SENATE BILL No. 1330

Introduced by Committee on Judiciary (Senators Corbett (Chair), Hancock, Harman, Leno, and Walters)

February 19, 2010

An act to amend Sections 31, 490, 490.5, 654.3, 728, 1246, 1301, 3152, 4040, 4076, 4980.44, 4999.2, 4999.7, 6213, 7028, 7108.5, 8520.2, 8676, 8761, 9889.20, 11344, 19596.2, 19850.6, 23356.2, 25503.42, and 25658.4 of, and to amend and renumber Section 19605.10 of, the Business and Professions Code, to amend Sections 1185, 1363.03, and 2954 of the Civil Code, to amend Sections 234 and 425.16 of, and to repeal Sections 128.6 and 209 of, the Code of Civil Procedure, to amend Sections 8971, 14035, 33128.3, 42238, 42605, 42606, 44346.5, 44856, 45103.1, 49701, 52055.770, 52165, 53302, 60852.3, 67302.5, 69458, 69460, 69613, 69999.14, 69999.18, 69999.20, 87482, 88003.1, and 89267.5 of, and to repeal Section 51241 of, the Education Code, to amend Sections 354.5, 2225, 11100, and 13307 of the Elections Code, to amend Section 1118 of the Evidence Code, to amend Section 7572 of the Family Code, to amend Sections 2089.12, 2089.23, 5655, 9011, and 12013 of the Fish and Game Code, to amend Sections 3884.2, 5931, 6047.12, 15061, and 71031 of the Food and Agricultural Code, to amend Sections 7906, 8588.1, 8879.72, 11011.1, 11011.2, 11126, 12715, 13302, 15491, 15820.911, 16724.5, 16731.6, 22898, 25331, 31855.9, 53601, 56375.2, 56668, 65080, 65583, 66540.12, 66540.32, 70375, 70391, 76000, 76000.5, 76104.6, 91530, and 91533 of, and to amend and renumber Section 63040 of, the Government Code, to amend Sections 86, 652, 1176, 5864, and 6035 of the Harbors and Navigation Code, to amend Sections 1261.5, 1289.4, 1348.8, 1357, 1357.50, 1358.4, 1358.12, 1358.91, 1367.66, 1418.21, 1429, 1499, 1568.03, 1569.69, 1599.645, 1736.5, 1798.200, 13221, 25396, 44272, 50843.5, 103526.5, 114850, 116064.2, 116540, 124991, 128730, 130060, and 130251 of, and to repeal Section 112877 of, the Health and Safety Code, to amend

Sections 38.5, 1063.1, 1063.2, 10136, 10192.4, 10192.81, 10192.12, 10192.20, 10198.6, and 10700 of the Insurance Code, to amend Section 273 of the Labor Code, to amend Section 699.5 of the Military and Veterans Code, to amend Sections 290.011, 293, 336.9, 597.5, 626.10, 831.5, 851.8, 1000.1, 1120, 1170, 1202.4, 1202.8, 1203.098, 1203.4, 1229, 1230, 1231, 1233.1, 1233.7, 1463.23, 6126.1, 6126.5, 6128, 6131, 11170, 11411, 13821, 13823.16, 13848.6, and 14029.5 of, and to repeal Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of, the Penal Code, to amend Sections 10100, 10101, 10102, 10103, 10103.5, 10104, 10105, 10262.5, and 10344 of the Public Contract Code, to amend Sections 2621.7, 4590, 5842, 25402.10, 48010, and 48027 of the Public Resources Code, to amend Sections 281, 399.20, 777.1, 851, 2881, 5411, 10009.1, 99233.2, 99312, and 185036 of the Public Utilities Code, to amend Sections 69, 69.3, 276, 6018.6, 6248, 6363.4, 7104, 7104.2, 30461.6, 41007, 41011, 41030, and 41136 of the Revenue and Taxation Code, to amend Sections 149.9 and 30918 of the Streets and Highways Code, to amend Sections 1611 and 10214.6 of the Unemployment Insurance Code, to amend Sections 4465, 4466, 11709.4, 13386, 21455.5, 27602, 40002, and 42001.13 of the Vehicle Code, to amend Sections 10608.24, 10608.44, 10853, 10933, 12645, 12647, and 30779 of the Water Code, to amend Sections 4691, 4860, 5806, 14083, 14085.57, 14105.3, 14132.725, 14154, 14163, 14166.221, 14167.3, 14167.6, 14167.7, 14167.10, 14522.4, 14598, 15660, 16124, 18220.1, and 18987.62 of the Welfare and Institutions Code, to amend Section 5.1 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to amend Section 1 of the Osteopathic Act, to amend Section 1 of Chapter 226 of the Statutes of 2009, to amend Section 2 of Chapter 405 of the Statutes of 2009, and to amend Section 3 of Chapter 426 of the Statutes of 2009, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, 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 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 31 of the Business and Professions Code is amended to read:

31. (a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section ~~11350.6~~ *17520* of the ~~Welfare and Institutions~~ *Family* Code.

(c) "Compliance with a judgment or order for ~~support,"~~ *support"* has the meaning given in paragraph (4) of subdivision (a) of Section ~~11350.6~~ *17520* of the ~~Welfare and Institutions~~ *Family* Code.

SEC. 2. Section 490 of the Business and Professions Code is amended to read:

490. (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. ~~Any~~ *An* action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has

been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under ~~the provisions of~~ Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by ~~Senate Bill 797 of the 2007–08 Regular Session~~ *Chapter 33 of the Statutes of 2008* do not constitute a change to, but rather are declaratory of, existing law.

SEC. 3. Section 490.5 of the Business and Professions Code is amended to read:

490.5. A board may suspend a license pursuant to Section ~~11350.6~~ *17520* of the ~~Welfare and Institutions~~ *Family* Code if a licensee is not in compliance with a child support order or judgment.

SEC. 4. Section 654.3 of the Business and Professions Code is amended to read:

654.3. (a) A dentist, or an employee or agent of a dentist, shall not charge treatment or costs to an open-end credit, that is extended by a third party and that is arranged for or established in a dental office, before the date upon which the treatment is rendered or costs are incurred, without first providing the patient a list of the treatment and services to be rendered, the estimated costs of the treatment and services, and which treatment and services are being charged in advance of rendering or incurring of costs, and ensuring that the patient has received the treatment plan required by subdivision (d).

(b) A dentist shall, within 15 business days of a patient's request, refund to the lender any payment received through ~~a~~ credit extended by a third party that is arranged for or established in a dental office for treatment that has not been rendered or costs that have not been incurred.

(c) A dentist, or an employee or agent of that dentist, shall not arrange for or establish credit extended by a third party for a patient without first providing the following written notice, on one page in at least 14-point type, and obtaining a signature from the patient:

"Credit for Dental Services

The attached application and information is for a credit card/line of credit or loan to help you finance your dental treatment. You should know that:

You are applying for a ____ credit card/line of credit or a ____ loan for $____.

You do not have to apply for the credit card/line of credit or loan. You may pay your dentist for dental treatment in another manner.

This credit card/line of credit or loan is not a payment plan with the dental office; it is credit with [name of company issuing the credit card/line of credit or loan]. Your dentist does not work for this company.

Before applying for this credit card/line of credit or loan, you have the right to a written treatment plan from your dentist that includes the anticipated treatment to be provided and the estimated costs of each service.

If you are approved for a credit card/line of credit, your dentist can only charge treatment and lab costs to that credit card/line of credit when you get the treatment or the dentist incurs costs unless your dentist has first given you a list of treatments that you are paying for in advance and the cost for each treatment or service.

You have the right to receive a credit to your credit card/line of credit or loan account refunded for any costs charged to the credit card/line of credit or loan for treatment that has not been rendered or costs that your dentist has not incurred. Your dentist must refund the amount of the charges to the lender within 15 business days of your request, after which the lender will credit your account.

Please read carefully the terms and conditions of this credit card/line of credit or loan, including any promotional offers.

You may be required to pay interest on the amount charged to the credit card/line of credit or the amount of the loan. If you miss a payment or do not pay on time, you may have to pay a penalty and/or a higher interest rate.

If you do not pay the money that you owe the company that provides you with a credit card/line of credit or loan, your missed payments can appear on your credit report and could hurt your credit rating. You could also be sued.

[Patient's Signature]"

(d) A dentist shall give a patient a written treatment plan prior to arranging for or establishing credit extended by a third party. The treatment plan shall include each anticipated service to be provided and the estimated cost of each service. If a patient is covered by a private or government dental benefit plan or dental insurance, from which the dentist takes assignment of benefits, the treatment plan shall indicate the patient's private or government-estimated share of cost for each service. If the dentist does not take assignment of benefits from a patient's dental benefit plan or insurance, the treatment plan shall indicate that the treatment may or may not be covered by a patient's dental benefit or insurance plan, and that the patient has the right to confirm dental benefit or insurance information from the patient's plan, insurer, or employer before beginning treatment.

(e) A dentist, or an employee or agent of that dentist, shall not arrange for or establish credit extended by a third party for a patient with whom the dentist, or an employee or agent of that dentist, communicates primarily in a language other than English that is one of the Medi-Cal threshold languages, unless the written notice information required by subdivision (c) is also provided in that language.

(f) A dentist, or an employee or agent of that dentist, shall not arrange for or establish credit that is extended by a third party for a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide.

(g) A patient who suffers any damage as a result of the use or employment by any person of a method, act, or practice that willfully violates this section may seek the relief provided by Chapter 4 (commencing with Section 1780) of Title 1.5 of Part 4 of Division 3 of the Civil Code.

(h) The rights, remedies, and penalties established by this article are cumulative, and shall not supersede the rights, remedies, or penalties established under other laws.

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

(1) "Dentist" includes, but is not limited to, a dental corporation, as defined in Section 1800.

(2) "Open-end credit" means credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended to the debtor during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(3) "Patient" includes, but is not limited to, the patient's parent or other legal representative.

SEC. 5. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment shall provide to the patient a brochure promulgated by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their ~~psychotherapist~~ *psychotherapists*. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, a licensed professional clinical counselor, a psychological assistant, a marriage and family therapist registered intern or trainee, an intern or clinical counselor trainee, as specified in Chapter 16 (commencing with Section 4999.10), or an associate clinical social worker.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Intimate part" and "touching" have the same meaning as defined in subdivisions ~~(f)~~ *(g)* and ~~(d)~~ *(e)*, respectively, of Section 243.4 of the Penal Code.

(4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the patient as being within his or her scope of practice, until the psychotherapist-patient relationship is terminated.

SEC. 6. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the ~~State Department of Public Health~~ *department* and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that the training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a certified phlebotomy technician issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall have until

January 1, 2007, to comply with this requirement, provided that he or she has submitted the application to the department on or before July 1, 2006.

(2) The department shall adopt regulations for certification by January 1, 2001, as a certified phlebotomy technician that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

(i) At least 40 hours of didactic instruction.

(ii) At least 40 hours of practical instruction.

(iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

~~(3)~~

(C) Each certified phlebotomy technician shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

~~(4)~~

(D) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

~~(5)~~

(E) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed

under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

~~(6)~~

(3) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state's minimum education and training requirements for comparable programs.

~~(7)~~

(4) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.

~~(8)~~

(5) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than one hundred dollars ($100) for a two-year period.

(c) (1) (A) A certified phlebotomy technician may perform venipuncture or skin puncture to obtain a specimen for nondiagnostic tests assessing the health of an individual, for insurance purposes, provided that the technician works under the general supervision of a physician and surgeon licensed under Chapter 5 (commencing with Section 2000). The physician and surgeon may delegate the general supervision duties to a registered nurse or a person licensed under this chapter, but shall remain responsible for ensuring that all those duties and responsibilities are properly performed. The physician and surgeon shall make available to the department, upon request, records maintained documenting when a certified phlebotomy technician has performed venipuncture or skin puncture pursuant to this paragraph.

(B) As used in this paragraph, general supervision requires the supervisor of the technician to determine that the technician is competent to perform venipuncture or skin puncture prior to the technician's first blood withdrawal, and on an annual basis thereafter. The supervisor is also required to determine, on a monthly basis, that the technician complies with appropriate venipuncture or skin puncture policies and procedures approved by the medical director and required by state regulations. The supervisor, or another designated licensed physician and surgeon, registered nurse, or person licensed under this chapter, shall be

available for consultation with the technician, either in person or through telephonic or electronic means, at the time of blood withdrawal.

(2) (A) Notwithstanding any other provision of law, a person who has been issued a certified phlebotomy technician certificate pursuant to this section may draw blood following policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000), appropriate to the location where the blood is being drawn and in accordance with state regulations. The blood collection shall be done at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(B) As used in this paragraph, "general supervision" means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 7. Section 1301 of the Business and Professions Code is amended to read:

1301. (a) The annual renewal fee for a clinical laboratory license or registration set under this chapter shall be paid during the 30-day period before the expiration date of the license or registration. If the license or registration is not renewed before the expiration date, the licensee or registrant, as a condition precedent to renewal, shall pay a delinquency fee equal to 25 percent of the

annual renewal fee for up to 60 days after the expiration date, in addition to the annual renewal fee in effect on the last preceding regular renewal date. Failure to pay the annual renewal fee in advance during the time the license or registration remains in force shall, ipso facto, work a forfeiture of the license or registration after a period of 60 days from the expiration date of the license or registration.

(b) (1) The department shall give written notice to all persons licensed pursuant to ~~Sections~~ *Section* 1260, 1260.1, 1261, 1261.5, 1262, 1264, or 1270 30 days in advance of the regular renewal date that a renewal fee has not been paid. In addition, the department shall give written notice to licensed clinical laboratory bioanalysts or doctoral degree specialists and clinical laboratory scientists or limited clinical laboratory scientists by registered or certified mail 90 days in advance of the expiration of the fifth year that a renewal fee has not been paid and if not paid before the expiration of the fifth year of delinquency the licensee may be subject to reexamination.

(2) If the renewal fee is not paid for five or more years, the department may require an examination before reinstating the license, except that no examination shall be required as a condition for reinstatement if the original license was issued without an examination. No examination shall be required for reinstatement if the license was forfeited solely by reason of nonpayment of the renewal fee if the nonpayment was for less than five years.

(3) If the license is not renewed within 60 days after its expiration, the licensee, as a condition precedent to renewal, shall pay the delinquency fee identified in subdivision ~~(*l*)~~ *(k)* of Section 1300, in addition to the renewal fee in effect on the last preceding regular renewal date. Payment of the delinquency fee will not be necessary if within 60 days of the license expiration date the licensee files with the department an application for inactive status.

SEC. 8. Section 3152 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 9. Section 4040 of the Business and Professions Code is amended to read:

4040. (a) “Prescription” means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition or purpose for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either ~~subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052~~ *Section 4052.1 or 4052.2*.

(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this state, or pursuant to either ~~subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052~~ *Section 4052.1 or 4052.2* by a pharmacist licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph ~~(3)~~ *(2)* of subdivision ~~(b)~~ *(a)* of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) “Electronic transmission prescription” includes both image and data prescriptions. “Electronic image transmission prescription” means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. “Electronic data transmission prescription” means any prescription

order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

SEC. 10. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1~~,~~ or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either ~~subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052~~ *Section 4052.1 or 4052.2* orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1~~,~~ or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor

who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either ~~subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052~~ *Section 4052.1 or 4052.2*.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition or purpose for which the drug was prescribed if the condition or purpose is indicated on the prescription.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1~~,~~ or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either ~~subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052~~ *Section 4052.1 or 4052.2*.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

SEC. 11. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. An unlicensed marriage and family therapist intern employed under this chapter shall comply with the following requirements:

(a) Possess, at a minimum, a master's degree as specified in Section 4980.36 or 4980.37, as applicable.

(b) Register with the board prior to performing any duties, except as otherwise provided in subdivision ~~(e)~~ *(g)* of Section 4980.43.

(c) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

SEC. 12. Section 4999.2 of the Business and Professions Code is amended to read:

4999.2. (a) In order to obtain and maintain a registration, in-state or out-of-state telephone medical advice services shall comply with the requirements established by the department. Those requirements shall include, but shall not be limited to, all of the following:

(1) (A) Ensuring that all staff who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions pursuant to Chapter 4 (commencing with Section 1600), as an occupational therapist pursuant to Chapter 5.6 (commencing with Section 2570), as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section ~~4990.1)~~ *4991)*, as an optometrist pursuant to Chapter 7 (commencing with Section 3000), or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided in paragraph (2).

(B) Ensuring that all staff who provide telephone medical advice services from an out-of-state location are health care professionals, as identified in subparagraph (A), who are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating consistent with the laws governing their respective scopes of practice.

(2) Ensuring that the telephone medical advice provided is consistent with good professional practice.

(3) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years.

(4) Ensuring that no staff member uses a title or designation when speaking to an enrollee or subscriber that may cause a reasonable person to believe that the staff member is a licensed,

certified, or registered professional described in subparagraph (A) of paragraph (1), unless the staff member is a licensed, certified, or registered professional.

(5) Complying with all directions and requests for information made by the department.

(b) To the extent permitted by Article VII of the California Constitution, the department may contract with a private nonprofit accrediting agency to evaluate the qualifications of applicants for registration pursuant to this chapter and to make recommendations to the department.

SEC. 13. Section 4999.7 of the Business and Professions Code is amended to read:

4999.7. (a) ~~Nothing in this section shall~~ *This section does not* limit, preclude, or otherwise interfere with the practices of other persons licensed or otherwise authorized to practice, under any other provision of this division, telephone medical advice services consistent with the laws governing their respective scopes of practice, or licensed under the Osteopathic Initiative Act or the Chiropractic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(b) For ~~the~~ purposes of this chapter, "telephone medical advice" means a telephonic communication between a patient and a health care professional in which the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment. "Telephone medical advice" includes assessment, evaluation, or advice provided to patients or their family members.

(c) For ~~the~~ purposes of this chapter, "health care professional" is a staff person described in Section 4999.2 who provides medical advice services and is appropriately licensed, certified, or registered ~~as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act,~~ as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions pursuant to Chapter 4 (commencing with Section 1600), *as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700),* as a psychologist

pursuant to Chapter 6.6 (commencing with Section 2900), *as an optometrist pursuant to Chapter 7 (commencing with Section 3000),* as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section ~~4990.1)~~ *4991),* ~~as an optometrist pursuant to Chapter 7 (commencing with Section 3000),~~ or as a chiropractor pursuant to the Chiropractic Initiative Act, and who is operating consistent with the laws governing his or her respective scopes of practice in the state in which he or she provides telephone medical advice services.

SEC. 14. Section 6213 of the Business and Professions Code is amended to read:

6213. As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars ($20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is

eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

(g) "Older Americans Act" means the Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

(h) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

(1) An interest-bearing checking account.

(2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end ~~money-market~~ *money market* fund.

(3) An investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end ~~money-market~~ *money market* fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a ~~"money-market~~ "*money market* fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

(k) "Eligible institution" means either of the following:

(1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends in the IOLTA account and carries deposit insurance from an agency of the federal government.

(2) Any other type of financial institution authorized by the *California* Supreme Court.

SEC. 15. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) It is a misdemeanor for a person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.

(b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed contractor, or five thousand dollars ($5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars ($5,000) nor more than the greater amount of ten thousand dollars ($10,000) or 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed contractor, and by imprisonment in a county jail for not more than one year or less than 90 days. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(e) A person who violates this section is subject to the penalties prescribed in subdivision (d) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(f) If the person engaging in the business of or acting in the capacity of an unlicensed contractor has agreed to furnish materials and labor on an hourly basis, "the contract price" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished~~,~~ and the cost of completing the work to be performed.

(g) Notwithstanding any other provision of law, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

(h) For any conviction under this section, a person who utilized the services of the unlicensed contractor is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses, regardless of whether that person had knowledge that the contractor was unlicensed.

SEC. 16. Section 7108.5 of the Business and Professions Code is amended to read:

7108.5. (a) This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

(b) Except as provided in subdivision (c), a prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days ~~of~~ *after* receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. A prime contractor or subcontractor that fails to comply with this subdivision shall be subject to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made as required under this subdivision.

(c) If there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or

subcontractor may withhold no more than 150 percent of the disputed amount.

(d) A violation of this section shall constitute a cause for disciplinary action.

(e) In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(f) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.

SEC. 17. Section 8520.2 of the Business and Professions Code is amended to read:

8520.2. (a) The Structural Pest Control Board is hereby transferred from the jurisdiction of the Department of Consumer Affairs and placed under the jurisdiction of the Department of Pesticide Regulation.

(b) The registrar of the board under the jurisdiction of the Department of Consumer Affairs shall remain as the registrar of the board under the jurisdiction of the Department of Pesticide Regulation.

(c) The members appointed to the board while under the jurisdiction of the Department of Consumer Affairs shall remain as members of the board under the jurisdiction of the Department of Pesticide Regulation.

(d) All employees of the board under the jurisdiction of the Department of Consumer Affairs are hereby transferred to the board under the jurisdiction of the Department of Pesticide Regulation.

(e) The duties, powers, purposes, responsibilities, and jurisdictions of the board under the jurisdiction of the Department of Consumer Affairs shall remain with the board under the jurisdiction of the Department of Pesticide Regulation.

(f) For the performance of the duties and the exercise of the powers vested in the board under this chapter, the board shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the board formerly within the jurisdiction of the Department of Consumer Affairs.

(g) Any reference to the board in this chapter or in any other provision of law or regulation shall be construed as a reference to

the board under the jurisdiction of the ~~department~~ *Department of Pesticide Regulation*.

SEC. 18. Section 8676 of the Business and Professions Code is amended to read:

8676. The ~~department~~ *Department of Pesticide Regulation* shall receive and account for all moneys collected under this chapter at the end of each month, and shall pay it into the Treasury to the credit of the Structural Pest Control Fund, which is hereby continued in existence.

The ~~money~~ *moneys* in this fund shall be expended for the pro rata cost of administration of the ~~department~~ *Department of Pesticide Regulation* and for the purpose of carrying out the provisions of this chapter.

SEC. 19. Section 8761 of the Business and Professions Code is amended to read:

8761. (a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice.

(b) All maps, plats, reports, descriptions, or other land surveying documents shall be prepared by, or under the responsible charge of, a licensed land surveyor or civil engineer authorized to practice land surveying and shall include his or her name and license number.

(c) Interim maps, plats, reports, descriptions, or other land surveying documents shall include a notation as to the intended purpose of the map, plat, report, description, or other document, such as “preliminary” or “for examination only.”

(d) All final maps, plats, reports, descriptions, or other land surveying documents issued by a licensed land surveyor or civil engineer authorized to practice land surveying shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If the land surveying document has multiple pages or sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet, unless otherwise required by law.

(e) It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other land surveying document unless the person is authorized to practice land surveying.

(f) It is unlawful for any person to stamp or seal any map, plat, report, description, or other land surveying document with the seal or stamp after the certificate of the licensee that is named on the seal or stamp has expired or has been suspended or revoked, unless the certificate has been renewed or reissued.

SEC. 20. Section 9889.20 of the Business and Professions Code is amended to read:

9889.20. Except as otherwise provided in ~~Sections~~ *Section* 9889.21 ~~and 9889.48~~, any person who fails to comply in any respect with the provisions of this chapter is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment not exceeding six months, or by both ~~such~~ *that* fine and imprisonment.

SEC. 21. Section 11344 of the Business and Professions Code is amended to read:

11344. (a) Notwithstanding Section 11341, a temporary license may be issued pending the outcome of the fingerprint and background check or as otherwise prescribed by the director. A temporary license is valid for up to 150 days. Unless otherwise prohibited pursuant to Section ~~11350.6~~ *17520* of the ~~Welfare and Institutions~~ *Family* Code, a temporary license may be renewed once at the discretion of the director.

(b) The director may issue a probationary license as follows:

(1) By term.

(2) By conditions to be observed in the exercise of the privileges granted.

SEC. 22. Section 19596.2 of the Business and Professions Code is amended to read:

19596.2. (a) Notwithstanding any other provision of law and except as provided in Section 19596.4, a thoroughbred racing association or fair may distribute the audiovisual signal and accept wagers on the results of out-of-state thoroughbred races conducted in the United States during the calendar period the association or fair is conducting a race meeting, including days on which there is no live racing being conducted by the association or fair, without the consent of the organization that represents horsemen *and horsewomen* participating in the race meeting and without regard to the amount of purses. Further, the total number of thoroughbred races imported by associations or fairs on a statewide basis under this section shall not exceed 32 per day on days when live

thoroughbred or fair racing is being conducted in the state. The limitation of 32 imported races per day does not apply to any of the following:

(1) Races imported for wagering purposes pursuant to subdivision (c).

(2) Races imported that are part of the race card of the Kentucky Derby, the Kentucky Oaks, the Preakness Stakes, the Belmont Stakes, the Jockey Club Gold Cup, the Travers Stakes, the Breeders' Cup, the Dubai Cup, or the Haskell Invitational.

(3) Races imported into the northern zone when there is no live thoroughbred or fair racing being conducted in the northern zone.

(4) Races imported into the combined central and southern zones when there is no live thoroughbred or fair racing being conducted in the combined central and southern zones.

(b) ~~Any~~ *A* thoroughbred association or fair accepting wagers pursuant to subdivision (a) shall conduct the wagering in accordance with the applicable provisions of Sections 19601, 19616, 19616.1, and 19616.2.

(c) No thoroughbred association or fair may accept wagers pursuant to this section on out-of-state races commencing after 7 p.m., Pacific ~~standard time~~ *Standard Time*, without the consent of the harness or quarter horse racing association that is then conducting a live racing meeting in Orange or Sacramento ~~Counties~~ *County*.

SEC. 23. Section 19605.10 of the Business and Professions Code is amended and renumbered to read:

~~19605.10.~~

19605.79. (a) Notwithstanding any other provision of law, in the event there are at any time uncommitted surplus funds in accounts created pursuant to Sections 19605.73 and 19605.75, those unexpended funds may, at the written request of the organization governing those funds and with the approval of the board, be reallocated to any other fund or account created pursuant to this chapter.

(b) Requests to the board to reallocate funds pursuant to subdivision (a) shall be accompanied by a report detailing all receipts and expenditures over the two prior fiscal years of the funds affected by the request.

