project, or fee-for-service case management provider or clinic selected or assigned.

(k) (1) The department shall ensure that Medi-Cal beneficiaries eligible under Title XVI of the Social Security Act are provided with information about options available regarding methods of receiving Medi-Cal benefits as described in subdivision (c).

(2) (A) The director may waive the requirements of subdivisions (c) and (d) until a means is established to directly provide the presentation described in subdivision (a) to beneficiaries who are eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(B) The director may elect not to apply the requirements of subdivisions (c) and (d) to beneficiaries whose eligibility under the Supplemental Security Income program is established before January 1, 1994.

(*l*) In areas where there is no prepaid managed health care plan or pilot program that has contracted with the department to provide services to Medi-Cal beneficiaries, and where no other enrollment requirements have been established by the department, no explicit choice need be made, and the beneficiary or eligible applicant shall receive a Medi-Cal card.

(m) The following definitions contained in this subdivision shall control the construction of this section, unless the context requires otherwise:

(1) "Applicant," "beneficiary," and "eligible applicant," in the case of a family group, mean any person with legal authority to make a choice on behalf of dependent family members.

(2) "Fee-for-service case management provider" means a provider enrolled and certified to participate in the Medi-Cal fee-for-service case management program the department may elect to develop in selected areas of the state with the assistance of and in cooperation with California physician providers and other interested provider groups.

(3) "Managed health care plan" and "managed care plan" mean a person or entity operating under a Medi-Cal contract with the department under this chapter or Chapter 8 (commencing with Section 14200) to provide, or arrange for, health care services for Medi-Cal beneficiaries as an alternative to the Medi-Cal fee-for-service program that has a contractual responsibility to manage health care provided to Medi-Cal beneficiaries covered by the contract.

(n) (1) Whenever a county welfare department notifies a public assistance recipient or Medi-Cal beneficiary that the recipient or beneficiary is losing Medi-Cal eligibility, the county shall include, in the notice to the recipient or beneficiary, notification that the loss of eligibility shall also result in the recipient's or beneficiary's disenrollment from Medi-Cal managed *health* care ~~health~~ or dental plans, if enrolled.

(2) (A) Whenever the department or the county welfare department processes a change in a public assistance recipient's or Medi-Cal beneficiary's residence or aid code that will result in

the recipient's or beneficiary's disenrollment from the managed *health* care ~~health~~ or dental plan in which he or she is currently enrolled, a written notice shall be given to the recipient or beneficiary.

(B) This paragraph shall become operative and the department shall commence sending the notices required under this paragraph on or before the expiration of 12 months after the effective date of this section.

(o) This section shall be implemented in a manner consistent with any federal waiver required to be obtained by the department in order to implement this section.

SEC. 225. Section 14016.51 of the Welfare and Institutions Code is amended to read:

14016.51. Upon the availability of federal funding, the department shall modify the Medi-Cal program mail-in application form, and other appropriate materials, and the single point-of-entry application form*,* to allow applicants in counties served by managed care plans to contact the enrollment contractor by using the Health Care Options toll-free telephone number to request and receive enrollment materials before a Medi-Cal eligibility determination has been made.

SEC. 226. Section 14087.6 of the Welfare and Institutions Code is amended to read:

14087.6. A county that has contracted for the provision of services pursuant to this article may provide the services directly to recipients, or arrange for any or all of the services to be provided by subcontracting with primary care providers, health maintenance organizations, insurance carriers, or other entities or individuals. The subcontracts may utilize a prospectively negotiated reimbursement rate, fee-for-service, retainer, capitation, or other basis for payment. The rate of payment established under the contract shall not exceed the total per capita amount that the department estimates would be payable for all services and requirements covered under the contract if all these services and requirements were to be furnished *to* Medi-Cal beneficiaries under the Medi-Cal fee-for-service program.

Counties that are responsible for providing health care under this chapter shall make efforts to utilize existing health service resources if these resources can be estimated by the county to result in lower total long-term costs and accessible quality care to

persons served under this chapter. The granting of a certificate of need pursuant to the criteria set forth in Section 127200 of the Health and Safety Code or a certificate of exemption pursuant to the criteria set forth in Section 127175 of the Health and Safety Code shall satisfy the intent of this provision.