(c) Initial board approval of a request to reallocate funds pursuant to subdivision (a) shall be limited to a one-year period.

Approval of a reallocation may be extended beyond one year upon a determination by the board that the extension is in the economic interest of thoroughbred racing.

(d) The organization whose written request pursuant to subdivision (a) has been approved by the board shall provide subsequent quarterly reports of receipts and expenditures of the affected funds if requested by the board.

(e) The organization whose written request pursuant to subdivision (a) has been approved by the board shall file a report with the board and the respective fiscal committees and ~~Committees~~ *committees* on ~~Governmental Organization~~ *governmental organization* of the Senate and the Assembly accounting for all receipts and expenditures in any of the affected funds. This report shall be filed within one year of initial board approval and annually thereafter if the approval is extended by the board.

SEC. 24. Section 19850.6 of the Business and Professions Code is amended to read:

19850.6. (a) In order to avoid delays in implementing the California Remote Caller Bingo Act, including implementing remote caller bingo, testing and certifying card-minding devices, and to avoid disruption of fundraising efforts by nonprofit organizations, the Legislature finds and declares that it is necessary to provide the commission with a limited exemption from normal rulemaking procedural requirements. The commission is directed to adopt appropriate emergency regulations as soon as possible, the initial regulatory action to be filed with the Office of Administrative Law no later than May 1, 2009. It is the intent of the Legislature to provide the commission with full authority and sufficient flexibility to adopt all needed regulations. These regulations may be adopted in a series of regulatory actions. Subsequent regulatory actions may amend or repeal earlier regulatory actions, as necessary, to reflect program experience and concerns of the regulated public.

(b) The commission shall adopt emergency regulations concerning remote caller bingo and concerning card-minding devices no later than May 1, 2009. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the commission is

hereby exempted for this purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code, but shall otherwise be subject to the review and approval of the Office of Administrative Law.

(c) Notwithstanding any other law, all emergency regulations adopted by the commission pursuant to this section before July 1, 2009, shall remain in effect until December 31, 2011, except to the extent that the commission exercises its power to adopt, amend, or repeal these regulations in whole or *in* part.

SEC. 25. Section 23356.2 of the Business and Professions Code is amended to read:

23356.2. (a) No license or permit shall be required for the manufacture of beer for personal or family use, and not for sale, by a person over ~~the age of~~ 21 years *of age*. The aggregate amount of beer with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household~~,~~ or (2) 100 gallons per calendar year if there is only one adult in the household.

(b) No license or permit shall be required for the manufacture of wine for personal or family use, and not for sale, by a person over ~~the age of~~ 21 years *of age*. The aggregate amount of wine with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household.

(c) Any beer manufactured pursuant to this section may be removed from the premises where manufactured for use in competition at organized affairs, exhibitions, or competitions, including homemakers' contests, tastings, or judgings.

(d) Any wine made pursuant to this section may be removed from the premises where made for personal or family use, including use at organized affairs, exhibitions, or competitions, such as homemakers' contests, tastings, or ~~judging~~ *judgings*. Wine used under this section shall not be sold or offered for sale.

(e) Except as provided herein, nothing in this section authorizes any activity in violation of Section 23300, 23355, or 23399.1.

SEC. 26. Section 25503.42 of the Business and Professions Code is amended to read:

25503.42. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license,

a California winegrower's agent, a holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent may purchase indoor advertising space or time at a fully enclosed venue with box office sales and attendance by the public on a ticketed basis only, with a patronage capacity in excess of 2,000, located in Los Angeles County within the area subject to the Los Angeles Sports and Entertainment District Specific Plan adopted by the City of Los Angeles pursuant to ordinance number 174225, as approved on September 6, 2001, where the owner of the venue is not the on-sale retail licensee. The purchase of the indoor advertising space or time shall be subject to all of the following conditions:

(1) The indoor advertising space or time is purchased only at the venue specified in this subdivision.

(2) The purchase of indoor advertising space or time shall be conducted pursuant to a written agreement entered into by the beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent and the owner of the venue described in this subdivision. A holder of a wholesale license shall not be a party to the written agreement or otherwise have any direct or indirect obligations under the agreement, including an obligation to share in the costs or contribute to the costs of the indoor advertising space or time purchased pursuant to this section.

(3) An agreement for the purchase of indoor advertising space or time pursuant to this section shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the advertising beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent by any on-sale retail licensee.

(4) An on-sale licensee operating at a venue described in this subdivision where indoor advertising space or time is purchased shall serve other brands of beer distributed by a competing beer wholesaler in addition to the brands manufactured or marketed by the advertising beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brands produced or marketed by the advertising winegrower or California

winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brands manufactured or marketed by the advertising distilled spirits manufacturer, the distilled spirits manufacturer's agent, or a holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license.

(5) No more than 15 percent of the retail licensee's purchases of distilled spirits and wine for sale on its licensed premises shall be manufactured, produced, or distributed by the holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license, or a distilled spirits manufacturer's agent that has purchased indoor advertising space.

(b) A beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in ~~the~~ *a* county jail *for* not ~~exceeding~~ *more than* six months, or by a fine equal to the greater of an amount equal to the entire value of the advertising space or time involved in the contract or ten thousand dollars ($10,000), or by both *that* imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(c) An on-sale retail licensee who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase indoor advertising time or space pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in ~~the~~ *a* county jail *for* not ~~exceeding~~ *more than* six months, or by a fine equal to the greater of an amount equal to the entire value of the advertising space or time involved in the contract or ten thousand dollars ($10,000), or by both *that* imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) For purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state

beer manufacturer's certificate, or a holder of a beer and wine importer's general license.

(e) Nothing in this section shall authorize the purchasing of indoor advertising space or time pursuant to subdivision (a) by any beer manufacturer, holder of a winegrower's license, a California winegrower's agent, a distilled spirits manufacturer, holder of a distilled spirits ~~rectifiers~~ *rectifier's* general license, or a distilled spirits manufacturer's agent directly or indirectly from any on-sale licensee.

(f) A venue owner that meets the description provided in subdivision (a) and that enters into a written agreement pursuant to this section shall obtain an annual certificate from the department. The director shall prepare, as part of the annual report required by Section 23055 for submission to the Legislature, a listing of the number of certifications made pursuant to this section or the absence of any certifications. Where there have been no certifications made pursuant to this section for two consecutive years, this information shall be included in the report.

(g) The Legislature finds that it is necessary and proper to require a separation among manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests shall be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

SEC. 27. Section 25658.4 of the Business and Professions Code is amended to read:

25658.4. (a) No clerk shall make an off sale of alcoholic beverages unless the clerk executes under penalty of perjury on the first day he or she makes that sale an application and acknowledgment. The application and acknowledgment shall be in a form understandable to the clerk.

(1) The department shall specify the form of the application and acknowledgment, which shall include at a minimum a summary of this division pertaining to the following:

(A) The prohibitions contained in Sections 25658 and 25658.5 pertaining to the sale to, and purchase of, alcoholic beverages by persons under 21 years of age.

(B) Bona fide evidence of majority as provided in Section 25660.

(C) Hours of operation as provided in Article 2 (commencing with Section 25631).

(D) The prohibitions contained in subdivision (a) of Section 25602 and Section 25602.1 pertaining to sales to an intoxicated person.

(E) Sections 23393 and 23394 as they pertain to on-premises consumption of alcoholic beverages in an off-sale premises.

(F) The requirements and prohibitions contained in Section 25659.5 pertaining to sales of keg beer for consumption off licensed premises.

(2) The application and acknowledgment shall also include a statement that the clerk has read and understands the summary, a statement that the clerk has never been convicted of violating this division or, if convicted, an explanation of the circumstances of each conviction, and a statement that the application and acknowledgment is executed under penalty of perjury.

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and available for inspection by the department. A licensee with more than one licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee electing to maintain *an* application and acknowledgments at a designated site other than the licensed premises shall maintain at each licensed premises a notice of where the executed application and acknowledgments are located. Any licensee with more than one licensed off-sale premises who elects to maintain the application and

acknowledgments at a designated site other than each licensed premises shall provide the department, upon written demand, a copy of any employee's executed application and acknowledgment within 10 business days. A violation of this subdivision by a licensee constitutes grounds for discipline by the department.

(b) The licensee shall post a notice that contains and describes, in concise terms, prohibited sales of alcoholic beverages, a statement that the off-sale seller will refuse to make a sale if the seller reasonably suspects that the Alcoholic Beverage Control Act may be violated, and a statement that a minor who purchases or attempts to purchase alcoholic beverages is subject to suspension or delay in the issuance of his or her driver's license pursuant to Section 13202.5 of the Vehicle Code. The notice shall be posted at an entrance or at a point of sale in the licensed premises or in any other location that is visible to purchasers of alcoholic beverages and to the off-sale seller.

(c) A retail licensee shall post a notice that contains and describes, in concise terms, the fines and penalties for any violation of Section 25658, relating to the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, any person under ~~the age of~~ 21 years *of age*.

(d) Nonprofit organizations or licensees may obtain video recordings and other training materials from the department on the Licensee Education on Alcohol and Drugs (LEAD) program. The video recordings and training materials may be updated periodically and may be provided in English and other languages, and when made available by the department, shall be provided at cost.

(e) As used in this section:

(1) "Off-sale seller" means any person holding a retail off-sale license issued by the department and any person employed by that licensee who in the course of that employment sells alcoholic beverages.

(2) "Clerk" means an off-sale seller who is not a licensee.

(f) The department may adopt rules and appropriate fees for licensees that it determines necessary for the administration of this section.

SEC. 28. Section 1185 of the Civil Code is amended to read:

1185. (a) The acknowledgment of an instrument shall not be taken unless the officer taking it has satisfactory evidence that the

person making the acknowledgment is the individual who is described in and who executed the instrument.

(b) For ~~the~~ purposes of this section "satisfactory evidence" means the absence of ~~any~~ information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be and any one of the following:

(1) (A) The oath or affirmation of a credible witness personally known to the officer, whose identity is proven to the officer upon presentation of ~~any~~ *a* document satisfying the requirements of paragraph (3) or (4), that the person making the acknowledgment is personally known to the witness and that each of the following are true:

(i) The person making the acknowledgment is the person named in the document.

(ii) The person making the acknowledgment is personally known to the witness.

(iii) That it is the reasonable belief of the witness that the circumstances of the person making the acknowledgment are such that it would be very difficult or impossible for that person to obtain another form of identification.

(iv) The person making the acknowledgment does not possess any of the identification documents named in paragraphs (3) and (4).

(v) The witness does not have a financial interest in the document being acknowledged and is not named in the document.

(B) A notary public who violates this section by failing to obtain the satisfactory evidence required by subparagraph (A) shall be subject to a civil penalty not exceeding ten thousand dollars ($10,000). An action to impose this civil penalty may be brought by the Secretary of State in an administrative proceeding or ~~any~~ *a* public prosecutor in superior court, and shall be enforced as a civil judgment. A public prosecutor shall inform the secretary of any civil penalty imposed under this subparagraph.

(2) The oath or affirmation under penalty of perjury of two credible witnesses, whose identities are proven to the officer upon the presentation of ~~any~~ *a* document satisfying the requirements of paragraph (3) or (4), that each statement in paragraph (1) ~~of this subdivision~~ is true.

(3) Reasonable reliance on the presentation to the officer of any one of the following, if the document is current or has been issued within five years:

(A) An identification card or driver's license issued by the ~~California~~ Department of Motor Vehicles.

(B) A passport issued by the Department of State of the United States.

(4) Reasonable reliance on the presentation of any one of the following, provided that a document specified in subparagraphs (A) to (F), inclusive, shall either be current or have been issued within five years and shall contain a photograph and description of the person named on it, shall be signed by the person, shall bear a serial or other identifying number, and, in the event that the document is a passport, shall have been stamped by the United States *Citizenship and* Immigration~~ and Naturalization Service~~ *Services of the Department of Homeland Security*:

(A) A passport issued by a foreign government.

(B) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue ~~drivers'~~ *driver's* licenses.

(C) An identification card issued by a state other than California.

(D) An identification card issued by any branch of the Armed Forces of the United States.

(E) An inmate identification card issued on or after January 1, 1988, by the Department of Corrections and Rehabilitation, if the inmate is in custody.

(F) An employee identification card issued by an agency or office of the State of California, or by an agency or office of a city, county, or city and county in this state.

(G) An inmate identification card issued prior to January 1, 1988, by the Department of Corrections and Rehabilitation, if the inmate is in custody.

(c) An officer who has taken an acknowledgment pursuant to this section shall be presumed to have operated in accordance with the provisions of law.

(d) ~~Any~~ *A* party who files an action for damages based on the failure of the officer to establish the proper identity of the person making the acknowledgment shall have the burden of proof in establishing the negligence or misconduct of the officer.

(e) ~~Any~~ *A* person convicted of perjury under this section shall forfeit any financial interest in the document.

SEC. 29. Section 1363.03 of the Civil Code is amended to read:

1363.03. (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board of directors and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member of the association from nominating himself or herself for election to the board of directors.

(4) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

(5) Specify a method of selecting one or three independent third parties as inspector~~,~~ or inspectors~~,~~ of ~~election~~ *elections* utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

(6) Allow the inspector~~,~~ or inspectors~~,~~ to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.

(b) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to Section 1363.07 shall be held by secret ballot in accordance with the procedures set forth in this section. A quorum shall be required only if so stated in the governing documents of the association or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum. An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(c) (1) The association shall select an independent third party or parties as an inspector of ~~election~~ *elections*. The number of inspectors of ~~election~~ *elections* shall be one or three.

(2) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member of the association, but may not be a member of the board of directors or a candidate for the board of directors or related to a member of the board of directors or a candidate for the board of directors. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a).

(3) The inspector or inspectors of ~~election~~ *elections* shall do all of the following:

(A) Determine the number of memberships entitled to vote and the voting power of each.

(B) Determine the authenticity, validity, and effect of proxies, if any.

(C) Receive ballots.

(D) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(E) Count and tabulate all votes.

(F) Determine when the polls shall close, consistent with the governing documents.

(G) Determine the tabulated results of the election.

(H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this section.

(4) An inspector of ~~election~~ *elections* shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three inspectors of ~~election~~ *elections*, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of ~~election~~ *elections* is prima facie evidence of the facts stated in the report.

(d) (1) For purposes of this section, the following definitions shall apply:

(A) "Proxy" means a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member.

(B) "Signed" means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or authorized representative of the member.

(2) Proxies shall not be construed or used in lieu of a ballot. An association may use proxies if permitted or required by the bylaws of the association and if those proxies meet the requirements of this article, other laws, and the association's governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this section.

(3) Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the member's vote by secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the

inspector of elections as described in Section 7613 of the Corporations Code.

(e) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote.

(2) The second envelope is addressed to the inspector or inspectors of ~~election~~ *elections*, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of ~~election~~ *elections*. The member may request a receipt for delivery.

(f) All votes shall be counted and tabulated by the inspector or inspectors of ~~election~~ *elections* or his or her designee in public at a properly noticed open meeting of the board of directors or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The inspector of ~~election~~ *elections*, or his or her designee, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable.

(g) The tabulated results of the election shall be promptly reported to the board of directors of the association and shall be recorded in the minutes of the next meeting of the board of directors and shall be available for review by members of the association. Within 15 days of the election, the board shall

publicize the tabulated results of the election in a communication directed to all members.

(h) The sealed ballots at all times shall be in the custody of the inspector or inspectors of ~~election~~ *elections* or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 7527 of the Corporations Code for challenging the election has expired, at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of ~~election~~ *elections* shall, upon written request, make the ballots available for inspection and review by an association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

(i) After the transfer of the ballots to the association, the ballots shall be stored by the association in a secure place for no less than one year after the date of the election.

(j) Notwithstanding any other provision of law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

(k) Except for the meeting to count the votes required in subdivision (f), an election may be conducted entirely by mail unless otherwise specified in the governing documents.

(*l*) The provisions of this section apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(m) The procedures set forth in this section shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(n) In the event of a conflict between this section and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this section shall prevail.

(o) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2006.

SEC. 30. Section 2954 of the Civil Code is amended to read:

2954. (a) (1) No impound, trust, or other type of account for payment of taxes on the property, insurance premiums, or other purposes relating to the property shall be required as a condition of a real property sale contract or a loan secured by a deed of trust or mortgage on real property containing only a single-family, owner-occupied dwelling, except: ~~(1)~~ *(A)* where required by a state or federal regulatory authority~~; or (2)~~, *(B)* where a loan is made, guaranteed, or insured by a state or federal governmental lending or insuring agency~~; or (3)~~, *(C)* upon a failure of the purchaser or borrower to pay two consecutive tax installments on the property prior to the delinquency date for such payments~~; or (4)~~, *(D)* where the original principal amount of such a loan is (i) 90 percent or more of the sale price, if the property involved is sold, or is (ii) 90 percent or more of the appraised value of the property securing the loan~~; or (5)~~, *(E)* whenever the combined principal amount of all loans secured by the real property exceeds 80 percent of the appraised value of the property securing the loans~~; or (6)~~, *(F)* where a loan is made in compliance with the requirements for higher priced mortgage loans established in Regulation Z, whether or not the loan is a higher priced mortgage loan~~;~~, or ~~(7)~~ *(G)* where a loan is refinanced or modified in connection with a lender's homeownership preservation program or a lender's participation in such a program sponsored by a federal, state, or local government authority or a nonprofit organization. Nothing contained in this section shall preclude establishment of such an account on terms mutually agreeable to the parties to the loan, if, prior to the execution of the loan or sale agreement, the seller or lender has furnished to the purchaser or borrower a statement in writing, which may be set forth in the loan application, to the effect that the establishment of such an account shall not be required as a condition to the execution of the loan or sale agreement, and further, stating whether or not interest will be paid on the funds in such an account.

An impound, trust, or other type of account for the payment of taxes, insurance premiums, or other purposes relating to property established in violation of this subdivision is voidable, at the option of the purchaser or borrower, at any time, but shall not otherwise affect the validity of the loan or sale.

(2) For the purposes of this subdivision, "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board

of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the ~~Federal~~ *federal* Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(b) Every mortgagee of real property, beneficiary under a deed of trust on real property, or vendor on a real property sale contract upon the written request of the mortgagor, trustor, or vendee shall furnish to the mortgagor, trustor, or vendee for each calendar year within 60 days after the end of ~~such~~ *the* year an itemized accounting of moneys received for interest and principal repayment and received and held in or disbursed from an impound or trust account, if any, for payment of taxes on the property, insurance premiums, or other purposes relating to the property subject to the mortgage, deed of trust, or real property sale contract. The mortgagor, trustor, or vendee shall be entitled to receive one such accounting for each calendar year without charge and shall be entitled to additional similar accountings for one or more months upon written request and on payment in advance of fees as follows:

(1) Fifty cents ($0.50) per statement when requested in advance on a monthly basis for one or more years.

(2) One dollar ($1) per statement when requested for only one month.

(3) Five dollars ($5) if requested for a single cumulative statement giving all the information described above back to the last statement rendered.

If the mortgagee, beneficiary, or vendor transmits to the mortgagor, trustor, or vendee a monthly statement or passbook showing moneys received for interest and principal repayment and received and held in and disbursed from an impound or trust account, if any, the mortgagee, beneficiary, or vendor shall be deemed to have complied with this section.

No increase in the monthly rate of payment of a mortgagor, trustor, or vendee on a real property sale contract for impound or trust accounts shall be effective until after the mortgagee, beneficiary, or vendor has furnished the mortgagor, trustor, or vendee with an itemized accounting of the moneys presently held by it in the accounts, and a statement of the new monthly rate of

payment, and an explanation of the factors necessitating the increase.

The provisions of this section shall be in addition to the obligations of the parties as stated by Section 2943 ~~of this code~~.

Every person who willfully or repeatedly violates this subdivision shall be subject to punishment by a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200).

(c) As used in this section, "single-family, owner-occupied dwelling" means a dwelling ~~which~~ *that* will be owned and occupied by a signatory to the mortgage or deed of trust secured by ~~such~~ *that* dwelling within 90 days of the execution of ~~such~~ *the* mortgage or deed of trust.

SEC. 31. Section 128.6 of the Code of Civil Procedure is repealed.

~~128.6. (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.~~

~~(b) For purposes of this section:~~

~~(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.~~

~~(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.~~

~~(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.~~

~~(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising~~

~~from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.~~

~~(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.~~

~~(f) This section shall become operative on January 1, 2003, unless a statute that becomes effective on or before this date extends or deletes the repeal date of Section 128.7.~~

SEC. 32. Section 209 of the Code of Civil Procedure, as amended by Section 6 of Chapter 567 of the Statutes of 2006, is repealed.

~~209. Any prospective trial juror who has been summoned for service, and who fails to attend the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend. Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.~~

~~This section shall become operative on January 1, 2010.~~

SEC. 33. Section 234 of the Code of Civil Procedure is amended to read:

234. Whenever, in the opinion of a judge of a superior court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as “alternate jurors.”

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times upon the trial of the cause in company with the other jurors, but shall not

participate in deliberation unless ordered by the court, and for a failure to do so are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff or marshal during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff or marshal who shall not suffer any communication to be made to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she ~~has~~ *had* been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil cases the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled.

SEC. 34. Section 425.16 of the Code of Civil Procedure is amended to read:

425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the

plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c) (1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, *11130.5, or* 54690.5~~, or 11130.5~~.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law~~;~~, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law~~;~~, (3) any written or oral statement or writing made in a place open to the public or a public forum in

connection with an issue of public interest~~;~~*, or* (4) ~~or~~ any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

SEC. 35. Section 8971 of the Education Code is amended to read:

8971. As used in this chapter, the following terms shall have the following meanings:

(a) "Child development program" means a full-day or part-day comprehensive developmental program for children ages 0 to 14 years that is administered by the State Department of Education.

(b) "Early primary ~~program,"~~ *program"* means an integrated, experiential, and developmentally appropriate educational program for children in preschool, kindergarten, and grades 1 to 3, inclusive, that incorporates various instructional strategies and authentic assessment practices, including educationally appropriate curricula, heterogeneous groupings, active learning activities, oral language development, ~~small-group~~ *small group* instruction, peer interaction, use of concrete manipulative materials in the classroom, planned articulation among preschool, kindergarten, and primary grades, and parent involvement and education.

(c) "Integrated, experiential, and developmentally appropriate educational program" means a program that is designed around the abilities and interests of the children in the program and one in which children learn about the various subjects simultaneously, as opposed to segmented courses, and through "hands-on" or "active learning" teaching methods that are more appropriate for young children than the academic "textbook" approach.

(d) "Preschool program" means a comprehensive developmental program for children who are too young to enroll in kindergarten.

(e) "Portfolio material" means a selection of representative samples of the child's performance within the program setting that may include, but not be limited to, teacher observations, work samples, developmental profiles, photographs, and audio or video recordings that present a picture of the child's progress over time.

(f) "School district" includes county offices of education.

(g) "State preschool ~~program,"~~ *program"* means a part-day comprehensive developmental program for children three to five years of age from low-income families, administered by the State Department of Education.

SEC. 36. Section 14035 of the Education Code is amended to read:

14035. (a) The county school service fund contingency account is hereby established in the General Fund. In each fiscal year the amount credited to the account shall be one hundred thousand dollars ($100,000). Notwithstanding any provision of Section 14002 to the contrary, the amount to be credited to the county school service fund contingency account each fiscal year shall not

be transferred from the General Fund as required or authorized to be transferred by Section 14002, but the amounts required or authorized to be transferred by Section 14002 shall be reduced by the amount to be credited to the contingency account and shall remain in the General Fund to the credit of the contingency account.

(b) The ~~money~~ *moneys* in the General Fund to the credit of the contingency account shall be transferred by the Controller to the State School Fund in amounts as are certified from time to time by the Superintendent of Public Instruction to be necessary to meet actual costs to reimburse county superintendents of schools for expenses incurred in providing emergency education to pupils and making financial grants to school districts pursuant to Section 1602, to reimburse county superintendents of schools for the actual and necessary travel expenses incurred in connection with cooperative county publication projects by the county superintendent of schools or members of his *or her* staff, and to reimburse county superintendents of schools for expenses incurred in making emergency financial grants to school districts.

(c) The amount credited, pursuant to this section, in each fiscal year to the county school service fund contingency account in the General Fund shall be reduced by the amount of the balance remaining to the account on June 30 of the preceding fiscal year and an equal reduction shall be made in the amount of the reduction in the amounts required or authorized to be transferred under Section 14002 in accordance with this section.

SEC. 37. Section 33128.3 of the Education Code is amended to read:

33128.3. (a) Notwithstanding the standards and criteria adopted pursuant to paragraph (3) of subdivision (a) of Section 33128, for the 2009–10 fiscal year, the minimum state requirement for a reserve for economic uncertainties is one-third of the percentage for a reserve adopted by the state board pursuant to Section 33128 as of May 1, 2009.

(b) The school district shall make progress, in the 2010–11 fiscal year, toward returning to compliance with the standards and criteria adopted pursuant to paragraph (3) of subdivision (a) of Section 33128.

(c) For the 2011–12 fiscal year, the minimum state requirement for a reserve for economic uncertainties shall be restored to the

percentage adopted by *the* state board pursuant to Section 33128 as of May 1, 2009.

(d) This section shall become inoperative on July 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for a fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount ~~received~~ per unit of average daily attendance *received* in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(6) For the 2004–05 fiscal year, the equalization adjustment specified in Section 42238.44.

(7) For the 2006–07 fiscal year, the equalization adjustment specified in Section 42238.48.

(8) For the 2011–12 fiscal year, the equalization adjustment specified in Section 42238.49.

(c) (1) (A) For the 2010–11 fiscal year, the Superintendent shall compute an add-on for each school district by adding the inflation adjustment specified in Section 42238.1 to the adjustment specified in Section 42238.485.

(B) For the 2011–12 fiscal year and each fiscal year thereafter, the Superintendent shall compute an add-on for each school district by adding the inflation adjustment specified in Section 42238.1 to

the amount computed pursuant to this paragraph for the prior fiscal year.

(2) Commencing with the 2010–11 fiscal year, the Superintendent shall compute an add-on for each school district by dividing each school district's fiscal year average daily attendance computed pursuant to Section ~~42238.5~~

~~by~~ *42238.5 by* the total adjustments in funding for each district made for the 2007–08 fiscal year pursuant to Section 42238.22 as it read on January 1, 2009.

(d) The sum of the base revenue limit computed pursuant to subdivision (b) and the add-on computed pursuant to subdivision (c) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(e) For districts electing to compute units of average daily attendance pursuant to paragraph (2) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(f) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

(g) The reduction required by subdivision (f) shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 was in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 was in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for either of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by a single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent.

(h) The Superintendent shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter ~~3~~ *3.5* (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of Division ~~1~~ *2* of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of *Part 1 of* Division 4 of Title 2 of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount, if any, received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15 of, paragraph (4) of subdivision (a) of Section 33607.5

of, or Section 33607.7 of, the Health and Safety Code that is allocated exclusively for educational facilities.

(7) For a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, the amount of statewide average general-purpose funding per unit of average daily attendance received by school districts for each of four grade level ranges, as computed by the department pursuant to Section 47633, multiplied by the average daily attendance, in corresponding grade level ranges, of any pupils who attend charter schools funded pursuant to Chapter 6 (commencing with Section 47630) of Part 26.8 of Division 4 for which the district is the sponsoring local educational agency, as defined in Section 47632, and who reside in and would otherwise have been eligible to attend a noncharter school of the district.

(i) A transfer of pupils of grades 7 and 8 between an elementary school district and a high school district shall not result in the receiving district receiving a revenue limit apportionment for those pupils that exceeds 105 percent of the statewide average revenue limit for the type and size of the receiving school district.

SEC. 39. Section 42605 of the Education Code is amended to read:

42605. (a) (1) Unless otherwise prohibited under federal law or otherwise specified in subdivision (e), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, recipients of funds from the items listed in paragraph (2) may use funding received, pursuant to subdivision (b), from any of these items listed in paragraph (2) that are contained in an annual Budget Act, for any educational purpose~~:~~.

(2) *Items* 6110-104-0001, 6110-105-0001, 6110-108-0001, 6110-122-0001, 6110-123-0001, 6110-124-0001, 6110-137-0001, 6110-144-0001, 6110-150-0001, 6110-151-0001, 6110-156-0001, 6110-181-0001, 6110-188-0001, 6110-189-0001, 6110-190-0001, 6110-193-0001, 6110-195-0001, 6110-198-0001, 6110-204-0001, 6110-208-0001, 6110-209-0001, 6110-211-0001, 6110-227-0001, 6110-228-0001, 6110-232-0001, 6110-240-0001, 6110-242-0001, 6110-243-0001, 6110-244-0001, 6110-245-0001, 6110-246-0001, 6110-247-0001, 6110-248-0001, 6110-260-0001, 6110-265-0001, 6110-266-0001, 6110-267-0001, 6110-268-0001, and 6360-101-0001 *of Section 2.00*.

(b) (1) For the 2009–10 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent or other administering state agency, as appropriate, shall apportion from the amounts provided in the annual Budget Act for the items enumerated in paragraph (2) of subdivision (a)~~,~~ an amount to recipients based on the same relative proportion that the recipient received in the 2008–09 fiscal year for the programs funded through the items enumerated in paragraph (2) of subdivision (a).

(2) This section and Section 42 of Chapter 12 of the ~~Statutes of 2009~~ *2009–10 Third Extraordinary Session* do not authorize a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 to redirect this funding for another purpose unless otherwise authorized in law or pursuant to an agreement between a charter school and its chartering authority. Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 shall continue to distribute the funds to those charter schools based on the relative proportion that the school district distributed in the 2007–08 fiscal year, and shall adjust those amounts to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a). For a charter school that began operation in the 2008–09 fiscal year, if a school district received funding on behalf of that charter school pursuant to Sections 47634.1 and 47651, the school district shall continue to distribute the funds to that charter school based on the relative proportion that the school district distributed in the 2008–09 fiscal year and shall adjust the amount of those funds to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a).

(3) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent shall apportion from the amounts appropriated by Item 6110-211-0001 of *Section 2.00 of* the annual Budget Act~~,~~ an amount to a charter school in accordance with the ~~per pupil~~ *per-pupil* methodology prescribed in subdivision (c) of Section 47634.1.

(4) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent shall apportion from the amounts provided in the annual Budget Act~~,~~ an amount to a school district, charter school, and county office of education based on the same relative proportion that the local educational agency received in the 2007–08 fiscal year for the programs funded through the following items contained in the annual Budget Act: 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-190-0001,~~ schedule~~ *Schedule* (3) of 6110-193-0001, 6110-198-0001, 6110-232-0001, and~~ schedule~~ *Schedule* (2) of 6110-240-0001.

(5) For purposes of paragraph (4)~~ of this subdivision~~, if a direct-funded charter school began operation in the 2008–09 fiscal year, the amount that the charter school was entitled to receive from the items enumerated in paragraph (4) for the 2008–09 fiscal year, as certified by the Superintendent in March 2009, is deemed to have been received in the 2007–08 fiscal year.

(c) (1) This section does not obligate the state to refund or repay reductions made pursuant to this section. A decision by a school district to reduce funding pursuant to this section for a state-mandated local program shall constitute a waiver of the subvention of funds that the school district is otherwise entitled to pursuant to Section 6 of Article XIII B of the California Constitution on the amount so reduced.

(2) As a condition of receipt of funds, the governing board of the school district or board of the county office of education, as appropriate, at a regularly scheduled open public hearing shall take testimony from the public, discuss, approve or disapprove the proposed use of funding, and make explicit for each of the budget items in paragraph (2) of subdivision (a) the purposes for which the funds will be used.

(3) Using the Standardized Account Code Structure reporting process, a local educational agency shall report expenditures of funds pursuant to the authority of this section by using the appropriate function codes to indicate the activities for which these funds are expended. The department shall collect and provide this information to the Department of Finance and the appropriate policy and budget committees of the Legislature by April 15, 2010, and annually thereafter on April 15 until, and including, April 15, 2014.

(d) For the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, local ~~education~~ *educational* agencies that use the flexibility provision of ~~the~~ *this* section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language, associated with the items enumerated in subdivision (a).

(e) Notwithstanding subdivision (d), the following requirements shall continue to apply:

(1) For Items 6110-105-0001 and 6110-156-0001, the amount authorized for flexibility shall exclude the funding provided for instruction of ~~CalWORKs eligible~~ *CalWORKs-eligible* students pursuant to ~~schedules~~ *Schedules* (2) and (3)~~,~~ and ~~provisions~~ *Provisions* 2 and 4.

(2) (A) Any instructional materials purchased by a local ~~education~~ *educational* agency shall be the materials adopted by the state board for kindergarten and grades 1 to 8, inclusive, and for grades 9 to 12, inclusive, the materials purchased shall be aligned with state standards as defined by Section 60605, and shall also meet the reporting and sufficiency requirements contained in Section 60119.

(B) For purposes of this section, "sufficiency" means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119~~,~~ and that all pupils within the local ~~education~~ *educational* agency who are enrolled in the same course shall have identical textbooks and instructional materials, as specified in Section 1240.3.

(3) For Item 6110-195-0001, the item shall exclude moneys that are required to fund awards for teachers that have previously met the requirements necessary to obtain these awards, until the award is paid in full.

(4) For Item 6110-266-0001, a county office of education shall conduct at least one site visit to each of the required schoolsites pursuant to Section 1240 and shall fulfill all of the duties set forth in Sections 1240 and 44258.9.

(5) For Item 6110-198-0001, a school district or county office of education that operates the child care component of the Cal-SAFE program shall comply with paragraphs (5) and (6) of subdivision (c) of Section 54746.

(f) This section does not invalidate any state law pertaining to teacher credentialing requirements or the functions that require credentials.

SEC. 40. Section 42606 of the Education Code is amended to read:

42606. (a) A local educational agency, including a direct-funded charter school, may apply for any state categorical program funding included in the annual Budget Act on behalf of a school that begins operation in the 2008–09 to the 2012–13 fiscal years, inclusive, but only to the extent the school or local educational agency is eligible for funding and meets the provisions of the program that were in effect as of January 1, 2009, except that charter schools shall not apply for any of the programs contained in *Section* 47634.4.

(b) A local educational agency that establishes a new school by redirecting enrollment from its existing schools to the new school shall not be eligible to receive funding in addition to the amounts allocated pursuant to Section 42605 for the categorical programs specified in that section or for the ~~class size reduction program~~ *Class Size Reduction Program* pursuant to Sections 52122 and 52124.

(c) The Superintendent shall report the number of new schools and the programs that these schools are applying for, including an estimate of the cost for that year. This information shall ~~by~~ *be* reported by November 11, 2009, and each fiscal year thereafter, to the appropriate ~~Committees~~ *committees* of the Legislature, the Legislative Analyst's Office, and the Department of Finance.

SEC. 41. Section 44346.5 of the Education Code is amended to read:

44346.5. (a) The Commission on Teacher Credentialing shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all individuals, as described in subdivision (a) of Section 49024, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the individual is free on bail or on his or her *own* recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the commission.

(c) The Department of Justice shall provide a state and federal level response to the commission pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The commission shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for individuals described in subdivision (a) of Section 49024 *of this code*.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(f) (1) If a denial of an application for a certificate is due at least in part to the individual's state or federal criminal history record, the commission shall provide to the individual a copy of his or her criminal history record search response with the notice of the denial.

(2) The state or federal criminal history record search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(3) The criminal history record search response shall be provided in such a manner as to protect the confidentiality and privacy of the individual's criminal history record and the criminal history record search response shall not be made available by the commission to any school district or county office of education.

(4) The commission shall retain a copy of the individual's criminal history record search response, and the date and the address to which it was sent. The commission shall make this information available upon request by the Department of Justice or the Federal Bureau of Investigation.

SEC. 42. Section 44856 of the Education Code is amended to read:

44856. The governing board of a school district, for the purposes of providing bilingual instruction, foreign language instruction, or cultural enrichment, in the schools of the district, subject to the rules and regulations of the state board, may conclude arrangements with the proper authorities of a foreign country, or

of a state, territory, or possession of the United States, for the hiring of bilingual teachers employed in public or private schools of a foreign country, state, territory, or possession. To be eligible for employment, the teacher must speak English fluently. Any persons employed pursuant to this section shall be known as a "sojourn certificated employee."

A person shall not be hired as a sojourn ~~certificate~~ *certificated* employee by a school district unless he or she holds the necessary valid credential or credentials issued by the Commission on Teacher Credentialing authorizing the person to serve in a position requiring certification qualifications in the school district proposing to employ him or her. The person may be employed for a period not to exceed two years, except that thereafter the period of employment may be extended from year to year for a total period of not more than five years upon verification by the employing district that termination of the employment would adversely affect an existing bilingual or foreign language program or program of cultural enrichment, and that attempts to secure the employment of a certificated California teacher qualified to fill the position have been unsuccessful. The commission shall establish minimum standards for the credentials for sojourn certificated employees.

SEC. 43. Section 45103.1 of the Education Code is amended to read:

45103.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the school district, provided that:

(A) In comparing costs, there shall be included the school district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the school district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that

function was not performed by the school district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing school district costs that would be directly associated with the contracted function. These continuing school district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut school district pay rates.

(3) The contract does not cause the displacement of school district employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and district cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the school district from potential contractor rate increases is minimal.

(9) The contract is with a firm. A "firm" means a corporation, limited liability ~~corporation~~ *company*, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the school district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new school district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within the district, cannot be performed satisfactorily by school district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the school district.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary school district hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. "Emergency appointment" means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the school district in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all school districts, including districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

SEC. 44. Section 49701 of the Education Code is amended to read:

49701. The provisions of the Interstate Compact on Educational Opportunity for Military Children are as follows:

Article I. Purpose

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(A) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

(B) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

(C) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

(D) Facilitating the on-time graduation of children of military families.

(E) Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

(F) Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

(G) Promoting coordination between this compact and other compacts affecting military children.

(H) Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction:

(A) "Active duty" means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211.

(B) "Children of military families" means: a school-aged child or children, enrolled in Kindergarten through Twelfth (12th) grade, in the household of an active duty member.

(C) "Compact commissioner" means: the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

(D) "Deployment" means: the period one (1) month prior to the service members' departure from their home station on military orders though six (6) months after return to their home station.

(E) "Educational records" means: those official records, files, and data directly related to a student and maintained by the school or local education agency, including, but not limited to, records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

(F) "Extracurricular activities" means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation

for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

(G) "Interstate Commission on Educational Opportunity for Military Children" means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

(H) "Local education agency" means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational institutions.

(I) "Member state" means: a state that has enacted this compact.

(J) "Military installation" means: ~~means~~ a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(K) "Non-member state" means: a state that has not enacted this compact.

(L) "Receiving state" means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

(M) "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(N) "Sending state" means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(O) "State" means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. Territory.

(P) "Student" means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth (12th) grade.

(Q) "Transition" means: 1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

(R) "Uniformed service(s)" means: the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard, as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration and the U.S. Public Health Services.

(S) "Veteran" means: a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

Article III. Applicability

(A) Except as otherwise provided in Section B, this compact shall apply to the children of:

(1) Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Military Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211;

(2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and

(3) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

(B) The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

(C) The provisions of this compact shall not apply to the children of:

(1) Inactive members of the National Guard and Military Reserve;

(2) Members of the uniformed services now retired, except as provided in Section A;

(3) Veterans of the uniformed services, except as provided in Section A; and

(4) Other U.S. Dept. of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

Article IV. Educational Records and Enrollment

(A) Unofficial or "hand-carried" education records – In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission to the extent feasible. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

(B) Official education records/transcripts – Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission to the extent practicable in each case.

(C) Immunizations – Compacting states shall give thirty (30) days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

(D) Kindergarten and First (1st) grade entrance age – Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local

education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on his or her validated level from an accredited school in the sending state.

Article V. Placement and Attendance

(A) Course placement – When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered and there is space available, as determined by the school district. Course placement includes, but is not limited to, Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

(B) Educational program placement – The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state, provided that the program exists in the school and there is space available, as determined by the school district. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(C) Special education services – 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his/her current Individualized Education

Program (IEP); and 2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(D) Placement flexibility – Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

(E) Absence as related to deployment activities – A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

Article VI. Eligibility

(A) Eligibility for enrollment

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis, who lives in a jurisdiction other than that of the custodial parent, may

continue to attend the school in which he/she was enrolled while residing with the custodial parent.

(B) Eligibility for extracurricular participation – State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified and space is available, as determined by the school district.

Article VII. Graduation

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

(A) Waiver requirements – Local education agency administrative officials shall use best efforts to waive specific courses required for graduation if similar coursework has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall use best efforts to provide an alternative means of acquiring required coursework so that graduation may occur on time.

(B) Exit exams – States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests; or 3) alternative testing, in lieu of testing requirements for graduation in the receiving state; or 4) in California, the passage of the exit examination adopted pursuant to Section 60850 is required for the student to graduate if the diploma is to be issued by a California public school, as long as it is a requirement in California. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her Senior year, then the provisions of Section C of this Article shall apply.

(C) Transfers during Senior year – Should a military student transferring at the beginning or during his or her Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall make best efforts to ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending

local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

Article VIII. State Coordination

(A) (1) Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

(2) In California, members of the State Council shall include all of the following:

(a) The State Superintendent of Public Instruction or his or her designee.

(b) A school district superintendent or his or her designee from a school district with a high concentration of military children, selected by the State Superintendent of Public Instruction.

(c) A representative from a military installation.

(d) A member of the Senate appointed by the Senate Committee on Rules, or his or her designee, who represents a legislative district with a high concentration of military children.

(e) A member of the Assembly appointed by the Speaker of the Assembly, or his or her designee, who represents a legislative district with a high concentration of military children.

(f) The Secretary for Education or his or her designee.

(g) Any other persons appointed by the State Superintendent of Public Instruction.

(B) The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(C) (1) The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

(2) In California, the State Superintendent of Public Instruction shall appoint the compact commissioner.

(D) The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the State Council, unless either is already a full voting member of the State Council.

Article IX. Interstate Commission on Educational Opportunity for Military Children

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

(A) Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

(B) Consist of one Interstate Commission voting representative from each member state, who shall be that state's compact commissioner.

(1) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(2) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(3) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.

(4) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(C) Consist of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and other interstate compacts affecting the education of children of military members.

(D) Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

(E) Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. Dept. of Defense shall serve as an ex-officio, nonvoting member of the executive committee.

(F) Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(G) Public notice shall be given by the Interstate Commission of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting,

or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by federal and state statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing a person of a crime, or formally censuring a person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigative records compiled for law enforcement purposes; or

(7) Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

(H) For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

(I) The Interstate Commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

(J) The Interstate Commission shall create a process that permits military officials, education officials and parents to inform the

Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

Article X. Powers and Duties of the Interstate Commission

The Interstate Commission shall have the following powers:

(A) To provide for dispute resolution among member states.

(B) To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as specifically set forth in Articles IV, V, VI, and VII of this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

(C) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

(D) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(E) To establish and maintain offices which shall be located within one or more of the member states.

(F) To purchase and maintain insurance and bonds.

(G) To borrow, accept, hire, or contract for services of personnel.

(H) To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(I) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications, and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

(J) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(K) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

(L) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(M) To establish a budget and make expenditures.

(N) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(O) To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(P) To coordinate education, training, and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

(Q) To establish uniform standards for the reporting, collecting, and exchanging of data.

(R) To maintain corporate books and records in accordance with the bylaws.

(S) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(T) To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

Article XI. Organization and Operation of the Interstate Commission

(A) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee, and such other committees as may be necessary;

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(6) Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

(7) Providing "start up" rules for initial administration of the compact.

(B) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(C) Executive Committee, Officers and Personnel

(1) The executive committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

(a) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(b) Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(c) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

(2) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

(D) The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(2) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or

responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willfull and wanton misconduct on the part of such persons.

Article XII. Rulemaking Functions of the Interstate Commission

(A) Rulemaking Authority–The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact, as specifically set forth in Articles IV, V, VI, and VII. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the specific matters set forth in Articles IV, V, VI, and VII of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

(B) Rulemaking Procedure – Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

(C) Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall

not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(D) If a majority of the legislatures of the compacting states rejects a Rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

Article XIII. Oversight, Enforcement, and Dispute Resolution

(A) Oversight

(1) The executive, legislative and judicial branches of state government in each member state shall enforce this compact, and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.

(3) The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

(B) Default, Technical Assistance, Suspension and Termination – If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(1) Provide written notice, to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

(2) Provide remedial training and specific technical assistance regarding the default.

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(5) The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(6) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(7) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(C) Dispute Resolution

(1) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

(2) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(D) Enforcement

(1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact or its promulgated rules and bylaws against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

Article XIV. Financing of the Interstate Commission

(A) The Interstate Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

(B) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(C) The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(D) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public

accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XV. Member, States, Effective Date and Amendment

(A) Any state is eligible to become a member state.

(B) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

(C) The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Article XVI. Withdrawal and Dissolution

(A) Withdrawal

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(B) Dissolution of Compact

(1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

Article XVII. Severability and Construction

(A) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(B) The provisions of this compact shall be liberally construed to effectuate its purposes.

(C) Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Article XVIII. Binding Effect of Compact and Other Laws

(A) Other Laws

(1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(2) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(B) Binding Effect of the Compact

(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(2) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(3) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

SEC. 45. Section 51241 of the Education Code, as amended by Section 55 of Chapter 140 of the Statutes of 2009, is repealed.

~~51241. (a) The governing board of a school district or the office of the county superintendent of schools of a county may grant a temporary exemption to a pupil from courses in physical education, if the pupil is one of the following:~~

~~(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.~~

~~(2) Enrolled for one-half, or less, of the work normally required of full-time pupils.~~

~~(b) (1) The governing board of a school district or the office of the county superintendent of schools of a county, with the consent of a pupil, may grant a pupil an exemption from courses in physical education for two years anytime during grades 10 to 12, inclusive, if the pupil has met satisfactorily any five of the six standards of the physical performance test administered in grade 9 pursuant to Section 60800.~~

~~(2) Pursuant to Sections 51210, 51220, and 51222, physical education is required to be offered to all pupils, and, therefore, schools are required to provide adequate facilities and instructional resources for that instruction. In this regard, paragraph (1) shall be implemented in a manner that does not create a new program or impose a higher level of service on a local educational agency. Paragraph (1) does not mandate any overall increase in staffing or instructional time because, pursuant to subdivision (d), pupils are not permitted to attend fewer total hours of class if they do not enroll in physical education. Paragraph (1) does not mandate any new costs because any additional physical education instruction that a local educational agency provides may be accomplished during the existing instructional day, with existing facilities. Paragraph (1) does not prevent a local educational agency from implementing any other temporary or permanent exemption authorized by this section.~~

~~(c) The governing board of a school district or the office of the county superintendent of a county may grant permanent exemption from courses in physical education if the pupil complies with any one of the following:~~

~~(1) Is 16 years of age or older and has been enrolled in grade 10 for one academic year or longer.~~

~~(2) Is enrolled as a postgraduate pupil.~~

~~(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of Article 24 (commencing with Section 880) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code.~~

~~(d) A pupil exempted under paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) shall not attend fewer total hours of courses and classes if he or she elects not to enroll in a physical education course than he or she would have attended if he or she had elected to enroll in a physical education course.~~

~~(e) Notwithstanding any other law, the governing board of a school district also may administer to pupils in grades 10 to 12, inclusive, the physical performance test required in grade 9 pursuant to Section 60800. A pupil who meets satisfactorily any five of the six standards of this physical performance test in any of grades 10 to 12, inclusive, is eligible for an exemption pursuant to subdivision (b).~~

SEC. 46. Section 52055.770 of the Education Code is amended to read:

52055.770. (a) School districts and chartering authorities shall receive funding at the following rate, on behalf of funded schools:

(1) For kindergarten and grades 1 to 3, inclusive, five hundred dollars ($500) per enrolled pupil in funded schools.

(2) For grades 4 to 8, inclusive, nine hundred dollars ($900) per enrolled pupil in funded schools.

(3) For grades 9 to 12, inclusive, one thousand dollars ($1,000) per enrolled pupil in funded schools.

(b) For purposes of subdivision (a), enrollment of a pupil in a funded school in the prior fiscal year shall be based on data from the CBEDS. For the 2007–08 fiscal year, the funded rates shall be reduced to reflect the percentage difference in the total amounts appropriated for purposes of this section in that year compared to

the amounts appropriated for purposes of this section in the 2008–09 fiscal year.

(c) The following amounts are hereby appropriated from the General Fund for the purposes set forth in subdivision (f):

(1) For the 2007–08 fiscal year, three hundred million dollars ($300,000,000), to be allocated as follows:

(A) Thirty-two million dollars ($32,000,000) for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges for the purpose of providing funding to the community colleges to improve and expand career technical education in public secondary education and lower division public higher education pursuant to Section 88532, including the hiring of additional faculty to expand the number of career technical education programs and course offerings.

(B) Two hundred sixty-eight million dollars ($268,000,000) for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent pursuant to this article.

(2) For each of the 2008–09, and 2010–11 to 2014–15 fiscal years, inclusive, four hundred fifty million dollars ($450,000,000) per fiscal year, to be allocated as follows:

(A) Forty-eight million dollars ($48,000,000) for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges as required under subdivision (e).

(B) Four hundred two million dollars ($402,000,000) for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent pursuant to this article.

(C) Commencing with the 2010–11 fiscal year, payments made pursuant to subparagraphs (A) and (B) shall be made only on or after October 8 of each fiscal year.

(d) For the 2013–14 fiscal year the amounts appropriated under subdivision (c) shall be adjusted to reflect the total fiscal settlement agreed to by the parties in California Teachers Association, et al. v. Arnold Schwarzenegger (Case Number 05CS01165 of the Superior Court for the County of Sacramento) and the sum of all fiscal years of funding provided to fund this article shall not exceed the total funds agreed to by those parties. This annual appropriation shall continue to be made until the Director of Finance reports to the Legislature, along with all proposed adjustments to the

Governor's Budget pursuant to Section 13308 of the Government Code, that the sum of appropriations made and allocated pursuant to subdivision (c) equals the total outstanding balance of the minimum state educational funding obligation to school districts and community college districts required by Section 8 of Article XVI of the California Constitution and Chapter 213 of the Statutes of 2004 for the 2004–05 and 2005–06 fiscal years, as determined in subdivision (a) or (b) of Section 41207.1.

(e) The sum transferred under subparagraph (A) of paragraph (2) of subdivision (c) for the 2008–09 fiscal year shall be allocated by the Chancellor of the California Community Colleges as follows:

(1) Thirty-eight million dollars ($38,000,000) to the community colleges for the purpose of providing funding to the community colleges to improve and expand career technical education in public secondary education and lower division public higher education pursuant to Section 88532, including the hiring of additional faculty to expand the number of career technical education programs and course offerings.

(2) Ten million dollars ($10,000,000) to the community colleges for the purpose of providing one-time block grants to community college districts to be used for one-time items of expenditure, including, but not limited to, the following purposes:

(A) Physical plant, scheduled maintenance, deferred maintenance, and special repairs.

(B) Instructional materials and support.

(C) Instructional equipment, including equipment related to ~~career-technical~~ *career technical* education, with priority for nursing program equipment.

(D) Library materials.

(E) Technology infrastructure.

(F) Hazardous substances abatement, cleanup, and repair.

(G) Architectural barrier removal.

(H) State-mandated local programs.

(3) The Chancellor of the California Community Colleges shall allocate the amount allocated pursuant to paragraph (2) to community college districts on an equal amount per actual ~~full-time-equivalent~~ *full-time equivalent* student (FTES) reported for the prior fiscal year, except that each community college district shall be allocated an amount not less than fifty thousand dollars

($50,000), and the equal amount per unit of FTES shall be computed accordingly.

(4) Funds allocated under paragraph (2) shall supplement and not supplant existing expenditures and may not be counted as the district contribution for physical plant projects and instructional material purchases funded in Item 6870-101-0001 of Section 2.00 of the annual Budget Act.