SEC. 227. Section 14123.25 of the Welfare and Institutions Code is amended to read:

14123.25. (a) In lieu of, or in addition to, the imposition of any other sanction available to it, including the sanctions and penalties authorized under Section 14123.2 or 14171.6, and as the "single state agency" for California vested with authority to administer the Medi-Cal program, the department shall exercise the authority granted to it in Section 1002.2 of Title 42 of the Code of Federal Regulations, and may also impose the mandatory and permissive exclusions identified in Section 1128 of the federal Social Security Act (42 U.S.C. Sec. 1320a-7), and its implementing regulations, and impose civil penalties identified in Section 1128A of the federal Social Security Act (42 U.S.C. Sec. 1320a-7a), and its implementing regulations, against applicants and providers, as defined in Section 14043.1, or against billing agents, as defined in Section 14040.1. The department may also terminate, or refuse to enter into, a provider agreement authorized under Section 14043.2 with an applicant or provider, as defined in Section 14043.1, upon the grounds specified in Section 1866(b)(2) of the federal Social Security Act (42 U.S.C. Sec. 1395cc(b)(2)). Notwithstanding Section 100171 of the Health and Safety Code or any other provision of law, any appeal by an applicant, provider, or billing agent of the imposition of a civil penalty, exclusion, or other sanction pursuant to this subdivision shall be in accordance with Section 14043.65, except that where the action is based upon *a* conviction for any crime involving fraud or abuse of the Medi-Cal, medicaid, or Medicare programs, or *an* exclusion by the federal government from the medicaid or Medicare programs, the action shall be automatic and not subject to appeal or hearing.

(b) In addition, the department may impose the intermediate sanctions identified in Section 1846 of the Social Security Act (42 U.S.C. Sec. 1395w-2), and its implementing regulations, against any provider that is a clinical laboratory, as defined in Section 1206 of the Business and Professions Code. The

imposition and appeal of this intermediate sanction shall be in accordance with Article 8 (commencing with Section 1065) of Chapter 2 of Division 1 of Title 17 of the California Code of Regulations.

(c) (1) In addition, the department may issue a written warning notice of improper billing or improper cost report computation, which shall specifically identify the statute, regulation, or rule that is being violated, to a provider via certified mail, return receipt requested, whenever a review of the provider's paid claims or a provider's cost report ~~demonstrate~~ *demonstrates* a pattern of improper billing or improper cost report computation. The review shall not take into account claims that were denied or payment reductions. The warning notice shall be in a format that specifically apprises the provider of the item or service improperly billed~~,~~ and*,* if applicable, the deficiencies in the manner in which provider costs were computed. The warning notice may be issued with annual cost report audit findings, or in addition to any audit or any other action that the department is authorized to take. The failure of the department to exercise its discretion to issue the warning notice shall ~~not be interpreted and shall~~ not limit its authority to audit or take any action authorized by law. The warning notice shall provide the provider with the opportunity to contest the warning notice and explain to the department the correctness of the provider's bill or cost report computation. If the department accepts the provider's explanation, in whole or in part, no further action related to the notice or part of the notice that the department accepts as correct shall be taken pursuant to this section.

(2) Civil money penalties may be imposed in the following circumstances:

(A) If a provider presents or causes to be presented claims for payment by the Medi-Cal program that are ~~either of the following~~:

(i) Billed improperly, and are for a service or item about which the provider has received two or more warning notices of improper billing, the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one hundred dollars ($100) per claim, or up to two times the amount improperly claimed for each item or service, whichever is greater.

(ii) For a service or item for which the department solicits provider costs for use in calculating Medi-Cal reimbursement or in calculating and assigning Medi-Cal reimbursement rates, the cost reports relevant to the claims are improperly calculated, and the provider has received two or more warning notices of improper cost report computation regarding substantially similar errors, the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one hundred dollars ($100) per adjustment by the department to the costs submitted by the provider, or up to two times the amount improperly claimed for each item or service, whichever is greater.