(f) For each fiscal year, commencing with the 2010–11 fiscal year, to the 2014–15 fiscal year, inclusive, the sum transferred pursuant to subparagraph (A) of paragraph (2) of subdivision (c) shall be allocated by the Chancellor of the California Community Colleges as follows: ~~Forty eight~~ *Forty-eight* million dollars ($48,000,000) to the community colleges for the purpose of providing funding to the community colleges to improve and expand career technical education in public secondary education and lower division public higher education pursuant to Section 88532, including the hiring of additional faculty to expand the number of career technical education programs and course offerings.

(g) The appropriations made under subdivision (c) are for the purpose of discharging in full the minimum state educational funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution and Chapter 213 of the Statutes of 2004 for the 2004–05 fiscal year, and the outstanding maintenance factor for the 2005–06 fiscal year resulting from this additional payment of the Chapter 213 amount for the 2004–05 fiscal year.

(h) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, including computation of the state's minimum funding obligation to school districts and community college districts in subsequent fiscal years, the first one billion six hundred twenty million nine hundred twenty-eight thousand dollars ($1,620,928,000) in appropriations made pursuant to subdivision (c) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 and "General Fund ~~Revenues~~ *revenues* appropriated for community college districts," as defined in subdivision (d) of Section 41202, for the 2004–05 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes

appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year. The remaining appropriations made pursuant to subdivision (c) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 and "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202, for the 2005–06 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.

(i) From funds appropriated under subdivision (c), the Superintendent shall provide both of the following:

(1) Not more than two million dollars ($2,000,000) annually to county superintendents of schools to carry out the requirements of this article, allocated in a manner similar to that created to carry out the new duties of those superintendents under the settlement agreement in the case of Williams v. California (Super. Ct. San Francisco, No. CGC-00-312236).

(2) Five million dollars ($5,000,000) in the 2007–08 fiscal year to support regional assistance under Section 52055.730. It is the intent of the Legislature that the Superintendent and the secretary, along with county offices of education, seek foundational and other financial support to sustain and expand these services. Funds provided under this paragraph that are not expended in the 2007–08 fiscal year shall be reappropriated for use in subsequent fiscal years for the same purpose.

(j) Notwithstanding any other provision of law, funds appropriated under subdivision (c) but not allocated to schools with kindergarten or grades 1 to 12, inclusive, in a fiscal year, due to program termination in any year or otherwise, shall be available for reappropriation only in furtherance of the purposes of this article. First priority for those amounts shall be to provide cost-of-living increases and enrollment growth adjustments to funded schools.

(k) The sum of three hundred fifty thousand dollars ($350,000) is hereby appropriated from the General Fund to the State Department of Education to fund 3.0 positions to implement this article. Funding provided under this subdivision is not part of funds provided pursuant to subdivision (c).

SEC. 47. Section 52165 of the Education Code is amended to read:

52165. Each pupil of limited English proficiency enrolled in the California public school system in kindergarten and grades 1 to 12, inclusive, shall receive instruction in a language understandable to the pupil that recognizes the pupil's primary language and teaches the pupil English.

(a) In kindergarten and grades 1 to 6, inclusive, the following shall apply:

(1) If the language census indicates that any school of a school district has 10 or more pupils of limited English proficiency with the same primary language in the same grade level or 10 or more pupils of limited English proficiency with the same primary language, in the same age group, and in a multigrade or ungraded instructional environment, the school district shall offer instruction pursuant to subdivision (a), (b), or (c) of Section 52163 for those pupils at the school. If there are pupils of limited English proficiency with different primary languages who do not otherwise satisfy the program requirements of subdivision (a), (b), or (c) of Section 52163 or of this subdivision, a language development specialist defined in subdivision (b) may be used.

(2) To the extent state or federal categorical funds are available, the services, as described in this paragraph, are required for pupils of limited English proficiency in concentrations of fewer than 10 per grade level. If there are fewer than 10 pupils of limited English proficiency in the same grade, but at least 20 pupils of limited English proficiency in the school with the same primary language, the school district shall provide at least one certified bilingual-crosscultural teacher or teachers on waiver as defined in Section 52178~~ or 52178.5~~ and an~~ individualized instruction~~ *elementary level individual learning* program as defined in subdivision (f) of Section 52163 for those pupils at the school. If the number of pupils of limited English proficiency in the school exceeds 45, the district shall provide two of those teachers. These teachers may be used as resource teachers or team teachers or to provide any other services to pupils of limited English proficiency as the district deems appropriate. These teachers shall be different teachers than those required pursuant to paragraph (1).

(b) The Legislature recognizes that in the past equal educational opportunities have not been fully available to secondary pupils of

limited English proficiency. It is the intent of the Legislature to encourage school districts to offer a language learning program pursuant to subdivision (d) of Section 52163. Certified bilingual-crosscultural teachers or, if those teachers are not available, language development specialists assisted by a bilingual aide shall be qualified to provide instruction for those programs. Language development specialists shall be formally trained and competent in the field of English language learning, including second language acquisition and development, structure of modern English, and basic principles of linguistics, and shall meet the culture and methodology competencies established by subdivisions (b) and (c) of Section 44253.5. The Commission on Teacher Credentialing shall provide for the assessment of language competencies specified in this section and shall modify existing culture and methodology competency for language development specialist to ensure that they meet the crosscultural and instructional methodologies for pupils being served by those teachers. A teacher of English to speakers of other languages certificate from a commission-approved teacher training institution of higher education that meets the criteria established by the commission pursuant to Section 44253.5 shall be accepted instead of the methodology requirement.

(c) In kindergarten and grades 1 to 12, inclusive, pupils of limited English proficiency who are not enrolled in a program described in subdivision (a), (b), (c), or (d) of Section 52163~~,~~ shall be individually evaluated and shall receive educational services defined in subdivision (e) or (f), as appropriate, of Section 52163. These services shall be provided in consultation with the pupil and the parent, parents, or guardian of the pupil.

(d) As a part of its consolidated application for categorical program funds, each district receiving those funds shall include a specific plan indicating the ways in which the individual learning plans will meet the needs of pupils of limited English proficiency. The plan shall describe all of the following:

(1) Procedures used in making the individual evaluation.

(2) The pupils' levels of English and primary language proficiency and levels of educational performance.

(3) Instructional objectives and scope of educational services to be provided.

(4) Periodic evaluation procedures, using objective criteria, to determine whether the instructional objectives are being met.

SEC. 48. Section 53302 of the Education Code is amended to read:

53302. *(a)* No more than 75 schools shall be subject to a petition authorized by this article.

(b) A petition shall be counted toward this limit upon the Superintendent and state board receiving notice from the local educational agency of its final disposition of the petition.

SEC. 49. Section 60852.3 of the Education Code is amended to read:

60852.3. (a) Notwithstanding any other provision of law, commencing with the 2009–10 school year, an eligible pupil with a disability is not required to pass the high school exit examination established pursuant to Section 60850 as a condition of receiving a diploma of graduation or as a condition of graduation from high school.

(b) This exemption shall last until the state board, pursuant to Section 60852.1, makes a determination that the alternative means by which an eligible pupil with disabilities may demonstrate the same level of academic achievement in the portions of, or those content standards required for passage of, the high school exit examination are not feasible or that the alternative means are implemented.

(c) For the purposes of this section, an eligible pupil with a disability is a pupil with an individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of ~~1972~~ *1973* (29 U.S.C. Sec. 794(a)) that indicates the pupil is scheduled to receive a high school diploma, and that the pupil has satisfied or will satisfy all other state and local requirements for the receipt of a high school diploma, on or after July 1, 2009.

(d) A local educational agency, as defined in Section 56026.3, shall not adopt an individualized education program pursuant to the federal Individuals with Disabilities Education Act or a plan pursuant to Section 504 of the federal Rehabilitation Act of ~~1972~~ *1973* for a pupil for the sole purpose of exempting the pupil from the requirement to pass the high school exit examination as a

condition ~~or~~ *of* receiving a high school diploma, unless that adoption is consistent with federal law.

(e) Pursuant to subdivision (b) of Section 60851, pupils with exceptional needs shall take the high school exit examination in grade 10 for purposes of fulfilling the requirements of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 7114).

SEC. 50. Section 67302.5 of the Education Code is amended to read:

67302.5. (a) As used in this section, the following terms have the following meanings:

(1) "Captioned" or "captioning" means the display of text corresponding to, and synchronized with, the spoken-word audio portion of instructional material.

(2) "Electronic format" means a computer file or other digital medium that embodies instructional material, is not itself captioned, but from which a captioned format may be created using commercially available technology.

(3) "Institution" means the University of California, the California State University, a California Community College, or any campus or location of any of those institutions.

(4) "Instructional material" means any audiovisual work, as that term is defined in Section 101 of Title 17 of the United States Code, that is created and published primarily for use by students in postsecondary instruction, and is required for a student's success in a course of study in which a student with a disability is enrolled. The determination of which materials are "required for student success" shall be made by the instructor of the course in consultation with the official making the request pursuant to subdivision (b) in accordance with guidelines issued pursuant to subdivision (i).

(5) "Publisher" means any individual, firm, partnership, or corporation that is engaged in the business, whether for profit or not for profit, of selling instructional material in which it owns or controls some or all of the copyright to that material. "Publisher" does not include any entity that is a subdivision of any state or other governmental body, other than the State of California.

(6) "Writing" includes facsimile transmission and e-mail.

(b) (1) A publisher that publishes instructional material used by students attending, or by instructors for use in classroom presentations at, the University of California, the California State

University, or a California Community College, shall, upon request by an institution on behalf of a student or instructor at that institution, do one of the following:

(A) Provide access to a captioned format of the instructional material directly to the student or the instructor by providing an Internet password, delivery of a disk or file, or in any other appropriate manner.

(B) Provide to the institution a captioned format of the instructional material.

(C) Provide to the institution an electronic format, if available, of the instructional material, unless the institution already has an electronic format in its possession, and a license permitting the institution to create a captioned format of the material, to the extent the publisher has the right to grant that license.

(2) A publisher shall respond to a properly addressed request that meets the requirements of subdivision (c) in the following manner, as applicable:

(A) Within 10 calendar days after the receipt of the request, the publisher shall provide to the institution a notice, in writing, as to which of the three actions in paragraph (1) it intends to take.

(B) If the publisher does not possess an electronic format of the instructional material, it shall advise the institution of that fact in the notice provided pursuant to subparagraph (A).

(C) If the publisher lacks sufficient rights to distribute, or license the institution to create, a captioned format of some or all of the instructional material covered by the request, it shall advise the institution of that fact in the notice provided pursuant to subparagraph (A), and shall provide both of the following to the institution, to the extent that the publisher is able to do so:

(i) An electronic format of the instructional material to which the publisher does not control the applicable rights.

(ii) The name and contact information of the person that the publisher believes to be capable of authorizing creation of a captioned format of the instructional material. Any person capable of authorizing the creation of the captioned format shall be deemed to be the publisher of that material for purposes of this section.

(D) If the publisher notifies the institution that it will provide an electronic format and a license permitting the institution to create a captioned format, it shall provide the electronic format

and the license within seven calendar days of providing the notice pursuant to subparagraph (A).

(E) If the publisher notifies the institution that it will provide a captioned format of the requested material, the publisher shall provide the captioned format as soon as it is possible to do so, but not later than 14 calendar days after providing the notice pursuant to subparagraph (A).

(3) If a publisher fails to respond to a request, as required by paragraph (2), within 10 calendar days of receiving the request, the institution shall be deemed to have received a license permitting the institution to create a captioned format of the instructional material.

(c) *(1)* An institution, if it chooses to submit a request pursuant to subdivision (b), shall include in the request all of the following:

(A) Certification that the institution or an instructor at that institution has purchased the instructional material either (i) for use by a student with an auditory disability that prevents the student from using the instructional material in a noncaptioned format or (ii) for use in a class in which a student with such a disability is enrolled, or that a student with such a disability attending, or registered to attend, that institution has purchased the instructional material.

(B) Certification that the student has an auditory disability that prevents the student from using instructional material in noncaptioned format.

(C) Certification that the instructional material is for use by the student or an instructor in connection with a course in which the student is registered or enrolled at the institution.

(D) The signature of the coordinator of services for students with disabilities at the institution, or by an official responsible for monitoring compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the institution.

(E) At a minimum, an e-mail address and a ~~fax~~ *facsimile* number at which the person signing the request may be contacted.

(2) A publisher may require, in addition to the requirements enumerated in paragraph (1), a request to include a statement signed by the student agreeing to both of the following:

(A) He or she will use the captioned format of the instructional material solely for his or her own educational purposes.

(B) He or she will not distribute or reproduce the captioned format for use by others.

(d) (1) Any institution possessing an electronic format of an instructional material shall take reasonable precautions to ensure that the electronic format is not distributed to any third party, except as provided in paragraph (2) and subdivision (e), and shall, to the extent possible, maintain in effect all copy-protection measures embedded in any electronic format provided by a publisher.

(2) An institution may retain an outside vendor to assist it in the exercise of rights granted to it by a publisher or by this section, and shall ensure, pursuant to an agreement that the publisher and the institution shall both have the power to enforce, that the electronic format is not further distributed and that any captioned format made from it is provided only to the institution.

(e) (1) If a publisher provides to an institution a captioned format of instructional materials, the institution shall provide the captioned format to the student or instructor on whose behalf the request was made and may retain a copy of that captioned format.

(2) Except as provided in paragraph (4), if a publisher grants an institution a license to create a captioned format, the institution shall provide a copy of the resulting captioned format to the publisher and may retain a copy of the captioned format.

(3) Pursuant to paragraph (1) or (2), the institution may provide additional copies to any other of its students, any instructor employed by the institution for classroom use, any student at any other institution, or any other institution for classroom use, if the institution collects and forwards to the publisher all institutional and student certifications required under subdivision (b).

(4) The institution shall cease to distribute additional copies of a captioned format to any other institution if either of the following occurs:

(A) The institution receives notice that a captioned format has become commercially available from the publisher or other copyright owner of the instructional material. However, if this occurs, the institution may continue to allow its own instructors to use any captioned format that the institution previously created.

(B) The publisher, or other copyright owner, of the instructional material notifies the institution that the institution's captioned format contains material errors or omissions.

(5) An instructor who receives a captioned format, or access to a captioned format pursuant to subparagraph (A) of paragraph (1) of subdivision (b), shall not use the captioned format for any purposes except for the classroom use for which the captioned format was requested or, in accordance with paragraph (3), for use in other classes at the institution with which the instructor is affiliated at the time that a request was made pursuant to subdivision (b).

(f) (1) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California may each designate an office, or may by agreement designate a single office, to maintain a registry of publisher contact information. A registry office designated pursuant to this subdivision may be a center described in subdivision (g) of this section or subdivision (g) of Section 67302.

(2) A publisher intending to sell instructional materials in the state shall provide to the office designated pursuant to paragraph (1) the name and contact information of its office or employee designated to handle requests made under this section, or an Internet Web site containing that information. If a publisher fails to provide that information, a request under subdivision (b) may be sent to a publisher at the address of its primary place of business, to the attention of its rights and permissions department.

(g) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California may each establish one or more centers within their respective segments to process requests pursuant to this section. A center under this subdivision may be a center established under subdivision (g) of Section 67302. All of the following requirements apply with respect to any center established or designated for the purposes of this subdivision:

(1) If an institution designated as within the jurisdiction of a center chooses to process requests in the manner set forth in this subdivision, it shall submit all requests made under this section to the center, which shall transmit these requests to publishers.

(2) Each center shall make every effort to coordinate requests within its segment.

(3) A publisher shall not be required to respond to requests from institutions that a center has been designated to represent, unless those requests are communicated through the center.

(4) The center shall, in handling all electronic formats and captioned formats for the benefit of students enrolled in the institutions the center represents, have the same rights and obligations arising under subdivisions (d) and (e) as the institutions on whose behalf it acts.

(h) Access to a captioned format, an electronic format, or a license to create a captioned format pursuant to subdivision (b) shall be provided free of any fee or royalty that is additional to the initial purchase of the instructional material by the student, the instructor, or the institution.

(i) (1) The Board of Governors of the California Community Colleges and the Trustees of the California State University may, and the Regents of the University of California are requested to, adopt guidelines consistent with this section for its implementation and administration. It is the intent of the Legislature that the guidelines, if adopted, address all of the following:

(A) The designation of materials deemed "required for student success."

(B) The procedures and standards relating to distribution of files and materials pursuant to subdivisions (b), (d), and (e).

(C) The possibility of involving outside networks or partnerships between publishers and institutions to provide for access to instructional materials for students with disabilities and to facilitate the issuance of licenses by publishers under subparagraph (C) of paragraph (1), and paragraph (3), of subdivision (b).

(D) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(2) For purposes of paragraph (1), the Board of Governors of the California Community Colleges, the Trustees of the California State University, and the University of California are encouraged, from time to time, in the reasonable discretion of the respective governing body, to convene an advisory group, at least one-third of the membership of which shall be representatives designated by publishers as having a substantial volume of transactions with institutions under this section.

(j) Nothing in this section shall be construed to require a publisher to produce or deliver an electronic format of instructional material if the publisher offers that instructional material for sale only in a form that is not computer-readable.

(k) Nothing in this section shall be construed as vesting any copyright or copyright interest in any captioned format in any person or entity other than the publisher.

(*l*) Nothing in this section shall be construed to authorize any use of instructional materials that would violate the takings clause of the Fifth Amendment to the United States Constitution or would constitute an infringement of copyright under the Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(m) This section exclusively governs requests for captioned formats of instructional materials and Section 67302 does not apply to requests for captioned formats of instructional materials.

(n) The provisions of this section shall apply to the University of California, *the California* State University, and the California Community Colleges only to the extent that the respective institution, by appropriate resolution, makes these provisions applicable.

SEC. 51. Section 69458 of the Education Code is amended to read:

69458. (a) Participation in the pilot alternative delivery system pursuant to this article is voluntary. Any local agency electing to participate in the *pilot* alternative delivery system is deemed to have acknowledged and agreed that its participation is voluntary and does not constitute a cost that is reimbursable under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

(b) All costs associated with a qualifying institution's election to participate in the *pilot* alternative delivery system shall be paid by the qualifying institution and, if the qualifying institution is a public institution, shall not require any additional state funds.

SEC. 52. Section 69460 of the Education Code is amended to read:

69460. (a) On or before January 10, 2012, the Legislative Analyst's Office shall report to the Legislature and the Governor on the implementation and outcomes of the first award cycle under ~~this~~ *the* pilot program. The report shall assess the extent to which the pilot program resulted in improved Cal Grant delivery to students, parents, and high school and financial aid counselors; administrative efficiencies; and sufficient state oversight. The report shall also identify any challenges or barriers to expansion of the alternative Cal Grant delivery system, as well as any

associated information technology challenges that may need to be addressed or changes that may be required.

(b) Consistent with the criteria in subdivision (a), the Student Aid Commission may provide a report to the Legislature and the Governor.

SEC. 53. Section 69613 of the Education Code is amended to read:

69613. (a) Program participants shall meet all of the following eligibility criteria prior to selection in the program and shall continue to meet these criteria, as appropriate, during the payment periods:

(1) The applicant has completed at least 60 semester units, or the equivalent, and is enrolled in an academic program leading to a baccalaureate degree at an eligible institution, has agreed to participate in a teacher internship program, or has been admitted to a program of professional preparation that has been approved by the Commission on Teacher Credentialing.

(2) The applicant is currently enrolled in, or has been admitted to, a program in which he or she will be enrolled on at least a half-time basis, as determined by the participating institution. The applicant shall agree to maintain satisfactory academic progress and a minimum of half-time enrollment, as defined by the participating eligible institution.

(A) Except as provided in subparagraphs (B) and (C), if a person participating in the program fails to maintain at least half-time enrollment, as required by this article, under the terms of the agreement pursuant to paragraph (2), the loan assumption agreement shall be invalidated and the participant shall retain full liability for all student loan obligations. This subparagraph shall not apply if the participant is in his or her final semester or quarter in school and has no additional coursework required to obtain his or her teaching credential.

(B) Notwithstanding subparagraph (A), if a program participant is unable to maintain at least half-time enrollment due to serious illness, pregnancy, or other natural causes, or is called to active military duty status, the participant is not required to retain full liability for the student loan obligation for a period not to exceed one calendar year, unless approved by the commission for a longer period.

(C) If a natural disaster prevents a program participant from maintaining at least half-time enrollment due to the interruption of instruction at the eligible institution, the term of the loan assumption agreement shall be extended for a period not to exceed one ~~calender~~ *calendar* year, unless approved by the commission for a longer period.

(3) The applicant has been judged by his or her postsecondary institution, school district, or county office of education to have outstanding ability on the basis of criteria that may include, but need not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(4) The applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) Any educational loan program approved by the Student Aid Commission.

(5) The applicant has agreed to teach full time for at least four consecutive academic years, or on a part-time basis for the equivalent of four full-time academic years, after obtaining a teaching credential in a public elementary or secondary school in this state, in a subject area that is designated as a current or projected shortage area by the Superintendent of Public Instruction, or, on the date the teacher is hired, at an eligible school.

(b) An agreement shall remain valid even if the subject area under which an applicant becomes eligible to enter into an agreement ceases to be a designated shortage field by the time the applicant becomes a teacher.

(c) For the purposes of calculating eligible years of teaching for the redemption of an award, the ~~designation~~ *inclusion* by the Superintendent of Public Instruction of a ~~newly opened~~ school *on a list prepared* pursuant to Section ~~52056~~ *69613.1* shall apply retroactively from the date the school first opened.

(d) A person participating in the program pursuant to this section shall not enter into more than one agreement.

(e) A person participating in the program pursuant to this section shall not owe a refund on any state or federal educational grant or *have* defaulted on any student loan.

(f) Notwithstanding any other provision of this section, a credentialed teacher teaching in a public school ranked in the lowest two deciles on the Academic Performance Index pursuant to Section 52052, possesses a clear multiple subject or single subject teaching credential or level II education specialist credential and who has not otherwise participated in the program established by this article, is eligible to enter into an agreement for loan assumption pursuant to this article. The number of loan assumption agreements provided pursuant to this subdivision shall not exceed 400 per year. The commission shall develop and adopt regulations for the implementation of this subdivision by January 1, 2010.

SEC. 54. Section 69999.14 of the Education Code is amended to read:

69999.14. (a) The Legislature finds and declares all of the following:

(1) The California National Guard exists to provide a military organization in California with the capability to protect the lives and property of the people of the state during periods of natural disaster and civil disturbances, and to perform other functions required by the Military and Veterans Code or as directed by the Governor.

(2) The California National Guard performs an essential public purpose in protecting the health, safety, and property of ~~California's~~ *California's* citizens and, in order to fulfill its objectives, it is necessary for the California National Guard to have sufficient human resources to deal with natural or human-caused disasters and emergencies.

(3) An educational assistance award program for members of the California National Guard would enhance retention rates within the California National Guard. Similar educational assistance programs have been highly successful in other states and have resulted in substantially higher retention rates.

(b) (1) As citizen soldiers, members of the California National Guard represent California's labor force, which is a diverse workforce comprised of skilled and talented workers from all regions of the state. Education assistance awards have the added benefit of improving the skills, competencies, and abilities of the

servicemen and servicewomen in the California National Guard who make significant contributions to our economy and are a vital component of the civilian workforce. It is the intent of the Legislature that members of the California National Guard use this education assistance program to enhance the state's highly skilled and highly trained civilian labor force.

(2) It is the intent of the Legislature to ensure that the California National Guard has the ability to retain its most competent and capable members, both in the present and in the future. The Legislature recognizes that every member of the California National Guard represents additional federal funding to the State of California annually. Increasing the strength of the California National Guard through higher retention rates would augment the total federal revenue to the state, leading to additional money flowing into the General Fund as tax revenue.

(c) It is, therefore, the intent of the Legislature that, in order to fulfill the public program of maintaining required strength in the California National Guard, an inducement be provided to members of the California National Guard by making education assistance awards available to California National Guard members seeking to improve themselves through higher education. It is the intent of the Legislature that these assistance awards be available to California National Guard members who serve the state faithfully.

SEC. 55. Section 69999.18 of the Education Code is amended to read:

69999.18. (a) The Student Aid Commission is responsible for issuing awards authorized by Section 69999.16, upon receipt of a certificate from the Adjutant General verifying that the applicant meets the eligibility requirements of this article. The commission shall provide any information to the Military Department that is necessary to meet the reporting requirements of Section 69999.24.

(b) The amount of an award issued pursuant to this article shall be as follows:

(1) For a recipient attending the University of California or the California State University, the maximum amount of the Cal Grant A award, pursuant to Section 66021.2, as adjusted in the annual Budget Act.

(2) For a recipient attending a community college, the maximum amount of the Cal Grant B award, pursuant to Section 66021.2, as adjusted in the annual Budget Act.

(3) For a recipient attending a nonpublic institution, the maximum amount of a Cal Grant A award for a student attending the University of California pursuant to Section 66021.2, as adjusted in the annual Budget Act.

(c) An award used for graduate studies shall not exceed the maximum amount of a Cal Grant A award, as specified in paragraph (1) of subdivision (b), plus five hundred dollars ($500) for books and supplies.

(d) The award amount under subdivisions (b) and (c) shall not exceed the difference between the recipient's cost of attendance and any other student financial aid and educational benefits pursuant to the federal Montgomery GI Bill (38 ~~U. S. C.~~ *U.S.C. Sec.* 3001 et seq.) or any other federal educational benefits program for veterans.

(e) California National Guard Education Assistance ~~Awards~~ *awards* may be renewed for each new academic year, for a maximum of the greater of either (1) four years of full-time equivalent enrollment~~,~~ or (2) the duration for which the qualifying member would otherwise be eligible pursuant to the Cal Grant Program (Chapter 1.7 (commencing with Section 69430)), if the Adjutant General certifies the qualifying member's eligibility and the qualifying member maintains at least a 2.0 cumulative grade point average.

SEC. 56. Section 69999.20 of the Education Code is amended to read:

69999.20. Qualifying members shall not receive both a California National Guard Education Assistance ~~Award~~ *award* and any Cal Grant ~~Award~~ *award* for the same academic year. A qualifying member under this article who is also eligible for a Cal Grant ~~Award~~ *award* may elect between an award under this article and any Cal Grant ~~Award~~ *award* for the same academic year.

SEC. 57. Section 87482 of the Education Code is amended to read:

87482. (a) (1) Notwithstanding Section 87480, the governing board of a community college district may employ any qualified individual as a temporary faculty member for a complete school year, but not less than a complete semester or quarter during a school year. The employment of those persons shall be based upon the need for additional faculty during a particular semester or quarter because of the higher enrollment of students during that

semester or quarter as compared to the other semester or quarter in the academic year, or because a faculty member has been granted leave for a semester, quarter, or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

(2) Employment of a person under this subdivision may be pursuant to contract fixing a salary for the entire semester or quarter.

(b) A person, other than a person serving as clinical nursing faculty and exempted from this subdivision pursuant to paragraph (1) of subdivision (c), shall not be employed by any one district under this section for more than two semesters or three quarters within any period of three consecutive years.

(c) (1) Notwithstanding subdivision (b), a person serving as full-time clinical nursing faculty or as part-time clinical nursing faculty teaching the hours per week described in Section 87482.5 may be employed by any one district under this section for up to four semesters or six quarters within any period of three consecutive academic years between July 1, 2007, and June 30, 2014, inclusive.

(2) A district that employs faculty pursuant to this subdivision shall provide data to the chancellor's office as to the number of faculty members ~~were~~ hired under this subdivision, and what the ratio of full-time to part-time faculty was for each of the three academic years prior to the hiring of faculty under this subdivision and for each academic year for which faculty is hired under this subdivision. This data shall be submitted, in writing, to the chancellor's office on or before June 30, 2012.

(3) The chancellor shall report, in writing, to the Legislature and the Governor on or before September 30, 2012, in accordance with data received pursuant to paragraph (2), the number of districts that hired faculty under this subdivision, the number of faculty members hired under this subdivision, and what the ratio of full-time to part-time faculty was for these districts in each of the three academic years prior to the operation of this subdivision and for each academic year for which faculty is hired under this subdivision.

(4) A district may not employ a person pursuant to this subdivision if the hiring of that person results in an increase in the ratio of part-time to full-time nursing faculty in that district.

SEC. 58. Section 88003.1 of the Education Code is amended to read:

88003.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the community college district, provided that:

(A) In comparing costs, there shall be included the community college district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the community college district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the community college district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing community college district costs that would be directly associated with the contracted function. These continuing community college district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the ~~contractors~~ *contractor's* wages are at the industry's level and do not undercut community college district pay rates.

(3) The contract does not cause the displacement of community college district employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to

other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and community college district cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the community college district from potential contractor rate increases is minimal.

(9) The contract is with a firm. A "firm" means a corporation, limited liability ~~corporation~~ *company*, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the community college district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new community college district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within community college districts, cannot be performed satisfactorily by community college district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the community college district.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the community college district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. "Emergency appointment" means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the community college district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the community college district in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the community college district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all community colleges, including community college districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

SEC. 59. Section 89267.5 of the Education Code is amended to read:

89267.5. (a) As used in this section, "ADN-to-BSN student" means a person who meets all of the following qualifications:

(1) The person has earned an associate degree in nursing from a California Community College from a program approved by the Board of Registered Nursing.

(2) The person is licensed to work in California as a registered nurse.

(3) The person is applying to the California State University to earn a bachelor of science in nursing.

(b) Prior to the commencement of the 2012–13 academic year, the Chancellor of the California State University shall implement articulated nursing degree transfer pathways between the California Community Colleges and the California State University. The articulated nursing degree transfer pathways shall, at a minimum, comply with both of the following requirements:

(1) A campus of the California State University shall not require an ADN-to-BSN student to complete any duplicative courses for which the content is already required by the Board of Registered Nursing for licensure or that the student has already satisfied by earning the associate degree in nursing and becoming licensed as a registered nurse.

(2) A campus of the California State University shall not require an ADN-to-BSN student, who has taken a prerequisite course at a California community college to earn the associate degree in nursing, to take the same prerequisite course or same content from that prerequisite course at the university for the bachelor of science in nursing degree.

(c) The Chancellor of the California State University and the Chancellor of the California Community Colleges may appoint representatives from their respective institutions to work collaboratively to provide advice and assistance on either or both of the following:

(1) Implementation of the articulated nursing *degree transfer* pathways.

(2) Identification of additional components to be included that are consistent with providing ADN-to-BSN students with a streamlined nursing degree transfer pathway consistent with the finding in subdivision (g) of Section 1 of ~~the act that adds this section~~ *Chapter 283 of the Statutes of 2009*.

(d) By March 15, 2011, the Legislative Analyst's Office shall prepare and submit to the Legislature and the Governor a report on the status of plans to implement articulated nursing degree transfer pathways between the California Community Colleges and the California State University. This report may be part of its annual budget report to the Legislature.

SEC. 60. Section 354.5 of the Elections Code is amended to read:

354.5. (a) "Signature" includes either of the following:

(1) A person's mark if the name of the person affixing the mark is written near the mark by a witness over ~~the age of~~ 18 years *of age* designated by the person and the designee subscribes his or her own name as a witness thereto. For purposes of this paragraph, a signature stamp may be used as a mark, provided that the authorized user complies with the provisions of this paragraph.

(2) An impression made by the use of a signature stamp pursuant to the requirements specified in subdivision (c).

(b) A mark attested as provided in paragraph (1) of subdivision (a), or an impression made by a signature stamp as provided in paragraph (2) of subdivision (a), may serve as a signature for any purpose specified in this code, including a sworn statement.

(c) An authorized user of a signature stamp may use it to affix a signature to a document or writing any time that a signature is required by this code, provided that all of the following conditions, as applicable, are met:

(1) A signature stamp used to obtain a ballot or vote by mail ballot in any local, state, or federal election shall be used only by the authorized user of that signature stamp.

(2) A signature stamp shall be affixed by the authorized user in the presence of the Secretary of State, his or her designee, the local elections official, or his or her designee, to obtain a ballot, in any local, state, or federal election unless the authorized user of the signature stamp votes by vote by mail ballot. If the owner of a signature stamp votes by vote by mail ballot, he or she shall affix the signature stamp on the identification envelope in accordance with the requirements of Section 3019.

(d) A signature affixed with a signature stamp by an authorized user in accordance with the requirements of this section shall be treated in the same manner as a signature made in writing.

(e) A registered voter or any person who is eligible to vote, who qualifies as an authorized user pursuant to paragraph (1) of subdivision (g), may use a signature stamp only after he or she first submits his or her affidavit of registration or a new affidavit of registration, whichever is applicable, in the presence of a county elections official, using the signature stamp to sign the affidavit.

(f) The Secretary of State shall report to the Legislature not later than January 1, 2009, regarding the use of signature stamps during the 2008 elections.

(g) The following definitions apply for purposes of this section:

(1) "Authorized user" means either of the following:

(A) A person with a disability who, by reason of that disability, is unable to write and who owns a signature stamp.

(B) A person using the signature stamp on behalf of the owner of the stamp with the owner's express consent and in the presence of the owner.

(2) "Disability" means a medical condition, mental disability, or physical disability, as those terms are defined in subdivisions (h), (i), and (k) of Section 12926 of the Government Code.

(3) "Signature stamp" means a stamp that contains the impression of any of the following:

(A) The actual signature of a person with a disability.

(B) A mark or symbol that is adopted by the person with the disability.

(C) A signature of the name of a person with a disability that is made by another person and is adopted by the person with the disability.

SEC. 61. Section 2225 of the Elections Code is amended to read:

2225. (a) Based on ~~change of address~~ *change-of-address* data received from the United States Postal Service or its licensees, the county elections official shall send a forwardable notice, including a postage-paid and preaddressed return form, to enable the voter to verify or correct address information.

Notification received through NCOA or Operation Mail that a voter has moved and has given no forwarding address shall not require the mailing of a forwardable notice to that voter.

(b) If ~~a change of address~~ *change-of-address data* indicates that the voter has moved to a new residence address in the same county, the forwardable notice shall be in substantially the following form:

"We have received notification that the voter has moved to a new residence address in ____ County. You will be registered to vote at your new address unless you notify our office within 15 days that the address to which this card was mailed is not a change of your permanent residence. You must notify our office by either returning the attached postage-paid postcard, or by calling toll free. If this is not a permanent residence, and if you do not notify us within 15 days, you may be required to provide proof of your residence address in order to vote at future elections."

(c) If ~~change of address~~ *change-of-address* data indicates that the voter has moved to a new address in another county, the forwardable notice shall be in substantially the following form: ~~"We~~

"*We* have received notification that you have moved to a new address not in ____ County. Please use the attached postage-paid postcard to: (1) advise us if this is or is not a permanent change of residence address, or (2) to advise us if our information is incorrect. If you do not return this card within 15 days and continue to reside in ____ County, you may be required to provide proof of your residence address in order to vote at future elections and, if you do not offer to vote at any election in the period between the date of this notice and the second federal general election following this notice, your voter registration will be cancelled and you will have to reregister in order to vote. If you no longer live in ____ County, you must reregister at your new residence address in order to vote in the next election. California residents may obtain a mail registration form by calling the county elections officer or 1-800-345-VOTE."

(d) If postal service change-of-address data received from a nonforwardable mailing indicates that a voter has moved and left no forwarding address, a forwardable notice shall be sent in substantially the following form:

"We are attempting to verify postal notification that the voter to whom this card is addressed has moved and left no forwarding address. If the person receiving this card is the addressed voter, please confirm your continued residence or provide current residence information on the attached postage-paid postcard within 15 days. If you do not return this card and continue to reside in ____ County, you may be required to provide proof of your residence address in order to vote at future elections and, if you

do not offer to vote at any election in the period between the date of this notice and the second federal general election following this notice, your voter registration will be cancelled and you will have to reregister in order to vote. If you no longer live in ____ County, you must reregister at your new residence address in order to vote in the next election. California residents may obtain a mail registration form by calling the county elections office or the Secretary of State's Office."

(e) The use of a toll-free number to confirm the old residence address is optional. Any change to the voter address must be received in writing.

SEC. 62. Section 11100 of the Elections Code is amended to read:

11100. (a) This chapter applies only to the recall of state officers.

(b) In addition to this chapter, Sections 13 to 18, inclusive, of Article ~~11~~ *II* of the California Constitution and the applicable provisions of Chapter 1 (commencing with Section 11000) and Chapter 4 (commencing with Section 11300) shall govern the recall of state officers.

SEC. 63. Section 13307 of the Elections Code is amended to read:

13307. (a) (1) Each candidate for nonpartisan elective office in any local agency, including any city, county, city and county, or district, may prepare a candidate's statement on an appropriate form provided by the elections official. The statement may include the name, age, and occupation of the candidate and a brief description, of no more than 200 words, of the candidate's education and qualifications expressed by the candidate himself or herself. However, the governing body of the local agency may authorize an increase in the limitations on words for the statement from 200 to 400 words. The statement shall not include the party affiliation of the candidate, nor membership or activity in partisan political organizations.

(2) The statement authorized by this subdivision shall be filed in the office of the elections official when the candidate's nomination papers are returned for filing, if it is for a primary election, or for an election for offices for which there is no primary. The statement shall be filed in the office of the elections official no later than the 88th day before the election, if it is for an election

for which nomination papers are not required to be filed. If a runoff election or general election occurs within 88 days of the primary or first election, the statement shall be filed with the elections official by the third day following the governing body's declaration of the results from the primary or first election.

(3) Except as provided in Section 13309, the statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5 p.m. of the next working day after the close of the nomination period.

(b) The elections official shall send to each voter, together with the sample ballot, a voter's pamphlet which contains the written statements of each candidate that is prepared pursuant to this section. The statement of each candidate shall be printed in type of uniform size and darkness, and with uniform spacing. The elections official shall provide a Spanish translation to those candidates who wish to have one, and shall select a person to provide that translation from the list of approved Spanish language translators and interpreters of the superior court of the county or from an institution accredited by the Western Association of Schools and Colleges.

(c) The local agency may estimate the total cost of printing, handling, translating, and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the federal Voting Rights Act of 1965, as amended. The local agency may require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voter's pamphlet. In the event the estimated payment is required, the receipt for the payment shall include a written notice that the estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing statements. Accordingly, the local agency is not bound by the estimate and may, on a pro rata basis, bill the candidate for additional actual expense or refund any excess paid depending on the final actual cost. In the event of underpayment, the local agency may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the local agency which, or the elections official who, collected the estimated cost

shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

(d) Nothing in this section shall be deemed to make any statement, or the authors thereof, free or exempt from any civil or criminal action or penalty because of any false, slanderous, or libelous statements offered for printing or contained in the voter's pamphlet.

(e) Before the nominating period opens, the local agency for that election shall determine whether a charge shall be levied against that candidate for the candidate's statement sent to each voter. This decision shall not be revoked or modified after the seventh day prior to the opening of the nominating period. A written statement of the regulations with respect to charges for handling, packaging, and mailing shall be provided to each candidate or his or her representative at the time he or she picks up the nomination papers.

(f) For purposes of this section and Section 13310, the board of supervisors shall be deemed the governing body of judicial elections.

SEC. 64. Section 1118 of the Evidence Code is amended to read:

1118. An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions:

(a) The oral agreement is recorded by a court reporter or reliable means of audio recording.

(b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.

(c) The parties to the oral agreement expressly state on the record that the agreement is enforceable~~,~~ or binding, or words to that effect.

(d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

SEC. 65. Section 7572 of the Family Code is amended to read:

7572. (a) The Department of Child Support Services, in consultation with the State Department of Health *Care* Services, the California Association of Hospitals and Health Systems, and other affected health provider organizations, shall work cooperatively to develop written materials to assist providers and

parents in complying with this chapter. This written material shall be updated periodically by the Department of Child Support Services to reflect changes in law, procedures, or public need.

(b) The written materials for parents which shall be attached to the form specified in Section 7574 and provided to unmarried parents shall contain the following information:

(1) A signed voluntary declaration of paternity that is filed with the Department of Child Support Services legally establishes paternity.

(2) The legal rights and obligations of both parents and the child that result from the establishment of paternity.

(3) An alleged father's constitutional rights to have the issue of paternity decided by a court; to notice of any hearing on the issue of paternity; to have an opportunity to present his case to the court, including his right to present and cross-examine witnesses; to have an attorney represent him; and to have an attorney appointed to represent him if he cannot afford one in a paternity action filed by a local child support agency.

(4) That by signing the voluntary declaration of paternity, the father is voluntarily waiving his constitutional rights.

(c) Parents shall also be given oral notice of the rights and responsibilities specified in subdivision (b). Oral notice may be accomplished through the use of audio or video recorded programs developed by the Department of Child Support Services to the extent permitted by federal law.

(d) The Department of Child Support Services shall, free of charge, make available to hospitals, clinics, and other places of birth any and all informational and training materials for the program under this chapter, as well as the paternity declaration form. The Department of Child Support Services shall make training available to every participating hospital, clinic, local registrar of births and deaths, and other place of birth no later than June 30, 1999.

(e) The Department of Child Support Services may adopt regulations, including emergency regulations, necessary to implement this chapter.

SEC. 66. Section 2089.12 of the Fish and Game Code is amended to read:

2089.12. (a) Unless the department determines that it is inappropriate to do so based on the nature of the management

actions being proposed, the species listed in the permit, or other factors, the agreement shall require that the landowner provide the department with at least 60 ~~days~~ *days'* advance notice of any of the following:

(1) Any incidental take that is anticipated to occur under the agreement.

(2) The landowner's plan to return to baseline at the end of the agreement.

(3) Any plan to transfer or alienate the landowner's interest in the land or water.

(b) (1) If the department receives any notice described in subdivision (a), the landowner shall provide the department, its contractors, or agents with access to the land or water for purposes of safely removing or salvaging the species.

(2) The department shall provide notice to the landowner at least seven days prior to accessing the land or water for the purposes of paragraph (1). The notice shall identify each person selected by the department, its contractors, or agents to access the land or water.

(3) Notwithstanding paragraph (1), during the seven-day notice period, a landowner may object, in writing, to a person selected to access the land or water. If a landowner objects, another person shall be selected by the department, its contractors, or agents, and notification shall be provided to the landowner pursuant to paragraph (2). However, if a landowner objects to a selection on two successive occasions, the landowner shall be deemed to consent to access to the land or water by a person selected by the department, its contractors, or agents. Failure by a landowner to object to the selection within the seven-day *notice* period shall be deemed consent to access the land or water by a person selected by the department, its contractors, or agents.

(4) If the landowner objects to a person selected to access the land or water pursuant to paragraph (3), the 60-day notice period described in subdivision (a) shall be tolled for the period between the landowner's objection to a person selected for access to the land or water and the landowner's consent to a person selected for access to the land or water.

SEC. 67. Section 2089.23 of the Fish and Game Code is amended to read:

2089.23. (a) A landowner that owns land that abuts a property enrolled in a state safe harbor agreement shall not be required, for purposes of an incidental take permit, to undertake the management activities set forth in the state safe harbor agreement, if all of the following conditions are met:

(1) The neighboring landowner allows the department to determine baseline conditions on the property.

(2) The neighboring landowner agrees to maintain the baseline conditions for the duration specified in the safe harbor agreement.

(3) The department determines that allowing the neighboring landowner to receive an incidental take permit for the abutting property does not undermine the net conservation benefit determination made by the department in the approval of the safe harbor agreement.

(4) The take authorized by the department will not jeopardize the continued existence of the species. This determination shall be made in accordance with subdivision (c) of Section 2081.

(b) (1) Unless the department determines that it is inappropriate to do so based on the species listed in the permit, or any other factors, the neighboring landowner shall provide the department with at least 60 ~~days~~ *days'* advance notice of any of the following:

(A) Any incidental take that is anticipated to occur under the permit.

(B) The neighboring landowner's plan to return to baseline conditions.

(C) Any plan to transfer or alienate the neighboring landowner's interest in the land or water.

(2) (A) If the department receives any notice described in paragraph (1), the neighboring landowner shall provide the department, its contractors, or agents with access to the land or water for purposes of safely removing or salvaging the species.

(B) The department shall provide notice to the neighboring landowner at least seven days before accessing the land or water for the purposes of subparagraph (A). The notice shall identify each person selected by the department, its contractors, or agents to access the land or water.

(C) Notwithstanding subparagraph (B), during the seven-day notice period, the neighboring landowner may object, in writing, to a person selected to access the land or water. If the neighboring landowner objects, another person shall be selected by the

department, its contractors, or agents, and notification shall be provided to the neighboring landowner pursuant to subparagraph (B). However, if the neighboring landowner objects to a selection on two successive occasions, the neighboring landowner shall be deemed to consent to access to the land or water by a person selected by the department, its contractors, or agents. Failure by the neighboring landowner to object to the selection within the seven-day notice period shall be deemed consent to access the land or water by the person selected by the department, its contractors, or agents.

SEC. 68. Section 5655 of the Fish and Game Code is amended to read:

5655. (a) In addition to the responsibilities imposed pursuant to Section 5651, the department may clean up or abate, or cause to be cleaned up or abated, the effects of any petroleum or petroleum product deposited or discharged in the waters of this state or deposited or discharged in any location onshore or offshore where the petroleum or petroleum product is likely to enter the waters of this state, order any person responsible for the deposit or discharge to clean up the petroleum or petroleum product or abate the effects of the deposit or discharge, and recover any costs incurred as a result of the cleanup or abatement from the responsible party.

(b) An order shall not be issued pursuant to this section for the cleanup or abatement of petroleum products in any sump, pond, pit, or lagoon used in conjunction with crude oil production that is in compliance with all applicable state and federal laws and regulations.

(c) The department may issue an order pursuant to this section only if there is an imminent and substantial endangerment to human health or the environment and the order shall remain in effect only until any cleanup and abatement order is issued pursuant to Section 13304 of the Water Code. A regional water quality control board shall incorporate the department's order into the cleanup and abatement order issued pursuant to Section 13304 of the Water Code, unless the department's order is inconsistent with any more stringent requirement established in the cleanup and abatement order. Any action taken in compliance with the department's order is not a violation of any subsequent regional water quality control

board cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) The Administrator of the Office of Spill Prevention and Response has the primary authority to serve as a state incident commander and direct removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any placement of petroleum or a petroleum product in the waters of the state, except as otherwise provided by law. This authority may be delegated.

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

(1) "Petroleum product" means oil of any kind or form, including, but not limited to, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil. "Petroleum product" does not include any pesticide that has been applied for agricultural, commercial, or industrial purposes or *that* has been applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, that has not been discharged accidentally or for purposes of disposal, and the application of which was in compliance with all applicable state and federal laws and regulations.

(2) "State incident commander" means a person with the overall authority for managing and conducting incident operations during an oil spill response, who shall manage an incident consistent with the standardized emergency management system required by Section 8607 of the Government Code. Incident management generally includes the development of objectives, strategies, and tactics, ordering and release of resources, and coordinating with other appropriate response agencies to ensure that all appropriate resources are properly utilized and that this coordinating function is performed in a manner designed to minimize risk to other persons and to the environment.

SEC. 69. Section 9011 of the Fish and Game Code is amended to read:

9011. (a) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, Dungeness crab, as defined in Section 8275, may be taken with Dungeness crab traps.

(2) A Dungeness crab trap may have any number of openings of any size. However, every Dungeness crab trap shall have at least two rigid circular openings of not less than 4¼ inches, inside diameter, on the top or side of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall

be located so that at least one-half of the opening is in the upper half of the trap.

(3) Subject to Article 6 (commencing with Section 8275) of Chapter 2, rock crab may be taken incidentally with a Dungeness crab trap used pursuant to this subdivision to take Dungeness crab, provided that the incidental taking ~~occur~~ *occurs* only during the season when it is lawful to take both species. A rock crab, taken incidentally with a Dungeness crab trap, that does not comply with Article 6 (commencing with Section 8275) of Chapter 2, shall be immediately returned to the waters from which it was taken.

(b) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, rock crab, as defined in Section 8275, may be taken with rock crab traps.

(2) A rock crab trap may have any number of openings of any size. However, a rock crab trap constructed of wire mesh with an inside mesh measurement of not less than 1 7/8 inches by 3 7/8 inches, with the 3 7/8 inch measurement parallel to the floor, shall have at least one rigid circular opening of not less than 3 1/4 inches, inside diameter, located on any outside wall of the rearmost chamber of the crab trap and shall be located so that at least one-half of the opening is in the upper half of the trap. Rock crab traps constructed of other material shall have at least two rigid circular openings of not less than 3 1/4 inches, inside diameter, on the top or side of the rearmost chamber of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap. No rigid circular opening, as required, shall extend more ~~than ½~~ *than ½* inch beyond the plane of the wall side or top of the trap in which it is located, and it shall be clearly accessible to any crab which may be in the trap.

(3) Subject to Article 6 (commencing with Section 8275) of Chapter 2, Dungeness crab may be taken incidentally with a rock crab trap used pursuant to this subdivision to take rock crab, provided that the incidental taking ~~occur~~ *occurs* only during the season when it is lawful to take both species. A Dungeness crab, taken incidentally with a rock crab trap, that does not comply with Article 6 (commencing with Section 8275) of Chapter 2, shall be immediately returned to the waters from which it was taken.

(4) A person shall not possess any lobster aboard a vessel while the vessel is being used pursuant to this subdivision to take rock crab.

(c) On or before January 1, 2013, the department shall report to the appropriate policy and fiscal committees of the Legislature the impacts, if any, of the changes made to this section by ~~the enactment of Assembly Bill 825 at the 2009–10 Regular Session of the Legislature~~ *Chapter 478 of the Statutes of 2009*. The report shall include information about citations issued pursuant to this section relating to both rock crab and Dungeness crab for the years 2010 to 2012, inclusive.

SEC. 70. Section 12013 of the Fish and Game Code is amended to read:

12013. (a) Any person who illegally takes or possesses in the field more than three times the daily bag limit, or who illegally possesses more than three times the legal possession limit, of fish, reptiles, birds, amphibians, or mammals is guilty of a misdemeanor and shall be subject to a fine of not less than five thousand dollars ($5,000), nor more than forty thousand dollars ($40,000), or imprisonment in ~~the~~ *a* county jail for not more than one year, or by both that fine and imprisonment.

(b) If a person is convicted of a second or subsequent violation of subdivision (a), that person shall be punished by a fine of not less than ten thousand dollars ($10,000), nor more than fifty thousand dollars ($50,000), or imprisonment in ~~the~~ *a* county jail for not more than one year, or by both that fine and imprisonment.

(c) Any person who maliciously and intentionally maims, mutilates, or physically tortures any fish, reptile, bird, amphibian, or mammal provided for in this code is guilty of a crime punishable in accordance with subdivision (a). Nothing in this subdivision affects any legal activity pursuant to this code, including, but not limited to, hunting, fishing, trapping, hunting dog training, hunting dog field trials, predation control, and efforts to dispatch a wounded mammal, ~~birds~~ *bird,* or fish taken legally.

(d) Nothing in this section prohibits a person from giving, receiving, or possessing the legal possession limit of lawfully taken fish, reptiles, birds, amphibians, or mammals.

(e) Nothing in this section prohibits a person from giving, receiving, or possessing, at the personal abode of the donor or donee, lawfully taken migratory game birds that are not required

to be tagged pursuant to the federal Migratory Bird Treaty Act (16 U.S.C. ~~Sec.703~~ *Sec. 703* et seq.) or regulations adopted pursuant to that act.

(f) This section does not supersede Section 12005, 12006.6, or 12009.

(g) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 13003. The board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 13103.

SEC. 71. Section 3884.2 of the Food and Agricultural Code is amended to read:

3884.2. (a) The District 32a Disposition Fund is hereby created in the State Treasury.

(b) The Department of General Services may sell all or any portion of the real property that composes District 32a. District 32a shall not enter into any contract, lease, or other agreement affecting the use or operation of the real property for a period that exceeds three months, and all of these contracts, leases, or other agreements shall contain a provision that they may be canceled upon a 30-day notice from the Department of General Services. The Department of General Services shall be reimbursed for any reasonable cost or expense incurred for the transactions described in this section. Additionally, to the extent bonds issued by the State Public Works Board or other entity involve the property to be sold pursuant to this section, all ~~issuer~~ *issuer-* and ~~trustee related~~ *trustee-related* costs associated with the review of any proposed sale, together with the costs related to the defeasance or retirement of any bonds, which may include the cost of nationally recognized bond counsel, shall be paid from the proceeds of any sale or lease authorized by this section. The net proceeds from the sale shall be deposited into the District 32a Disposition Fund.