(B) If a provider presents or causes to be presented claims for payment by the Medi-Cal program that are ~~either of the following~~:

(i) Billed improperly, and are for a service or item about which the provider has received three or more warning notices of improper billing, or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars ($1,000) per claim, or up to three times the amount improperly claimed for each item or service, whichever is greater.

(ii) For a service or item for which the department solicits provider costs for use in calculating Medi-Cal reimbursement or in calculating and assigning Medi-Cal reimbursement rates, and the cost reports relevant to the claims are improperly calculated, and the provider has received three or more warning notices of improper cost report computation regarding substantially similar errors, or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars ($1,000) per adjustment by the department to the costs submitted by the provider, or three times the amount claimed for each item or service, whichever is greater.

(3) Any provider subjected to civil money penalties under paragraph (2) may appeal the decision to assess penalties pursuant to Section 100171 of the Health and Safety Code.

SEC. 228. Section 16206 of the Welfare and Institutions Code is amended to read:

16206. (a) The purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective services social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. It is the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services. In addition, the program shall provide training programs for persons defined as a mandated reporter pursuant to the Child Abuse and Neglect Reporting Act, Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code. The program shall provide the services required in this section to the extent possible within the total allocation. If allocations are insufficient, the department, in consultation with the grantee or grantees and the Child Welfare Training Advisory Board, shall prioritize the efforts of the program, giving primary attention to the most urgently needed services. County child protective services social workers assigned emergency response responsibilities shall receive first priority for training pursuant to this section.

(b) The training program shall provide practice-relevant training for mandated child abuse reporters and all members of the child welfare delivery system that will address critical issues affecting the well-being of children, and shall develop curriculum materials and training resources for use in meeting staff development needs of mandated child abuse reporters and child welfare personnel in public and private agency settings.

(c) The training provided pursuant to this section shall include all of the following:

(1) Crisis intervention.

(2) Investigative techniques.

(3) Rules of evidence.

(4) Indicators of abuse and neglect.

(5) Assessment criteria, including the application of guidelines for assessment of relatives for placement according to the criteria described in Section 361.3.

(6) Intervention strategies.

(7) Legal requirements of child protection, including requirements of child abuse reporting laws.

(8) Case management.

(9) Use of community resources.

(10) Information regarding the dynamics and effects of domestic violence upon families and children, including indicators and dynamics of teen dating violence.

(11) Posttraumatic stress disorder and the causes, symptoms, and treatment of posttraumatic stress disorder in children.

(12) The importance of maintaining relationships with individuals who are important to a child in out-of-home placement, including methods to identify those individuals, consistent with the child's best interests, including, but not limited to, asking the child about individuals who are important, and ways to maintain and support those relationships.

(13) The legal duties of a child protective services social worker, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment.

(d) The training provided pursuant to this section may also include any or all of the following:

(1) Child development and parenting.

(2) Intake, interviewing, and initial assessment.

(3) Casework and treatment.

(4) Medical aspects of child abuse and neglect.

(e) The training program shall assess the program's performance at least annually and forward it to the State Department of Social Services for an evaluation and report to the Legislative Analyst. The first report shall be forwarded to the Legislative Analyst no later than January 1, 1990, and on the first of January in any subsequent ~~years~~ *year*. The assessment shall include at minimum the following:

(1) The number of persons trained.

(2) The type of training provided.

(3) The degree to which the training is perceived by participants as useful in practice.

(f) The training program shall provide practice-relevant training to county child protective services social workers who screen referrals for child abuse or neglect and for all workers assigned to provide emergency response, family maintenance, family reunification, and permanent placement services. The training shall be developed in consultation with the Child

Welfare Training Advisory Board and domestic violence victims' advocates and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

SEC. 229. Section 15 of Chapter 656 of the Statutes of 2003 is amended to read:

SEC. 15. (a) Unless otherwise provided, this act shall apply with respect to any penalty assessed on or after January 1, 2004, on any return for which the statute of limitations on assessment has not expired. All other provisions of this act shall apply on and after January 1, 2004.