(c) The sale of the real property authorized by this section shall be pursuant to a public bidding process designed to obtain the highest, most certain return for the state from a responsible bidder, and any transaction based on such a bidding process shall be deemed to be the fair market value for the property. A notice of

this bidding process shall be posted by the Department of General Services on its Internet Web site for at least 30 days prior to the sale of the real property. The provisions of Section 11011.1 of the Government Code are not applicable to the sale of real property authorized under this section.

(d) Thirty days prior to executing a transaction for a sale of real property authorized by this section, the Director of General Services shall report to the ~~chairs~~ *chairpersons* of the fiscal committees of the Legislature all of the following:

(1) The financial terms of the transaction.

(2) A comparison of fair market value for the real property and the terms listed in paragraph (1).

(3) Any basis for agreeing to terms and conditions other than fair market value.

(e) As to the real property sold pursuant to this section, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. If, however, the Director of General Services determines that there is little or no potential for mineral deposits, the reservation may be without surface right of entry above a depth of 500 feet, or the rights to prospect for, mine, and remove the deposits shall be limited to those areas of the real property conveyed that the director determines to be reasonably necessary for the removal of the deposits.

(f) The Department of General Services shall report to the Legislature on or before June 30 of each year on the status of the sale of real property authorized by this section.

(g) Upon the sale of all property that composes District 32a, District 32a shall be abolished and all funds in the District 32a Disposition Fund shall be transferred to the General Fund.

(h) (1) The disposition of state real property or buildings specified in subdivision (b) that are made on an “as is” basis shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code. Upon title to the parcel vesting in the purchaser or transferee of the property, the purchaser or transferee shall be subject to any local governmental land use entitlement approval requirements and to Chapter 3 (commencing

with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(2) If the disposition of state real property or buildings specified in subdivision (b)~~,~~ is not made on an "as is" basis and close of escrow is contingent on the satisfaction of a local governmental land use entitlement approval requirement or compliance by the local government with Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code, the execution of the purchase and sale agreement or of the exchange agreement by all parties to the agreement shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(3) For the purposes of this subdivision, "disposition" means the sale, lease, or repurchase of state property or buildings specified in subdivision (b).

(i) The disposition of real property or buildings, or both, pursuant to this section does not constitute a sale or other disposition of state surplus property within the meaning of Section 9 of Article III of the California Constitution and shall not be subject to subdivision (g) of Section 11011 of the Government Code.

SEC. 72. Section 5931 of the Food and Agricultural Code is amended to read:

5931. In the event the committee and the citrus pest control districts do not agree on the terms of the memorandum of understanding as prescribed in Section 5930, the citrus pest control districts shall conduct an election to determine which entity shall provide funding for the citrus tristeza virus effective plan. The ballot shall ask landowners within the citrus pest control districts to select either~~,~~ (1) the California Citrus *Pest and* Disease ~~Management~~ *Prevention* Committee and the Department of Food and Agriculture through the Citrus Disease Management Account to fund the citrus tristeza virus effective plan~~,~~ or (2) the citrus pest control districts as the funding entity of the citrus tristeza virus effective plan.

SEC. 73. Section 6047.12 of the Food and Agricultural Code is amended to read:

6047.12. (a) Expenditures charged by the department and the board for administrative purposes shall not exceed a total of 14 percent of the assessments collected pursuant to this article. Administrative purposes shall include, but not be limited to, all auditing expenses and all costs and ~~attorneys~~ *attorney's* fees resulting from, or relating to, litigation involving this article against the department, or the board and its members and agents, and expenses associated with Section 6047.4 and paragraphs (1) and (2) of subdivision (a) of Section 6047.5.

(b) Notwithstanding subdivision (a), the Joint Legislative Audit Committee and the State Auditor shall maintain independent authority to audit the expenditure of industry assessments.

SEC. 74. Section 15061 of the Food and Agricultural Code, as amended by Section 2 of Chapter 245 of the Statutes of 2009, is amended to read:

15061. (a) An inspection tonnage tax at the maximum rate of fifteen cents ($0.15) per ton of commercial feed sold, except whole grains, and whole hays when unmixed, shall be paid to the secretary by any person who distributes commercial feed to a consumer-buyer in this state. The distributor shall also pay an inspection tonnage tax for purchased commercial feed fed to his or her own animals.

(b) The secretary may, based upon a finding and recommendation of the Feed Inspection Advisory Board, determine the specific rate necessary to provide the revenue needed to carry out the provisions of this chapter. The secretary and the Feed Inspection Advisory Board shall not exceed the maximum tonnage rate established by this section. Setting the tonnage tax rate shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The secretary may, based upon a finding and recommendation of the Feed Inspection Advisory Board, designate 15 percent of the tonnage taxes collected, or two hundred thousand dollars ($200,000), whichever amount is greater, to provide funding for research and education regarding the safe manufacture, distribution, and use of commercial feed. These funds may only be spent on activities approved by the Feed ~~and~~ Inspection Advisory Board, with approval being made prior to any expenditure.

(d) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 75. Section 71031 of the Food and Agricultural Code is amended to read:

71031. "Person" means any individual, partnership, limited liability partnership, corporation, limited liability ~~corporation~~ *company*, firm, company, or other entity doing business in California.

SEC. 76. Section 7906 of the Government Code is amended to read:

7906. For school districts:

(a) "ADA" means a school district's second principal apportionment units of average daily attendance as determined pursuant to Section 42238.5 of the Education Code, including average daily attendance in summer school, regional occupational centers and programs, and apprenticeship programs, and excluding average daily attendance in adult education programs. All other units of average daily attendance including, but not limited to, special day classes for special education pupils, shall be included.

(1) For purposes of this subdivision, the average daily attendance of summer school programs shall be determined pursuant to subparagraph (F) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(2) For purposes of this subdivision, the average daily attendance of apprenticeship programs shall be determined pursuant to subparagraph (D) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(3) For the 2008–09, 2009–10, 2010–11, 2011–12, and 2012–13 fiscal years, the average daily attendance of public school districts, including county superintendents of schools, serving kindergarten and grades 1 to 12, inclusive, or any part thereof, shall include the same amount of average daily attendance for classes for supplemental instruction and regional occupational centers *and* programs that was used for the purposes of this section for the 2007–08 fiscal year.

(b) "Foundation program level" means:

(1) For the 1978–79 fiscal year, one thousand two hundred forty-one dollars ($1,241) for elementary districts, one thousand three hundred twenty-two dollars ($1,322) for unified districts,

and one thousand four hundred twenty-seven dollars ($1,427) for high school districts.

(2) For the 1979–80 fiscal year ~~through~~ *to* the 1986–87 fiscal year, inclusive, the levels specified in paragraph (1) increased by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year.

(3) For the 1986–87 fiscal year, the levels specified in paragraph (2) increased by one hundred eighty dollars ($180) for elementary districts, one hundred ninety-one dollars ($191) for unified districts, and two hundred seven dollars ($207) for high school districts.

(4) For the 1987–88 fiscal year, the levels specified in paragraph (3) increased by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year.

(5) For the 1988–89 fiscal year and each fiscal year thereafter, the foundation program level shall be the appropriations limit of the school district for the current fiscal year, plus amounts paid for any nonreimbursed court or federal mandates imposed on or after November 6, 1979, less the sum of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current fiscal year, such as parcel taxes or square foot taxes, unless for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current fiscal year, other than local taxes which count towards the revenue limit, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234 of the Education Code.

(c) "Proceeds of taxes" shall be deemed to include subventions received from the state only if those subventions are for one of the following two purposes:

(1) Basic aid subventions of one hundred twenty dollars ($120) per ADA.

(2) Additional apportionments which, when added to the district's local revenues as defined in Section 42238 of the Education Code, do not exceed the foundation program level for that district. In no case shall subventions received from the state for reimbursement of state mandates in accordance with the

provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979, be considered "proceeds of taxes" for the purposes of this section.

(d) Proceeds of taxes for a fiscal year shall not include any proceeds of taxes within the district's beginning balance or reserve, unless those funds were not appropriated in a prior fiscal year. Funds that were appropriated to a reserve or other fund referenced in Section 5 of Article XIII B of the California Constitution shall be deemed to be appropriated for the purpose of this paragraph.

(e) The remainder of the state apportionments, including special purpose apportionments and categorical aid subventions shall not be considered proceeds of taxes for a school district.

(f) Each school district shall report to the Superintendent of Public Instruction and to the Director of Finance at least annually its ~~appropriation~~ *appropriations* limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the school district, and amounts excluded from its appropriations limit, at a time and in a manner prescribed by the Superintendent of Public Instruction and approved by the Director of Finance.

(g) For the 1988–89 fiscal year and each fiscal year thereafter, nothing in paragraph (2) of subdivision (c) shall be so construed as to require that the amount determined pursuant to subdivision (b) be multiplied by the amount determined pursuant to subdivision (a) for purposes of determining the amount of state aid included in school district "proceeds of taxes" for purposes of this section.

SEC. 77. Section 8588.1 of the Government Code is amended to read:

8588.1. (a) The Legislature finds and declares that this state can only truly be prepared for the next disaster if the public and private sector collaborate.

(b) The California Emergency Management Agency may~~, as appropriate,~~ include, *as appropriate,* private businesses and nonprofit organizations within its responsibilities to prepare the state for disasters under this chapter. All participation by businesses and nonprofit associations in this program shall be voluntary.

(c) The agency may do any of the following:

(1) Provide guidance to business and nonprofit organizations representing business interests on how to integrate private sector

emergency preparedness measures into governmental disaster planning programs.

(2) Conduct outreach programs to encourage business to work with governments and community associations to better prepare the community and their employees to survive and recover from disasters.

(3) Develop systems so that government, businesses, and employees can exchange information during disasters to protect themselves and their families.

(4) Develop programs so that businesses and government can work cooperatively to advance technology that will protect the public during disasters.

(d) The agency may share facilities and systems for ~~the~~ purposes of subdivision (b) with the private sector to the extent the costs for their use are reimbursed by the private sector.

(e) Proprietary information or information protected by state or federal privacy laws shall not be disclosed under this program.

(f) Notwithstanding Section 11005, donations and private grants may be accepted by the agency and shall not be subject to Section 11005.

(g) The Disaster Resistant Communities Fund is hereby created in the State Treasury. Upon appropriation by the Legislature, the Secretary of California Emergency Management may expend the ~~money~~ *moneys* in the account for the costs associated ~~within~~ *with* this section.

(h) This section shall be implemented only to the extent that in-kind contributions or donations are received from the private sector, or grant funds are received from the federal government, for these purposes.

SEC. 78. Section 8879.72 of the Government Code is amended to read:

8879.72. (a) To establish the funding shares for each eligible applicant described in paragraph (1) of subdivision (a) of Section 8879.71, the commission shall do the following prior to the commencement of a funding cycle:

(1) Determine the total amount of annual revenue generated from voter-approved sales taxes, voter-approved parcel or property taxes, and voter-approved bridge tolls dedicated to transportation improvements according to the most recent available data reported

to the State Board of Equalization, the Controller, or the Bay Area Toll Authority.

(2) Establish a northern California and southern California share by attributing the proportional share of revenues from voter-approved sales taxes, voter-approved parcel or property taxes, and voter-approved bridge tolls dedicated to transportation improvements and imposed in counties in northern California to the northern share, and by attributing the proportional share of revenues from voter-approved sales taxes imposed in counties located in southern California to the southern share. The determination of whether a county is located in northern or southern California shall be based on the definitions set forth in Section 187 of the Streets and Highways Code.

(3) Program funds made available to the southern share, based on the determination in paragraph (2), shall be distributed to the entity responsible for programming and allocating revenues from the sales tax in proportion to the population of the county in which the entity is located compared to the total population of southern California counties with voter-approved sales taxes dedicated to transportation improvements. For the purpose of calculating population, the commission shall use the most recent information available from the Department of Finance.

(4) Program funds made available to the northern share, based on the determination in paragraph (2), shall be distributed as follows:

(A) Program funds generated by voter-approved bridge tolls and voter-approved parcel or property taxes dedicated to transportation improvements shall be distributed to the entity responsible for programming and allocating revenues from the toll or tax based on the proportional share of revenues generated by the toll or tax by that entity in comparison to the total revenues generated by voter-approved sales taxes, voter-approved parcel or property taxes, and voter-approved bridge tolls dedicated to transportation improvements in northern California.

(B) Program funds generated by voter-approved sales taxes dedicated to transportation improvements shall be distributed to the entity responsible for programming and allocating revenues from the sales tax in proportion to the population of the county in which the entity is located compared to the total population of the northern California counties with voter-approved sales taxes

dedicated to transportation improvements. For the purposes of calculating population, the commission shall use the most recent information available ~~for~~ *from* the Department of Finance.

(b) Under this section, each fiscal year in which funds are appropriated for the program shall constitute a funding cycle.

(c) Each eligible applicant desiring to participate in the program in any funding cycle under this section shall submit to the commission all of the following:

(1) A description of the eligible project nominated for funding, including a description of the project's cost, scope, and specific improvements and benefits it is anticipated to achieve.

(2) A description of the project's current status, including the phase of delivery the project is in at the time it is nominated for funding and a schedule for the project's completion.

(3) A description of how the project would support transportation and land use planning goals within the region.

(4) The amount of eligible local matching funds the applicant is committing to the project.

(5) The amount of program funds the applicant seeks from the program for the project.

(d) The commission shall review nominated projects under this section and their accompanying documentation to ensure that each nominated project meets the requirements of this article and to confirm that each project has a commitment of the requisite amount of eligible local matching funds as required in this article. Upon conducting the review of the requirements and determining the proposed projects to be in compliance with this article, the projects shall be deemed eligible.

(e) An eligible applicant that is identified to receive an allocation of funds under this section, but that does not submit a project for funding in a funding cycle, may utilize its funding share in a subsequent funding cycle.

(f) In addition to the requirements in subdivision (a), the commission shall, prior to the commencement of a funding cycle, calculate the amount of bond funds specified in subdivision (g) of Section 8879.23 that have not been appropriated and shall establish, using the distribution formula set forth in subdivision (a) of Section 8879.71, projected targets for the distribution of those funds for the purpose of planning consistent with Section 8879.501. The

commission shall annually review and revise these projected targets.

SEC. 79. Section 11011.1 of the Government Code is amended to read:

11011.1. (a) Notwithstanding any other provision of law, except Article 8.5 (commencing with Section 54235) of Chapter 5 of Part 1 of Division 2 of Title 5, the disposal of surplus state real property by the Department of General Services shall be subject to the requirements of this section. For purposes of this section, "surplus state real property" means real property declared surplus by the Legislature and directed to be disposed of by the Department of General Services, including any real property previously declared surplus by the Legislature but not yet disposed of by the Department of General Services prior to the enactment of this section.

(b) (1) The department may dispose of surplus state real property by sale, lease, exchange, a sale combined with an exchange, or other manner of disposition of property, as authorized by the Legislature, upon any terms and conditions and subject to any reservations and exceptions the department deems to be in the best interests of the state.

(2) (A) The Legislature finds and declares that the provision of decent housing for all Californians is a state goal of the highest priority. The disposal of surplus state real property is a direct and substantial public purpose of statewide concern and will serve an important public purpose, including mitigating the environmental effects of state activities. Therefore, it is the intent of the Legislature that priority be given, as specified in this section, to the disposal of surplus state real property to housing for persons and families of low or moderate income, where land is suitable for housing and there is a need for housing in the community.

(B) Surplus state real property that has been determined by the department not to be needed by any state agency shall be offered to any local agency, as defined in subdivision (a) of Section 54221, and then to nonprofit affordable housing sponsors, prior to being offered for sale to private entities or individuals. As used in this subdivision, "nonprofit affordable housing sponsor" means any of the following:

(i) A nonprofit corporation incorporated pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(ii) A cooperative housing corporation which is a stock cooperative, as defined by Section 11003.2 of the Business and Professions Code.

(iii) A limited-dividend housing corporation.

(C) The department, subject to this section, shall maintain a list of surplus state real property in a conspicuous place on its Internet Web site. The department shall provide local agencies and, upon request, members of the public, with electronic notification of updates to the list of properties.

(D) To be considered as a potential priority buyer of the surplus state real property, a local agency or nonprofit affordable housing sponsor shall notify the department of its interest in the surplus state real property within 90 days of the department posting on its Internet Web site the notice of the availability of the surplus state real property. The local agency or nonprofit affordable housing sponsor shall demonstrate, to the satisfaction of the department, that the surplus state real property, or portion of that surplus state real property, is to be used by the local agency or nonprofit affordable housing sponsor for open space, public parks, affordable housing projects, or development of local government-owned facilities. When more than one local agency expresses an interest in the surplus state real property, priority shall be given to the local agency that intends to use the surplus state real property for affordable housing. If no agreement or transfer of title occurs, the priority shall next be given to the local agency that intends to use the surplus state real property for open space, public parks, or development of local government-owned facilities. The sales agreement shall be executed by the local agency or nonprofit affordable housing sponsor within 60 days after the director determines the local agency or nonprofit affordable housing sponsor is to receive the surplus state real property. The sale of the surplus state real property to a local agency or nonprofit affordable housing sponsor pursuant to this section shall be completed, and title transferred, within 60 days of the date the department executes the sales agreement, or, if required by law, no later than 60 days after the State Public Works Board has authorized the sale. If the sale of a surplus state real property to a

local agency or nonprofit affordable housing sponsor is not completed within the timeframe specified in this subparagraph, then the department shall proceed with the process for disposal to other private entities or individuals.

(c) (1) If more than one local agency desires the surplus state real property for use as an open space, a public park, or the development of a local government-owned facility, the department shall transfer the surplus state real property to the local agency offering the highest price above fair market value. If more than one local agency desires the surplus state real property for use as an affordable housing project, the department shall transfer the surplus state real property to the local agency offering the greatest number of affordable housing units. If more than one nonprofit affordable housing sponsor desires the surplus state real property for use as an affordable housing project, the department shall transfer the surplus state real property to the nonprofit affordable housing sponsor offering the greatest number of affordable housing units.

(2) If no local agency or nonprofit affordable housing sponsor is interested, or an agreement, as provided above, is not reached, then the disposal of the surplus state real property to private entities or individuals shall be pursuant to a public bidding process designed to obtain the highest most certain return for the state from a responsible bidder, and any transaction based on such a bidding process shall be deemed to be the fair market value for the purposes of the reporting requirements pursuant to subdivision (d).

(3) Notwithstanding any other provision of law, the department may sell surplus state real property, or a portion of surplus state real property, to a local agency, or to a nonprofit affordable housing sponsor if no local agency is interested in the surplus state real property, for affordable housing projects at a sales price less than fair market value if the department determines that such a discount will enable the provision of housing for persons and families of low or moderate income. Nothing shall preclude a local agency that purchases the surplus state real property for affordable housing from reconveying the surplus state real property to a nonprofit affordable housing sponsor for development of affordable housing. Transfer of title to the surplus state real property or lease of the surplus state real property for affordable housing shall be conditioned upon continued use of the surplus state real property

as housing for persons and families of low and moderate income for at least 40 years and the department shall record a regulatory agreement that imposes affordability covenants, conditions, and restrictions on the surplus state real property. The regulatory agreement shall be a first priority lien on the surplus state real property and last for a period of at least 40 years, and if another state agency is lending funds for a project, a combined regulatory agreement shall be utilized. Notwithstanding any other provision of law, the regulatory agreement shall not be subordinated to any other lien or encumbrance except for any federal loan program ~~whose~~ *the* statutes or regulations *of which* require a first ~~lien~~ priority *lien* for that federal loan.

(4) Notwithstanding any other provision of law, the Director of General Services may transfer surplus state real property to a local agency for less than fair market value if the local agency uses the surplus state real property for parks or open-space purposes. The deed or other instrument of transfer shall provide that the surplus state real property would revert to the state if the use changed to a use other than parks or open-space purposes during the period of 25 years after the transfer date. For the purpose of this paragraph, "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) Thirty days prior to executing a transaction for a sale, lease, exchange, a sale combined with an exchange, or other manner of disposition of the surplus state real property for less than fair market value or for affordable housing, or as authorized by the Legislature, the Director of General Services shall report to the chairpersons of the fiscal committees of the Legislature all of the following:

(1) The financial terms of the transaction.

(2) A comparison of fair market value for the surplus state real property and the terms listed in paragraph (1).

(3) The basis for agreeing to terms and conditions other than fair market value.

(e) As to surplus state real property sold ~~and~~ or exchanged pursuant to this section, the director shall except and reserve to the state all mineral deposits, as ~~defined~~ *described* in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. If, however, the director

determines that there is little or no potential for mineral deposits, the reservation may be without surface right of entry above a depth of 500 feet, or the rights to prospect for, mine, and remove the deposits shall be limited to those areas of the surplus state real property conveyed that the director determines to be reasonably necessary for the removal of the deposits.

(f) The failure to comply with this section, except for subdivision (d), shall not invalidate the transfer or conveyance of surplus state real property to a purchaser for value.

(g) For purposes of this section, fair market value is established by an appraisal and economic evaluation conducted by the department or approved by the department.

SEC. 80. Section 11011.2 of the Government Code is amended to read:

11011.2. (a) (1) Notwithstanding any other law, including, but not limited to, Sections 11011 and 14670, except as provided in this section, the Department of General Services may lease real property under the jurisdiction of a state agency, department, or district agricultural association, if the Director of General Services determines that the real property is of no immediate need to the state but may have some potential future use to the program needs of the agency, department, or district agricultural association.

(2) The Director of General Services may not lease any of the following real property pursuant to this section:

(A) Tax-deeded land or lands under the jurisdiction of the State Lands Commission.

(B) Land that has escheated to the state or that has been distributed to the state by court decree in estates of deceased persons.

(C) Lands under the jurisdiction of the State Coastal Conservancy or another state conservancy.

(D) Lands under the jurisdiction of the Department of Transportation or the California State University ~~System~~ *system*, or land owned by the Regents of the University of California.

(E) Lands under the jurisdiction of the Department of Parks and Recreation.

(F) Lands under the jurisdiction of the Department of Fish and Game.

(3) A lease entered into pursuant to this section shall be set at the amount of the lease's fair market value, as determined by the

Director of General Services. The Director of General Services may determine the length of term or a use of the lease, and specify any other terms and conditions which are determined to be in the best interest of the state.

(b) The Department of General Services may enter into a long-term lease of real property pursuant to this section that has outstanding lease revenue bonds and for which the real property cannot be disencumbered from the bonds, only if the issuer and trustee for the bonds approves the lease transaction, and this approval takes into consideration, among other things, that the proposed lease transaction does not breach a covenant or obligation of the issuer or trustee.

(c) (1) All issuer- and trustee-related costs for reviewing a proposed lease transaction pursuant to this section, and all other costs of the lease transaction related to the defeasance or other retirement of any bonds, including the cost of nationally recognized bond counsel, shall be paid from the proceeds of that lease.

(2) The Department of General Services shall be reimbursed for any reasonable costs or expenses incurred in conducting a transaction pursuant to this section.

(3) Notwithstanding subdivision (g) of Section 11011, the Department of General Services shall deposit~~,~~ into the General Fund~~,~~ the net proceeds of a lease entered into pursuant to this section, after deducting the amount of the reimbursement of costs incurred pursuant to this section or the reimbursement of adjustments to the General Fund loan made pursuant to Section 8 of ~~the act adding this Section~~ *Chapter 20 of the 2009–10 Fourth Extraordinary Session* from the lease.

(d) The Department of General Services shall transmit a report to each house of the Legislature on or before June 30, 2011, and on or before June 30 each year thereafter, listing every new lease that exceeds a period of five years entered into under the authority of this section and the following information regarding each listed lease:

(1) Lease payments.

(2) Length of the lease.

(3) Identification of the leasing parties.

(4) Identification of the leased property.

(5) Any other information the Director of General Services determines should be included in the report to adequately describe the material provisions of the lease.

SEC. 81. Section 11126 of the Government Code is amended to read:

11126. (a) (1) ~~Nothing in this article shall be construed to~~ *This article does not* prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition ~~to~~ *of* holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against ~~any~~ *an* employee at the closed session shall be null and void.

(3) The state body also may exclude from ~~any~~ *a* public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For ~~the~~ purposes of this section, "employee" does not include ~~any~~ *a* person who is elected to, or appointed to a public office by, ~~any~~ *a* state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, ~~the term employee~~ *"employee"* includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) ~~Nothing in this article shall be construed to~~ *This article does not* do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided *that* the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter ~~any~~ *a* correctional institution or the grounds of a correctional institution ~~where~~ *if* that right is not otherwise granted by law, ~~nor shall anything in this article be construed to~~ *and this article does not* prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of ~~any~~ *an* individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent ~~any~~ *a* closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real

property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) ~~Nothing in this paragraph shall~~ *This paragraph does not* preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the ~~Council~~ *Bureau* for Private Postsecondary ~~and Vocational~~ Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the ~~Council~~ *Bureau* for Private Postsecondary ~~and Vocational~~ Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or ~~any~~ *a* committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5

(commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For ~~the purpose~~ *purposes* of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body *also* may ~~also~~ meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these

considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether ~~any~~ action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether ~~any~~ action was taken in closed session. The Legislative Analyst shall retain for no less than four years ~~any~~ written notification received from a state body pursuant to this subparagraph.

(d) (1) Notwithstanding any other provision of law, ~~any~~ *a* meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) ~~Nothing in this article shall be construed to~~ *This article does not* prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) ~~Nothing in this article shall be construed to~~ *This article does not* prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed

session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision ~~shall not be deemed as~~ *is not* a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), ~~nothing in this article shall be construed to~~ *this article does not* do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or ~~any~~ *a* member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. ~~Nothing in this article shall be construed to~~ *This article does not* prevent an examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider ~~any~~ *a* matter that properly could be considered in closed session by the state body ~~whose~~ *the* authority *of which* it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider ~~any~~ *a* matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider ~~any~~ *a* matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose ~~any~~ action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the ~~Director of the Office of Emergency Services~~ *Secretary of California Emergency Management* or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with

Section 12699.50), or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

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

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 ~~of the Government Code~~ with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

SEC. 82. 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) and the requirements specified in subdivision (h). 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. However, if only one city is within four miles of a tribal casino and that same casino is located entirely within the unincorporated area of that particular county, only one elected representative from that city shall be included on the Indian Gaming Local Community Benefit Committee.

(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~~ *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 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 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 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~~ *moneys* 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) and the requirements specified in subdivision (h).

(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~~ *moneys* 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) In selecting grants pursuant to subdivision (b), an Indian Gaming Local Community Benefit Committee shall select only grant applications that mitigate impacts from casinos on local jurisdictions. If a local jurisdiction uses a grant selected pursuant

to subdivision (b) for any unrelated purpose, the grant shall terminate immediately and any moneys not yet spent shall revert to the Indian Gaming Special Distribution Fund. If a local jurisdiction approves an expenditure that mitigates an impact from a casino on a local jurisdiction and that also provides other benefits to the local jurisdiction, the grant selected pursuant to subdivision (b) shall be used to finance only the proportionate share of the expenditure that mitigates the impact from the casino.

(i) 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 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.

(j) 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, stating that the local government project has received funding from the Indian Gaming Special Distribution Fund and further identifying the particular Individual Tribal Casino Account from which the grant derives.

(k) (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 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. Moneys allocated for the 2008–09 fiscal year shall be eligible for expenditure through December 31, 2009.

(*l*) Notwithstanding any other law, a local government jurisdiction that receives a grant from an Individual Tribal Casino Account shall deposit all funds received in an interest-bearing account and use the interest from those funds only for the purpose of mitigating an impact from a casino. If any portion of the funds in the account ~~are~~ *is* used for any other purpose, the remaining portion shall revert to the Indian Gaming Special Distribution Fund. As a condition of receiving further funds under this section, a local government jurisdiction, upon request of the county, shall demonstrate to the county that all expenditures made from the account have been in compliance with the requirements of this section.

SEC. 83. Section 13302 of the Government Code is amended to read:

13302. The accounting system devised as provided in Section 13300 shall provide, with respect to the General Fund and other governmental funds, for all of the following:

(a) The accrual of expenditures as of the end of each fiscal year on the basis of payables incurred, excluding accrued interest on general obligation bonded indebtedness.

(b) (1) The accrual of revenues at the end of the fiscal year if the underlying transaction has occurred as of the last day of the fiscal year, the amount is measurable, and the actual collection will occur either during the current period or after the end of the current period but in time to pay current ~~year-end~~ *yearend* liabilities.

(2) Cash in agency trust accounts within the centralized State Treasury system that is in transit to the State Treasury, accrued interest receivable, and accounts receivable shall be accrued as of the end of each fiscal year.

(c) For the purposes of financial reporting, ~~all~~ *both* of the following shall apply:

(1) A payable exists when goods or services have been delivered and the state is required to pay for those goods or services, and an encumbrance exists when a valid obligation against an appropriation has been created.

(2) All funds appropriated shall be identified as either expended, payable, encumbered (exclusive of payables), or unencumbered, as further defined by the California Fiscal Advisory Board, and the total of these shall equal the total appropriation.

(d) (1) Notwithstanding any other law, and except as provided in paragraph (2), payments to employees made through the Uniform State Payroll System as described in Section 12472.5 with an issue date each year of July 1 shall be considered payables incurred in the fiscal year in which the payment is issue dated.

(2) Notwithstanding paragraph (1), for purposes of calculating maintenance of effort expenditures under Section 8 of Article XVI of the California Constitution, or for purposes of calculating funds used by a program during the fiscal year, payments made on July 1 may be counted towards the prior fiscal year.

SEC. 84. Section 15491 of the Government Code is amended to read:

15491. (a) The State Allocation Board shall provide for live video and audio transmission of all board meetings and hearings that are open to the public through a technology that is accessible to as large a segment of the public as possible, including, but not limited to, the use of any of the following technologies:

(1) Cable, satellite, over-the-air, or any other type of transmission that can be accessed through a television.

(2) ~~Webcast~~*Web cast*.

(b) The ~~State Allocation Board~~ *board* shall ensure that any Web cast transmission implemented pursuant to subdivision (a) may be transmitted over and accessed through the ~~K-12~~ *K–12* High-Speed Network established pursuant to paragraph (2) of subdivision (b) of Section 11800 of the Education Code.

(c) The board shall consult with the State Chief Information Officer for the purposes of implementing this section pursuant to the duties that the State Chief Information Officer is required to perform, as described in Section 11545.

SEC. 85. Section 15820.911 of the Government Code is amended to read:

15820.911. (a) The ~~CDCR~~ *Department of Corrections and Rehabilitation*, a participating county, and the ~~SPWB~~ *board* are authorized to acquire, design, and construct~~,~~ a local jail facility approved by the Corrections Standards Authority ~~(CSA)~~ pursuant to Section 15820.916, or a site or sites owned by, or subject to a

lease or option to purchase held by, a participating county. The ownership interest of a participating county in the site or sites for a local jail facility must be determined by the ~~SPWB~~ *board* to be adequate for purposes of its financing in order to be eligible under this chapter.

(b) Notwithstanding Section 15815, a participating county may acquire, design, or construct the local jail facility in accordance with its local contracting authority. Notwithstanding Section 14951, the participating county may assign an inspector during the construction of the project.

(c) The ~~CDCR~~ *department*, a participating county, and the ~~SPWB~~ *board* shall enter into a construction agreement for these projects that shall provide, at a minimum, performance expectations of the parties related to the acquisition, design, construction, or renovation of the local jail facility~~,~~*;* guidelines and criteria for use and application of the proceeds of revenue bonds, notes, or bond anticipation notes issued by the ~~SPWB~~ *board* to pay for the cost of the approved local jail facility project*;* and ongoing maintenance and staffing responsibilities for the term of the financing.

(d) The construction agreement shall include a provision that the participating county agrees to indemnify, defend, and save harmless the State of California for any and all claims and losses arising out of the acquisition, design, and construction of the project. The construction agreement may also contain additional terms and conditions that facilitate the financing by the ~~SPWB~~ *board*.

(e) The scope and cost of these approved local jail facility projects shall be subject to approval and administrative oversight by the ~~SPWB~~ *board*.

(f) For purposes of compliance with the California Environmental Quality Act (Division 13 *(commencing with Section 21000)* of the Public Resources ~~Code (commencing at Section 210000))~~ *Code)*, neither the ~~SPWB~~ *board* nor the ~~CDCR~~ *department* shall be deemed a lead or responsible agency; the participating county is the lead agency.

SEC. 86. Section 16724.5 of the Government Code is amended to read:

16724.5. (a) ~~(1)~~ For purposes of this section, "revolving fund" means the General Obligation Bond Expense Revolving Fund created pursuant to this section.

(b) There is in the State Treasury the General Obligation Bond Expense Revolving Fund, which shall consist of all ~~money~~ *moneys* appropriated by the Legislature into that fund or payable into that fund in accordance with this section.

(c) All ~~money~~ *moneys* in the revolving fund ~~is~~ *are* hereby appropriated and shall be available without regard to fiscal years for all of the following:

(1) The payment of the expenses incurred by the ~~State~~ Treasurer in having the bonds prepared and in advertising their sale or their prior redemption, and of the other costs described in subdivision (e) of Section 16727.

(2) For expenses incurred by the committee pursuant to Section 16758.

(3) For payment for legal services pursuant to Section 16760.

(d) Whenever bonds are sold, out of the first ~~money~~ *moneys* realized from their sale, there shall be redeposited in the revolving fund the sums that have been expended for the purposes specified in subdivision (c), which may be used for the same purposes and repaid in the same manner whenever additional sales are made.

SEC. 87. Section 16731.6 of the Government Code is amended to read:

16731.6. (a) Notwithstanding any other provision of this chapter, and as an alternative to the procedures set forth in Section 16731, the committee may provide for the issuance of all or part of the bonds authorized to be issued as commercial paper notes. The committee shall adopt a resolution finding that issuance of the bonds in the form of commercial paper notes is necessary and desirable, directing the Treasurer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes, including all of the following:

(1) For each program of commercial paper notes authorized, the resolution shall contain the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time up to the maturity date, in accordance with all of the following:

(A) The resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date, and that the amount issued from time to time may

be set by the Treasurer up to the maximum amount authorized to be outstanding at any one time.

(B) The resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes.

(C) The determination of the final maturity date and total amount by the committee shall be made upon recommendation of the Treasurer to meet the needs of the state for funds, to provide the maximum benefit to potential purchasers, and to respond to the expected demand for the commercial paper notes.

(D) Notwithstanding any other provision of this chapter, whenever the committee determines to issue commercial paper notes, the committee is not required to comply with the requirements of Section 16732.

(2) The method of setting the interest rates and interest payment dates applicable to the commercial paper notes, in accordance with the following:

(A) Commercial paper notes may bear a stated rate of interest payable only at maturity, which rate or rates may be determined at the time of sale of each unit of commercial paper notes.

(B) The rate of interest borne by the commercial paper notes shall not exceed 11 percent per annum.

(C) Notwithstanding any other provision of this chapter, whenever the committee determines to issue commercial paper notes, the committee is not required to comply with the requirements of Section 16733.

(3) Any provisions for the redemption of the commercial paper notes prior to stated maturity.

(4) The technical form and language of the commercial paper notes.

(5) All other terms and conditions of the commercial paper notes and of their execution, issuance, and sale, deemed necessary and appropriate by the committee.

(b) Notwithstanding any other provision of this chapter, when the committee determines to issue commercial paper notes, all of the following shall apply:

(1) The commercial paper notes may be sold at negotiated sale at a price below the par value in a manner consistent with paragraph (2) of subdivision (a).

(2) During the term of any program of commercial paper notes, the renewal and reissuance from time to time of the commercial

paper notes in an amount up to the maximum amount authorized by the resolution shall be deemed to be a refunding of the previously maturing amount, permitted by and consistent with Article 6 (commencing with Section 16780).

(3) Consistent with the intent for the General Fund to realize a savings in debt service costs when commercial paper notes are issued in place of bonds without shifting or adding financing and debt service costs to the bond funds, the state administrative costs of commercial paper and interest payable and other costs associated with commercial paper notes shall be paid for as follows:

(A) The proceeds of commercial paper notes are, notwithstanding Section 13340, continuously appropriated to pay the state administrative costs of commercial paper including, but not limited to, costs of the Treasurer's office, the Controller's office, and the Department of Finance.

(B) The interest payable on maturing commercial paper notes and other costs associated with commercial paper notes not specified in ~~paragraph~~ *subparagraph* (A), including, but not limited to, remarketing fees, issuing and paying agent fees, the letter or line of credit provider fees, the rating agency fees, and bond counsel fees, shall be paid from the General Fund which, notwithstanding Section 13340, is continuously appropriated to pay the interests and costs.

SEC. 88. Section 22898 of the Government Code is amended to read:

22898. (a) Notwithstanding any other provision of this part, the percentage of employer contribution payable for postretirement health benefits for an employee of the Alameda County Transportation Improvement Authority shall, except as provided in subdivision (b), be based on the employee's completed years of credited service, provided that the Alameda County Transportation Improvement Authority shall not pay an employer contribution for the first five years of that credited service, and shall pay thereafter as ~~showin~~ *shown in* the following table:

Credited Years of Service	Percentage of Employer Contribution
5	50
6	55
7	60
8	65

9.....70
10.....75
11.....80
12.....85
13.....90
14.....95
15.....100

The application of this subdivision shall be subject to the following:

(1) The employer contribution with respect to each annuitant shall be adjusted by the employer each year. Those adjustments shall be based upon the principle that the employer contribution for each annuitant may not be less than the amount equal to 100 percent of the weighted average of the health benefits plan premiums for an employee or annuitant enrolled for self-alone, during the benefit year to which the formula is applied, for the four health benefit plans that had the largest agency enrollment, excluding family members, during the previous benefit year. For each annuitant with enrolled family members, the employer shall not pay an additional contribution.

(2) The employer shall certify to the board, in the case of employees not represented by a bargaining unit, that there is not an applicable memorandum of understanding.

(3) The credited service of an annuitant for the purpose of determining the percentage of employer contributions applicable under this section shall mean state service as defined in Section 20069, except that at least five years of credited service shall have been performed with the Alameda County Transportation Improvement Authority.

(4) The employer shall provide the board any information requested that the board determines is necessary to implement this section.

(b) Notwithstanding subdivision (a), the contribution payable by the employer subject to this section shall be equal to 100 percent of the amount established pursuant to paragraph (1) of subdivision (a) on behalf of any annuitant who either:

(1) Retired for disability.

(2) Retired for service with 15 or more years of service credit entirely with that employer, regardless of the number of days after

separation from employment. The contribution payable by the employer under this paragraph shall be paid only if it is greater than, and made in lieu of, a contribution payable to the annuitant by another employer under this part. The board shall establish application procedures and eligibility criteria to implement this paragraph.

(c) This section applies only to the Alameda County Transportation Improvement Authority, or its successor, and only with regard to the employees of the agency who are first hired on or after October 1, 2004.

SEC. 89. Section 25331 of the Government Code is amended to read:

25331. It is the intent of the Legislature that the fees or charges authorized by this chapter are *for* optional services that the public may or may not choose to purchase, and are not taxes for the purposes of Article XIII A of the California Constitution.

SEC. 90. Section 31855.9 of the Government Code is amended to read:

31855.9. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to ~~his~~ *the member's* death who is survived by a spouse with whom the member was living at the time of *his or her* death, the retirement system shall pay to the surviving spouse, in addition to all other payments due, if any, a lump sum supplemental survivorship benefit of two hundred fifty-five dollars ($255), as set forth in Section 31855.8 or 31855.12. If the member is not survived by a spouse with whom the member was living, the retirement system shall apply a lump sum supplemental survivorship benefit to reimburse the person who paid the funeral expenses of the member in an amount not to exceed two hundred fifty-five dollars ($255).

SEC. 91. Section 53601 of the Government Code is amended to read:

53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having

~~money~~ *moneys* in a sinking fund or ~~money~~ *moneys* in its treasury not required for the immediate needs of the local agency may invest any portion of the ~~money~~ *moneys* that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.

(e) Bonds, notes, warrants, or other evidences of indebtedness of ~~any~~ *a* local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(f) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

(g) Bankers' acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers' acceptances ~~may~~ *shall* not exceed 180 days' maturity or 40 percent of the agency's ~~money~~ *moneys* that may be invested pursuant to this section. However, no more than 30 percent of the agency's ~~money~~ *moneys* may be invested in the bankers' acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing ~~any money~~ *moneys* in its treasury in ~~any~~ *a* manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(h) Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized ~~statistical-rating~~ *statistical rating* organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or (2):

(1) The entity meets the following criteria:

(A) Is organized and operating in the United States as a general corporation.

(B) Has total assets in excess of five hundred million dollars ($500,000,000).

(C) Has debt other than commercial paper, if any, that is rated "A" or higher by ~~a nationally recognized statistical-rating organization (NRSRO)~~ *an NRSRO*.

(2) The entity meets the following criteria:

(A) Is organized within the United States as a special purpose corporation, trust, or limited liability company.

(B) Has programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or *a* surety bond.

(C) Has commercial paper that is rated "A-1" or higher, or the equivalent, by ~~a nationally recognized statistical-rating organization (NRSRO)~~ *an NRSRO*.

Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, may invest no more than 25 percent of their ~~money~~ *moneys* in eligible commercial paper. Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. Counties or a city and county may invest in commercial paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(i) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit ~~may~~ *shall* not exceed 30 percent of the agency's ~~money which~~ *moneys that* may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the ~~money~~ *moneys* are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or ~~any~~ *a* person with investment decisionmaking authority in the administrative office manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors,

or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(j) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of ~~any~~ securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on ~~any~~ *an* investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that ~~underlay~~ *underlie* a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold ~~on~~ *using a* reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty ~~by way of~~ *using* a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a

minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may ~~only~~ be made *only* upon prior approval of the governing body of the local agency and shall ~~only~~ be made *only* with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, "significant banking relationship" means any of the following activities of a bank:

(i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.

(ii) Financing of a local agency's activities.

(iii) Acceptance of a local agency's securities or funds as deposits.

(5) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for ~~purpose~~ *purposes* of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the

agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(k) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by ~~a nationally recognized rating service~~ *an NRSRO*. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's ~~money~~ *moneys* that may be invested pursuant to this section.

(*l*) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two ~~nationally recognized statistical rating organizations~~ *NRSROs*.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two ~~nationally recognized statistical rating organizations~~ *NRSROs*.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include ~~any~~ commission that the companies may charge and shall not exceed 20 percent of the agency's ~~money~~ *moneys* that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(m) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(n) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(o) ~~Any~~ *A* mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by ~~a nationally recognized rating service~~ *an NRSRO* and rated in a rating category of "AA" or its equivalent or better by ~~a nationally recognized rating service~~ *an NRSRO*. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus ~~money~~ *moneys* that may be invested pursuant to this section.

(p) Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (o), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

(1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.

(2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o), inclusive.

(3) The adviser has assets under management in excess of five hundred million dollars ($500,000,000).

SEC. 92. Section 56375.2 of the Government Code is amended to read:

56375.2. (a) In addition to those powers enumerated in Section 56375, the Marin Local ~~Area~~ *Agency* Formation Commission may initiate and approve, after notice and hearing, a reorganization or consolidation of the Sewerage Agency of Southern Marin and its member districts, without protest hearings.

(b) If the commission initiates and approves the reorganization or consolidation pursuant to subdivision (a), the commission may impose terms and conditions on the reorganization or consolidation that would require the Sewerage Agency of Southern Marin and its member agencies to be responsible for payment of the commission's costs incurred in association with the reorganization or consolidation.

(c) This section shall become effective on January 1, 2011.

SEC. 93. Section 56668 of the Government Code is amended to read:

56668. Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

(a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

(b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

"Services," as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

(c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

(d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing

planned, orderly, efficient patterns of urban development, and the policies and priorities in Section 56377.

(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.

(f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.

(g) A regional transportation plan adopted pursuant to Section 65080, and *its* consistency with city or county general and specific plans.

(h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.

(i) The comments of any affected local agency or other public agency.

(j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.

(k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.

(*l*) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

(m) Any information or comments from the landowner or owners, voters, or residents of the affected territory.

(n) Any information relating to existing land use designations.

(o) The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

SEC. 94. Section 63040 of the Government Code is amended and renumbered, immediately following Section 63036, to read:

~~63040.~~

63037. (a) Following consultation with appropriate state and local agencies, the bank shall establish criteria, priorities, and guidelines for the selection of projects to receive assistance from the bank. Projects shall comply with the criteria, priorities, and guidelines adopted by the bank.

(b) The criteria, priorities, and guidelines shall, at a minimum, be based upon the following:

(1) The State Environmental Goals and Policy Report, or its successor, approved pursuant to Article 5 (commencing with Section 65041) of Chapter 1.5 of Division 1 of Title 7.

(2) If the sponsor is a state agency, board, commission, or department, the Capital and Infrastructure Project Planning Report, prepared by the Director of Finance pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of Title 2.

(c) When the bank establishes or makes changes to the criteria, priorities, and guidelines, the bank shall notify the Governor, the fiscal and policy committees of the Legislature that exercise legislative oversight of the bank, and appropriate state and local agencies.

(d) The resolution required in Section 63041 shall have been adopted prior to the project's selection by the bank.

SEC. 95. Section 65080 of the Government Code is amended to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall be an internally consistent document and shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, daily vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

(i) Single occupant vehicle.

(ii) Multiple occupant vehicle or carpool.

(iii) Public transit including commuter rail and intercity rail.

(iv) Walking.

(v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.

(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(2) A sustainable communities strategy prepared by each metropolitan planning organization as follows:

(A) No later than September 30, 2010, the State Air Resources Board shall provide each affected region with greenhouse gas

emission reduction targets for the automobile and light truck sector for 2020 and 2035, respectively.

(i) No later than January 31, 2009, the state board shall appoint a Regional Targets Advisory Committee to recommend factors to be considered and methodologies to be used for setting greenhouse gas emission reduction targets for the affected regions. The committee shall be composed of representatives of the metropolitan planning organizations, affected air districts, the League of California Cities, the California State Association of Counties, local transportation agencies, and members of the public, including homebuilders, environmental organizations, planning organizations, environmental justice organizations, affordable housing organizations, and others. The advisory committee shall transmit a report with its recommendations to the state board no later than September 30, 2009. In recommending factors to be considered and methodologies to be used, the advisory committee may consider any relevant issues, including, but not limited to, data needs, modeling techniques, growth forecasts, the impacts of regional jobs-housing balance on interregional travel and greenhouse gas emissions, economic and demographic trends, the magnitude of greenhouse gas reduction benefits from a variety of land use and transportation strategies, and appropriate methods to describe regional targets and to monitor performance in attaining those targets. The state board shall consider the report prior to setting the targets.

(ii) Prior to setting the targets for a region, the state board shall exchange technical information with the metropolitan planning organization and the affected air district. The metropolitan planning organization may recommend a target for the region. The metropolitan planning organization shall hold at least one public workshop within the region after receipt of the report from the advisory committee. The state board shall release draft targets for each region no later than June 30, 2010.

(iii) In establishing these targets, the state board shall take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions, and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from other greenhouse gas emission sources as that term

is defined in subdivision (i) of Section 38505 of the Health and Safety Code and consistent with the regulations promulgated pursuant to the California Global Warming Solutions Act of 2006 (Division ~~12.5~~ *25.5* (commencing with Section 38500) of the Health and Safety Code).

(iv) The state board shall update the regional greenhouse gas emission reduction targets every eight years consistent with each metropolitan planning organization's timeframe for updating its regional transportation plan under federal law until 2050. The state board may revise the targets every four years based on changes in the factors considered under clause (iii) ~~above~~. The state board shall exchange technical information with the Department of Transportation, metropolitan planning organizations, local governments, and affected air districts and engage in a consultative process with public and private stakeholders prior to updating these targets.

(v) The greenhouse gas emission reduction targets may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the state board.

(B) Each metropolitan planning organization shall prepare a sustainable communities strategy, subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the most recent planning assumptions considering local general plans and other factors. The sustainable communities strategy shall (i) identify the general location of uses, residential densities, and building intensities within the region~~;~~, (ii) identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth~~;~~, (iii) identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584~~;~~, (iv) identify a transportation network to service the transportation needs of the region~~;~~, (v) gather and consider the best practically available scientific information regarding resource areas and farmland in the region as defined in subdivisions (a) and (b) of Section 65080.01~~;~~, (vi) consider the state housing goals specified in Sections 65580 and 65581~~;~~, (vii) set forth a forecasted

development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the state board~~;~~, and (viii) allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).

(C) (i) Within the jurisdiction of the Metropolitan Transportation Commission, as defined by Section 66502, the Association of Bay Area Governments shall be responsible for clauses (i), (ii), (iii), (v), and (vi) *of subparagraph (B)*, the Metropolitan Transportation Commission shall be responsible for clauses (iv) and (viii) *of subparagraph (B)*; and the Association of Bay Area Governments and the Metropolitan Transportation Commission shall jointly be responsible for clause (vii) of subparagraph (B).

(ii) Within the jurisdiction of the Tahoe Regional Planning Agency, as defined in Sections 66800 and 66801, the Tahoe Metropolitan Planning Organization shall use the Regional Plan for the Lake Tahoe Region as the sustainable community strategy, provided *that* it complies with clauses (vii) and (viii) of subparagraph (B).

(D) In the region served by the multicounty transportation planning agency described in Section 130004 of the Public Utilities Code, a subregional council of governments and the county transportation commission may work together to propose the sustainable communities strategy and an alternative planning strategy, if one is prepared pursuant to subparagraph (I), for that subregional area. The metropolitan planning organization may adopt a framework for a subregional sustainable communities strategy or a subregional alternative planning strategy to address the intraregional land use, transportation, economic, air quality, and climate policy relationships. The metropolitan planning organization shall include the subregional sustainable communities strategy for that subregion in the regional sustainable communities strategy to the extent consistent with this section and federal law and approve the subregional alternative planning strategy, if one is prepared pursuant to subparagraph (I), for that subregional area to the extent consistent with this section. The metropolitan planning

organization shall develop overall guidelines, create public participation plans pursuant to subparagraph (F), ensure coordination, resolve conflicts, make sure that the overall plan complies with applicable legal requirements, and adopt the plan for the region.

(E) The metropolitan planning organization shall conduct at least two informational meetings in each county within the region for members of the board of supervisors and city councils on the sustainable communities strategy and alternative planning strategy, if any. The metropolitan planning organization may conduct only one informational meeting if it is attended by representatives of the county board of supervisors and city council members representing a majority of the cities representing a majority of the population in the incorporated areas of that county. Notice of the meeting or meetings shall be sent to the clerk of the board of supervisors and to each city clerk. The purpose of the meeting or meetings shall be to discuss the sustainable communities strategy and the alternative planning strategy, if any, including the key land use and planning assumptions to the members of the board of supervisors and the city council members in that county and to solicit and consider their input and recommendations.

(F) Each metropolitan planning organization shall adopt a public participation plan, for development of the sustainable communities strategy and an alternative planning strategy, if any, that includes all of the following:

(i) Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, consistent with the agency's adopted Federal Public Participation Plan, including, but not limited to, affordable housing advocates, transportation advocates, neighborhood and community groups, environmental advocates, home builder representatives, broad-based business organizations, landowners, commercial property interests, and homeowner associations.

(ii) Consultation with congestion management agencies, transportation agencies, and transportation commissions.

(iii) Workshops throughout the region to provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices. At least one workshop shall be held in each county in the region. For counties with a population greater than 500,000, at least three workshops

shall be held. Each workshop, to the extent practicable, shall include urban simulation computer modeling to create visual representations of the sustainable communities strategy and the alternative planning strategy.

(iv) Preparation and circulation of a draft sustainable communities strategy and an alternative planning strategy, if one is prepared, not less than 55 days before adoption of a final regional transportation plan.