(b) Except as provided in subdivision (c), Sections 18407, 19772, and 19773 of the Revenue and Taxation Code, as amended or added by this act, apply to taxable years beginning on or after January 1, 2003.

(c) (1) The penalty provisions of Section 19772 apply to any person that satisfies both of the following:

(A) The person is subject to the provisions of Sections 18407 and 19772.

(B) The person has invested in a transaction after February 28, 2000, and before January 1, 2004, where that transaction becomes a listed transaction at any time.

(2) (A) A person that is subject to the provisions of Section 6111 of the Internal Revenue Code, as incorporated and modified by Section 18648, must register a tax shelter with the Franchise Tax Board before April 30, 2004, if that tax shelter was offered for sale between February 28, 2000, and January 1, 2004, and becomes a listed transaction on or before January 1, 2004.

(B) The penalty under Section 19173 applies for a failure to register the tax shelter under ~~paragraph~~ *subparagraph* (A).

(3) (A) Subdivision (c) of Section 18648 does not apply to licensed attorneys in the case of a transaction that was entered into before January 1, 2004, if the attorney is considered a material ~~advisor~~ *adviser* solely due to the practice of law.

(B) The provisions of subparagraph (A) shall only apply to an attorney offering advice in an attorney-client relationship where:

(i) Legal advice of any kind is sought from a professional legal adviser in his or her capacity as a professional legal adviser.

(ii) The communications are made in confidence and relate to that purpose.

(iii) The communications are made or received by the client.

(4) For purposes of applying Section 19778 of the Revenue and Taxation Code, Section 18407 of the Revenue and Taxation Code, as added by ~~this act~~ *Section 1 of Chapter 656 of the Statutes of 2003*, applies for taxable years beginning after December 31, 1998.

SEC. 230. Section 4 of the Lake County Flood Control and Water Conservation District (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 4. (a) The objects and purposes of this act are to provide for the control, impounding, treatment, and disposal of the flood and storm waters of the district, the conservation and protection of all waters within the district, including both surface water and groundwater, and the control of flood and storm waters of streams that have their source outside of the district, but which streams and the flood waters thereof flow into the district, to protect from flood or storm waters the watercourses, lakes, groundwater, watersheds, harbors, public highways, life, and property in the district, to develop and improve the quality of all waters within the district for all beneficial uses, including domestic, irrigation, industrial and recreational uses, and to protect and improve the quality of all waters within the district.

(b) The objects and purposes of this act are also to provide for the participation of the district in the national pollutant discharge elimination system (NPDES) permit program in accordance with the Clean Water Act (33 U.S.C. *Sec.* 1251 et seq.).

SEC. 231. Section 5 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and may do all of the following:

~~1.~~

(a) Have perpetual succession.

~~2.~~

(b) Sue and be subject to suit in the name of ~~said~~ *the* district.

~~3.~~

(c) Adopt a seal.

~~4.~~

(d) Acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and hold, use, enjoy, let, and dispose

of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, water, and water rights~~,~~ and privileges, and construct, maintain, alter, and operate any and all works or improvements, within or outside the district, necessary or proper to carry out any of the objects of purposes of this act and convenient to the full exercise of its powers, and complete, extend, add to, alter, remove, repair, or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

~~5.~~

(e) Conserve all waters within the district, and control the flood and storm waters of the district and the flood and storm waters of streams that have their sources outside the district, but which streams and floodwaters thereof~~,~~ flow into the district, and protect from damage from those flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in the district, and the watercourses outside the district of streams flowing into the district, and to develop waters within or outside the district for domestic irrigation, industrial, and recreational uses, and construct works therefor, including works for the storage and delivery of water~~;~~, provided~~ further~~, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although the powers may be of the same nature as the powers of the district. Any other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which that other political subdivision has an interest, or for the use, or joint use, of property or facilities in which the district has an interest.

~~6.~~

(f) Cooperate and act in conjunction with the federal government, the state, or any of their engineers, officers, boards, commissions, departments, or agencies, or with any public or private corporation, or with the County of Lake or adjacent counties, or with any other agencies, in the construction of any work for the storage or delivery of all waters within or outside the district for domestic, irrigation, industrial, and recreational uses and for the conservation of waters within the district, for the

controlling of flood or storm waters of or flowing into the district, or for the protection of life or property in the district.

~~7.~~

(g) Carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to the beneficial use of waters within or outside the district, including domestic, irrigation, industrial, and recreational uses and the conservation of water and the control of floods both within and outside the district, and for those purposes the district shall have the right of access through its authorized representatives to all properties within the district. The district, through its authorized representatives, may enter upon those lands and make examinations, surveys, and maps thereof.

~~8.~~

(h) Enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways*,* and other rights-of-way; acquire by purchase, lease, contract, gift, devise, or other legal means all lands and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of the works, enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair*,* or operation of any rights, works*,* or other property of a kind which might be lawfully acquired or owned by the district.

~~9.~~

(i) Incur indebtedness and issue bonds in the manner provided in this act.

~~10.~~

(j) In compliance with Article XIII C and Article XIII D of the California Constitution, cause taxes, fees, or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner provided in this act.

~~11.~~

(k) Make contracts, and employ labor, and do all acts necessary for the full exercise of all powers vested in the district or any of the officers thereof by this act.

~~12.~~

(l) Exercise the right of eminent domain, either within or outside the district, to take any property necessary to carry out any of the objects or purposes of this act. The district in exercising that power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, *and* poles~~,~~ of any public utility that is required to be moved to a new location.

The district shall not condemn property outside the County of Lake unless the consent of the governing board of the county, in which the property to be condemned is located, has first been obtained.

Nothing *contained* in this act ~~contained~~ shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for that city and county or municipal utility district, or as affecting the absolute control of any properties of that city and county or municipal utility district necessary for that water supply and nothing herein contained shall be construed as vesting any power of control over those properties in the district or in any officer thereof, or in any person referred to in this act.

~~13.~~

(m) Provide for the operation and maintenance of any works of any kind or channelways, that may be built or operated by the state or the federal government without cost to the district, for the control or disposition of flood and storm waters within the district*,* whether those waters originate within or outside the district.

~~14.~~

(n) Contract with the County of Lake, because of the interest of the County of Lake in the general welfare and preservation and promotion of land values in the county and in the maintenance, construction*,* and improvement of public roads, bridges*,* and other county property within any zone that may be damaged or destroyed by those flood and storm waters and that will be protected by proper control and disposition of those

waters, for the participation by that county, on a percentage or other appropriate basis, in the amount or amounts that may be taxed or assessed from time to time against any lands in any zone by any taxing or assessing agency or authority, including the district, to provide funds for the operation and maintenance of any works of any kind or channelways which may be built, maintained, or operated by the state or the federal government or the district for the benefit of that zone; and the County of Lake may enter into that contract with the district.

~~15.~~

(n) Levy assessments in any zone, on the basis of benefits as provided in Section 13 or 13.1~~ of this act~~, to raise funds for payment of expenses of operation and of works or channelways in that zone and the cost of levying and collecting those assessments.

~~16.~~

(o) Levy and collect special taxes in the district or any zone in accordance with Section 13~~ of this act~~.

~~17.~~

(p) Levy and collect benefit assessments in the district or any zone in accordance with Section 13~~ of this act~~.

~~18.~~

(q) Participate alone, or jointly with Lake County, or cities or districts within Lake County, in the national pollutant discharge elimination system (NPDES) permit program in accordance with the Clean Water Act (33 U.S.C. *Sec.* 1252 et seq.), and undertake necessary acts in connection with that program.

SEC. 232. Any section of any act enacted by the Legislature during the 2005 calendar year that takes effect on or before January 1, 2006, 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 2005 calendar year and takes effect on or before January 1, 2006, amends, amends and renumbers, adds, repeals and adds, or

1 repeals any section contained in that article, chapter, part, title, or
2 division.

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