(v) At least three public hearings on the draft sustainable communities strategy in the regional transportation plan and alternative planning strategy, if one is prepared. If the metropolitan transportation organization consists of a single county, at least two public hearings shall be held. To the maximum extent feasible, the hearings shall be in different parts of the region to maximize the opportunity for participation by members of the public throughout the region.

(vi) A process for enabling members of the public to provide a single request to receive notices, information, and updates.

(G) In preparing a sustainable communities strategy, the metropolitan planning organization shall consider spheres of influence that have been adopted by the local agency formation commissions within its region.

(H) Prior to adopting a sustainable communities strategy, the metropolitan planning organization shall quantify the reduction in greenhouse gas emissions projected to be achieved by the sustainable communities strategy and set forth the difference, if any, between the amount of that reduction and the target for the region established by the state board.

(I) If the sustainable communities strategy, prepared in compliance with subparagraph (B) or (D), is unable to reduce greenhouse gas emissions to achieve the greenhouse gas emission reduction targets established by the state board, the metropolitan planning organization shall prepare an alternative planning strategy to the sustainable communities strategy showing how those greenhouse gas emission targets would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies. The alternative planning strategy shall be a separate document from the regional transportation plan, but it may be adopted concurrently with the

regional transportation plan. In preparing the alternative planning strategy, the metropolitan planning organization:

(i) Shall identify the principal impediments to achieving the targets within the sustainable communities strategy.

(ii) May include an alternative development pattern for the region pursuant to subparagraphs (B) to (G), inclusive.

(iii) Shall describe how the greenhouse gas emission reduction targets would be achieved by the alternative planning strategy, and why the development pattern, measures, and policies in the alternative planning strategy are the most practicable choices for achievement of the greenhouse gas emission reduction targets.

(iv) An alternative development pattern set forth in the alternative planning strategy shall comply with Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, except to the extent that compliance will prevent achievement of the greenhouse gas emission reduction targets approved by the state board.

(v) For purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), an alternative planning strategy shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an alternative planning strategy shall not be a consideration in determining whether a project may have an environmental effect.

(J) (i) Prior to starting the public participation process adopted pursuant to subparagraph (F) ~~of paragraph (2) of subdivision (b)~~, the metropolitan planning organization shall submit a description to the state board of the technical methodology it intends to use to estimate the greenhouse gas emissions from its sustainable communities strategy and, if appropriate, its alternative planning strategy. The state board shall respond to the metropolitan planning organization in a timely manner with written comments about the technical methodology, including specifically describing any aspects of that methodology it concludes will not yield accurate estimates of greenhouse gas emissions, and suggested remedies. The metropolitan planning organization is encouraged to work with the state board until the state board concludes that the technical methodology operates accurately.

(ii) After adoption, a metropolitan planning organization shall submit a sustainable communities strategy or an alternative

planning strategy, if one has been adopted, to the state board for review, including the quantification of the greenhouse gas emission reductions the strategy would achieve and a description of the technical methodology used to obtain that result. Review by the state board shall be limited to acceptance or rejection of the metropolitan planning organization's determination that the strategy submitted would, if implemented, achieve the greenhouse gas emission reduction targets established by the state board. The state board shall complete its review within 60 days.

(iii) If the state board determines that the strategy submitted would not, if implemented, achieve the greenhouse gas emission reduction targets, the metropolitan planning organization shall revise its strategy or adopt an alternative planning strategy, if not previously adopted, and submit the strategy for review pursuant to clause (ii). At a minimum, the metropolitan planning organization must obtain state board acceptance that an alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets established for that region by the state board.

(K) Neither a sustainable communities strategy nor an alternative planning strategy regulates the use of land, nor, except as provided by subparagraph (J), shall either one be subject to any state approval. Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region. Nothing in this section shall be interpreted to limit the state board's authority under any other provision of law. Nothing in this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law. Nothing in this section shall require a city's or county's land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy. Nothing in this section requires a metropolitan planning organization to approve a sustainable communities strategy that would be inconsistent with Part 450 of Title 23 of, or Part 93 of Title 40 of, the Code of Federal Regulations and any administrative guidance under those regulations. Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law.

(L) Nothing in this section requires projects programmed for funding on or before December 31, 2011, to be subject to the provisions of this paragraph if they (i) are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, (ii) are funded pursuant to Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2, or (iii) were specifically listed in a ballot measure prior to December 31, 2008, approving a sales tax increase for transportation projects. Nothing in this section shall require a transportation sales tax authority to change the funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31, 2010. For purposes of this subparagraph, a transportation sales tax authority is a district, as defined in Section 7252 of the Revenue and Taxation Code, that is authorized to impose a sales tax for transportation purposes.

(M) A metropolitan planning organization, or a regional transportation planning agency not within a metropolitan planning organization, that is required to adopt a regional transportation plan not less than every five years, may elect to adopt the plan not less than every four years. This election shall be made by the board of directors of the metropolitan planning organization or regional transportation planning agency no later than June 1, 2009, or thereafter 54 months prior to the statutory deadline for the adoption of housing elements for the local jurisdictions within the region, after a public hearing at which comments are accepted from members of the public and representatives of cities and counties within the region covered by the metropolitan planning organization or regional transportation planning agency. Notice of the public hearing shall be given to the general public and by mail to cities and counties within the region no later than 30 days prior to the date of the public hearing. Notice of election shall be promptly given to the Department of Housing and Community Development. The metropolitan planning organization or the regional transportation planning agency shall complete its next regional transportation plan within three years of the notice of election.

(N) Two or more of the metropolitan planning organizations for Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County may work together to develop and adopt

multiregional goals and policies that may address interregional land use, transportation, economic, air quality, and climate relationships. The participating metropolitan planning organizations may also develop a multiregional sustainable communities strategy, to the extent consistent with federal law, or an alternative planning strategy for adoption by the metropolitan planning organizations. Each participating metropolitan planning organization shall consider any adopted multiregional goals and policies in the development of a sustainable communities strategy and, if applicable, an alternative planning strategy for its region.

(3) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all transportation projects proposed for development during the 20-year or greater life of the plan. The action element shall consider congestion management programming activities carried out within the region.

(4) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

(i) State highway expansion.

(ii) State highway rehabilitation, maintenance, and operations.

(iii) Local road and street expansion.

(iv) Local road and street rehabilitation, maintenance, and operation.

(v) Mass transit, commuter rail, and intercity rail expansion.

(vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.

(vii) Pedestrian and bicycle facilities.

(viii) Environmental enhancements and mitigation.

(ix) Research and planning.

(x) Other categories.

(C) The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall consider financial incentives for cities and counties that have resource areas or farmland, as defined in Section 65080.01, for the purposes of, for example, transportation investments for the preservation and safety of the city street or county road system and ~~farm to market~~ *farm-to-market* and interconnectivity transportation needs. The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute ~~towards~~ *toward* the greenhouse gas emission reduction targets by implementing policies for growth to occur within their cities.

(c) Each transportation planning agency may also include other factors of local significance as an element of the regional transportation plan, including, but not limited to, issues of mobility for specific sectors of the community, including, but not limited to, senior citizens.

(d) Except as otherwise provided in this subdivision, each transportation planning agency shall adopt and submit, every four years, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. A transportation planning agency located in a federally designated air quality attainment area or that does not contain an urbanized area may at its option adopt and submit a regional transportation plan every five years. When applicable, the plan shall be consistent with federal planning and programming requirements and shall conform to the regional transportation plan guidelines adopted by the California Transportation Commission. Prior to adoption of the regional transportation plan, a public hearing shall be held after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 96. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use

or other discretionary permit. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.

(ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(B) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). Transitional housing and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(7) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The need for emergency shelter shall be assessed based on annual and seasonal need. The need for

emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.

(8) An analysis of opportunities for energy conservation with respect to residential development. Cities and counties are encouraged to include weatherization and energy efficiency improvements as part of publicly subsidized housing rehabilitation projects. This may include energy efficiency measures that encompass the building envelope, its heating and cooling systems, and its electrical system.

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use, and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for

each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, ~~and~~ the utilization of appropriate

federal and state financing and subsidy programs when available, and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than three years and 120 days from the

statutory deadline in Section 65588 for adoption of the housing element.

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in subdivision (b) of Section 65583.2.

(C) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified

in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.

(2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.

(3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:

(A) How the joint facility will meet the jurisdiction's emergency shelter need.

(B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.

(C) The amount and source of the funding that the jurisdiction contributes to the facility.

(4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.

(e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when a city, county, or city and county submits a draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

(f) The deadline for completing required rezoning pursuant to subparagraph (A) of paragraph (1) of subdivision (c) shall be extended by one year if the local government has completed the rezoning at densities sufficient to accommodate at least 75 percent of the units for low- and very low income households and if the legislative body at the conclusion of a public hearing determines, based upon substantial evidence, that any of the following circumstances exist:

(1) The local government has been unable to complete the rezoning because of the action or inaction beyond the control of the local government of any other state, federal, or local agency.

(2) The local government is unable to complete the rezoning because of infrastructure deficiencies due to fiscal or regulatory constraints.

(3) The local government must undertake a major revision to its general plan in order to accommodate the ~~housing related~~ *housing-related* policies of a sustainable communities strategy or an alternative planning strategy adopted pursuant to Section 65080.

The resolution and the findings shall be transmitted to the department together with a detailed budget and schedule for preparation and adoption of the required rezonings, including plans for citizen participation and expected interim action. The schedule shall provide for adoption of the required rezoning within one year of the adoption of the resolution.

(g) (1) If a local government fails to complete the rezoning by the deadline provided in subparagraph (A) of paragraph (1) of subdivision (c), as it may be extended pursuant to subdivision (f), except as provided in paragraph (2), a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other

locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph; and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph. Any subdivision of sites shall be subject to the Subdivision Map Act *(Division 2 (commencing with Section 66410))*. Design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) A local government may disapprove a housing development described in paragraph (1) if it makes written findings supported by substantial evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(3) The applicant or any interested person may bring an action to enforce this subdivision. If a court finds that the local agency disapproved a project or conditioned its approval in violation of this subdivision, the court shall issue an order or judgment compelling compliance within 60 days. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders to ensure that the purposes and policies of this subdivision are fulfilled. In any such action, the city, county, or city and county shall bear the burden of proof.

(4) For purposes of this subdivision, "housing development project" means a project to construct residential units for which the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of at least 49 percent of the housing units for very low, low-, and moderate-income households with an affordable housing cost or affordable rent, as defined in Section 50052.5 or 50053 of the Health and Safety Code, respectively, for the period required by the applicable financing.

(h) An action to enforce the program actions of the housing element shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

SEC. 97. Section 66540.12 of the Government Code is amended to read:

66540.12. (a) The authority shall be governed by a board composed of five members, as follows:

(1) Three members shall be appointed by the Governor, subject to confirmation by the Senate. The Governor shall make the initial appointment of these members of the board ~~within 10 days after the effective date of this title~~ *no later than January 11, 2008*.

(2) One member shall be appointed by the Senate Committee on Rules.

(3) One member shall be appointed by the Speaker of the Assembly.

(b) Each member of the board shall be a resident of a county in the bay area region.

(c) Public officers associated with ~~any~~ *an* area of government, including planning or water, whether elected or appointed, may be appointed to serve contemporaneously as members of the board. ~~No~~ *A* public agency ~~may~~ *shall not* have more than one representative on the board of the authority.

(d) The Governor shall designate one member as the ~~chair~~ *chairperson* of the board and one member as the vice ~~chair~~ *chairperson* of the board.

(e) The term of a member of the board shall be six years.

(f) Vacancies shall be ~~immediately~~ filled *immediately* by the appointing power for the unexpired portion of the terms in which they occur.

SEC. 98. Section 66540.32 of the Government Code is amended to read:

66540.32. (a) The authority shall create and adopt, on or before July 1, 2009, an emergency water transportation system management plan for water transportation services in the bay area region in the event that bridges, highways, and other facilities are rendered wholly or significantly inoperable.

(b) (1) The authority shall create and adopt, on or before July 1, 2009, a transition plan to facilitate the transfer of existing public transportation ferry services within the bay area region to the authority pursuant to this title. In the preparation of the transition plan, priority shall be given to ensuring continuity in the programs, services, and activities of existing public transportation ferry services.

(2) The plan required by this subdivision shall include all of the following:

(A) A description of existing ferry services in the bay area region, as of January 1, 2008, that are to be transferred to the authority pursuant to Section 66540.11 and a description of any proposed changes to those services.

(B) A description of any proposed expansion of ferry services in the bay area region.

(C) An inventory of the ferry and ferry-related capital assets or leasehold interests, including, but not limited to, vessels, terminals, maintenance facilities, and existing or planned parking facilities or parking structures, and of the personnel, operating costs, and revenues of public agencies operating public transportation ferries and providing water transportation services as of January 1, 2008, and those facilities that are to be transferred, in whole or in part, to the authority pursuant to Section 66540.11.

(D) A description of those capital assets, leasehold interests, and personnel identified in subparagraph (C) that the authority proposes to be transferred pursuant to Section 66540.11.

(E) An operating plan that includes, at a minimum, an estimate of the costs to continue the ferry services described in subparagraph (A) for at least five years and a detailed description of current and historically available revenues and proposed sources of revenue to meet those anticipated costs. Further, the operating plan shall identify options for closing any projected deficits or for addressing increased cost inputs, such as fuel, for at least the five-year period.

(F) A description of the proposed services, duties, functions, responsibilities, and liabilities of the authority and those of agencies

providing or proposed to provide water transportation services for the authority.

(G) To the extent the plan may include the transfer of assets or services from a local agency to the authority pursuant to Section 66540.11, that transfer shall be subject to negotiation and agreement by the local agency. The authority and the local agency shall negotiate and agree on fair terms, including just compensation, prior to any transfer authorized by this title.

(H) An initial five-year Capital Improvement Program (CIP) detailing how the authority and its local agency partners plan to support financing and completion of capital improvement projects, including, but not limited to, those described in subparagraph (C), that are required to support the operation of transferred ferry services. Priority shall be given to emergency response projects and those capital improvement projects for which a Notice of Determination pursuant to the California Environmental Quality Act *(Division 13 (commencing with Section 21000) of the Public Resources Code)* has been filed and which further the expansion, efficiency, or effectiveness of the ferry system.

(I) A description of how existing and expanded water transportation services will provide seamless connections to other transit providers in the bay area region, including, but not limited to, a description of how the authority will coordinate with all local agencies to ensure optimal public transportation services, including supplemental bus services that existed on January 1, 2008, that support access to the ferry system for the immediate and surrounding communities.

(J) The date on which the ferry services are to be transferred to the authority.

(3) To the extent the plan required by this subdivision includes proposed changes to water transportation services or related facilities historically provided by the City of Vallejo or the City of Alameda, the proposed changes shall be consistent with that city's general plan, its redevelopment plans, and its development and disposition agreements for projects related to the provision of water transportation services. Those projects include, but are not limited to, the construction of parking facilities and transit transfer facilities within close proximity of a ferry terminal or the relocation of a ferry terminal.

(c) In developing the plans described in subdivisions (a) and (b), the authority shall cooperate to the fullest extent possible with the Metropolitan Transportation Commission, the ~~State Office of Emergency Services~~ *California Emergency Management Agency (Cal EMA)*, the Association of Bay Area Governments, and the San Francisco Bay Conservation and Development Commission, and shall, to the fullest extent possible, coordinate its planning with local agencies, including those local agencies that operated, or contracted for the operation of, public water transportation services as of the effective date of this title. To avoid duplication of work, the authority shall make maximum use of data and information available from the planning programs of the Metropolitan Transportation Commission, ~~the State Office of Emergency Services~~ *(Cal EMA)*, the Association of Bay Area Governments, the San Francisco Bay Conservation and Development Commission, the cities and counties in the San Francisco Bay area, and other public and private planning agencies. In addition, the authority shall consider both of the following:

(1) The San Francisco Bay Area Water Transit Implementation and Operations Plan adopted by the San Francisco Bay Area Water Transit Authority on July 10, 2003.

(2) Any other plan concerning water transportation within the bay area region developed or adopted by ~~any~~ *a* general purpose local government or special district that operates or sponsors water transit, including, but not limited to, those water transportation services provided under agreement with a private operator.

(d) The authority shall prepare a specific transition plan for any transfer not anticipated by the transition plan required under subdivision (b).

(e) Prior to adopting the plans required by this section, the authority shall establish a process for taking public input on the plans in consultation with existing operators of public ferry services affected by the plans. The public input process shall include at least one public hearing conducted at least 60 days prior to the adoption of the plans in each city where an operational ferry facility existed as of January 1, 2008.

SEC. 99. Section 70375 of the Government Code is amended to read:

70375. (a) This article shall take effect on January 1, 2003, and the fund, penalty, and fee assessment established by this article

shall become operative on January 1, 2003, except as otherwise provided in this article.

(b) In each county, the five-dollar ($5) penalty amount authorized by subdivision (a) of Section 70372 shall be reduced by the amount collected for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401 to the extent it is funded by ~~money~~ *moneys* from the local courthouse construction fund.

(c) The authority for all of the following shall expire proportionally on ~~the~~ June ~~30th~~ *30* following the date of transfer of responsibility for facilities from the county to the Judicial Council, except so long as ~~money is~~ *moneys are* needed to pay for construction provided for in those sections and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council:

(1) An additional penalty for a local courthouse construction fund established pursuant to Section 76100.

(2) A filing fee surcharge in the County of Riverside established pursuant to Section 70622.

(3) A filing fee surcharge in the County of San Bernardino established pursuant to Section 70624.

(4) A filing fee surcharge in the City and County of San Francisco established pursuant to Section 70625.

(d) For purposes of subdivision (c), ~~the term~~ "proportionally" means ~~that~~ *the* proportion of the fee or surcharge that shall expire upon the transfer of responsibility for a facility that is the same proportion as the square footage that facility bears to the total square footage of court facilities in that county.

SEC. 100. Section 70391 of the Government Code is amended to read:

70391. The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law:

(a) Exercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities ~~whose~~ *the* title *of which* is held by the state, including, but not limited to, the acquisition and development of facilities.

(b) Exercise the full range of policymaking authority over trial court facilities, including, but not limited to, planning, construction,

acquisition, and operation, to the extent not expressly otherwise limited by law.

(c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:

(1) If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011, and as follows, except that, notwithstanding any other provision of law, the proportion of the net proceeds that represents the proportion of other state funds used on the property other than for operation and maintenance shall be returned to the fund from which it came and the remainder of the proceeds shall be deposited in the State Court Facilities Construction Fund.

(2) The Judicial Council shall consult with the county concerning the disposition of the facility. Notwithstanding any other law, including Section 11011, when requested by the transferring county, a surplus facility shall be offered to that county at fair market value prior to being offered to ~~any other~~ *another* state agency or ~~other~~ local government agency.

(3) The Judicial Council shall consider whether the potential new or planned use of the facility:

(A) Is compatible with the use of other adjacent public buildings.

(B) Unreasonably departs from the historic or local character of the surrounding property or local community.

(C) Has a negative impact on the local community.

(D) Unreasonably interferes with other governmental agencies that use or are located in or adjacent to the building containing the court facility.

(E) Is of sufficient benefit to outweigh the public good in maintaining it as a court facility or building.

(4) All funds received for disposal of surplus court facilities shall be deposited by the Judicial Council in the State Court Facilities Construction Fund.

(5) If the facility was acquired, rehabilitated, or constructed, in whole or in part, with ~~money~~ *moneys* in the State Court Facilities Construction Fund that ~~was~~ *were* deposited in that fund from the state fund, any funds received for disposal of that facility shall be apportioned to the state fund and the State Court Facilities Construction Fund in the same proportion that the original cost of

the building was paid from the state fund and other sources of the State Court Facilities Construction Fund.

(6) Submission of a plan to the Legislature for the disposition of court facilities transferred to the state, prior to, or as part of, any budget submission to fund a new courthouse that will replace the existing court facilities transferred to the state.

(d) Conduct audits of all of the following:

(1) The collection of fees by the local courts.

(2) The ~~money~~ *moneys* in local courthouse construction funds established pursuant to Section 76100.

(3) The collection of moneys to be transmitted to the Controller for deposit in the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5.

(e) Establish policies, procedures, and guidelines for ensuring that the courts have adequate and sufficient facilities, including, but not limited to, facilities planning, acquisition, construction, design, operation, and maintenance.

(f) Establish and consult with local project advisory groups on the construction of new trial court facilities, including the trial court, the county, the local sheriff, state agencies, bar groups, including, but not limited to, the criminal defense bar, and members of the community. Consultation with the local sheriff in design, planning, and construction shall include the physical layout of new facilities, as it relates to court security and other security considerations, including matters relating to the safe control and transport of in-custody defendants.

(g) Manage court facilities in consultation with the trial courts.

(h) Allocate appropriated funds for court facilities maintenance and construction, subject to the other provisions of this chapter.

(i) Manage shared-use facilities to the extent required by the agreement under Section 70343.

(j) Prepare funding requests for court facility construction, repair, and maintenance.

(k) Implement the design, bid, award, and construction of all court construction projects, except as delegated to others.

(*l*) Provide for capital outlay projects that may be built with funds appropriated or otherwise available for these purposes as follows:

(1) Approve five-year and master plans for each district.

(2) Establish priorities for construction.

(3) Recommend to the Governor and the Legislature the projects to be funded by the State Court Facilities Construction Fund.

(4) Submit the cost of projects proposed to be funded to the Department of Finance for inclusion in the Governor's Budget.

(m) In carrying out its responsibilities and authority under this section, the Judicial Council shall consult with the local court for:

(1) Selecting and contracting with facility consultants.

(2) Preparing and reviewing architectural programs and designs for court facilities.

(3) Preparing strategic master and five-year capital facilities plans.

(4) Major maintenance of ~~any~~ *a* facility.

SEC. 101. Section 76000 of the Government Code is amended to read:

76000. (a) (1) Except as otherwise provided ~~elsewhere~~ in this section, in each county there shall be levied an additional penalty in the amount of seven dollars ($7) for every ten dollars ($10), or part of ten dollars ($10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or ~~any~~ *a* local ordinance adopted pursuant to the Vehicle Code.

(2) ~~This~~ *The* additional penalty shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code. ~~These~~ *The* moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. The county treasurer shall deposit those amounts specified by the board of supervisors by resolution in one or more of the funds established pursuant to this chapter. However, deposits to these funds shall continue through whatever period of time is necessary to repay any borrowings made by the county on or before January 1, 1991, to pay for construction provided for in this chapter.

(3) This additional penalty does not apply to the following:

(A) ~~Any~~ *A* restitution fine.

(B) ~~Any~~ *A* penalty authorized by Section 1464 of the Penal Code or this chapter.

(C) ~~Any~~ *A* parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(D) The state surcharge authorized by Section 1465.7 of the Penal Code.

(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of two dollars and fifty cents ($2.50) shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund two dollars and fifty cents ($2.50). ~~These~~ *The* moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section ~~1462.3 or~~ 1463.009 of the Penal Code. The judges of the county shall increase the bail schedule amounts as appropriate to reflect the added penalty provided for by this section. In ~~those~~ cities, districts, or other issuing agencies ~~which~~ *that* elect to accept parking penalties, and otherwise process parking violations pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, ~~that~~ *the* city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the added penalty provided for by this section. Each agency ~~which~~ *that* elects to process parking violations shall pay to the county treasurer two dollars and fifty cents ($2.50) for each fund for each parking penalty collected on each violation ~~which~~ *that* is not filed in court. Those payments to the county treasurer shall be made monthly, and the county treasurer shall deposit all those sums in the authorized fund. ~~No~~ *An* issuing agency shall *not* be required to contribute revenues to ~~any~~ *a* fund in excess of those revenues generated from the surcharges established in the resolution adopted pursuant to this chapter, except as otherwise agreed upon by the local governmental entities involved.

(c) The county treasurer shall deposit one dollar ($1) of every two dollars and fifty cents ($2.50) collected pursuant to subdivision (b) into the general fund of the county.

(d) The authority to impose the two-dollar-and-fifty-cent ($2.50) penalty authorized by subdivision (b) shall be reduced to one dollar ($1) as of the date of transfer of responsibility for facilities from

the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter ~~5.1~~ *5.7*, except as ~~money is~~ *moneys are* needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council.

(e) The seven-dollar ($7) additional penalty authorized by subdivision (a) shall be reduced in each county by the additional penalty amount assessed by the county for the local courthouse construction fund established by Section 76100 as of January 1, 1998, when the ~~money~~ *moneys* in that fund ~~is~~ *are* transferred to the state under Section 70402. The amount each county shall charge as an additional penalty under this section shall be as follows:

Alameda	$5.00	Marin	$5.00	San Luis Obispo	$6.00
Alpine	$5.00	Mariposa	$2.00	San Mateo	$4.75
Amador	$5.00	Mendocino	$7.00	Santa Barbara	$3.50
Butte	$6.00	Merced	$5.00	Santa Clara	$5.50
Calaveras	$3.00	Modoc	$4.00	Santa Cruz	$7.00
Colusa	$6.00	Mono	$5.00	Shasta	$3.50
Contra Costa	$5.00	Monterey	$5.00	Sierra	$7.00
Del Norte	$5.00	Napa	$3.00	Siskiyou	$5.00
El Dorado	$5.00	Nevada	$5.00	Solano	$5.00
Fresno	$7.00	Orange	$3.50	Sonoma	$5.00
Glenn	$4.06	Placer	$4.75	Stanislaus	$5.00
Humboldt	$5.00	Plumas	$5.00	Sutter	$3.00
Imperial	$6.00	Riverside	$4.60	Tehama	$7.00
Inyo	$4.00	Sacramento	$5.00	Trinity	$4.26
Kern	$7.00	San Benito	$5.00	Tulare	$5.00
Kings	$7.00	San Bernardino	$5.00	Tuolumne	$5.00
Lake	$7.00	San Diego	$5.00	Ventura	$5.00
Lassen	$2.00	San Francisco	$6.99	Yolo	$7.00
Los Angeles	$5.00	San Joaquin	$3.75	Yuba	$3.00
Madera	$7.00				

SEC. 102. Section 76000.5 of the Government Code is amended to read:

76000.5. (a) (1) Except as otherwise provided ~~elsewhere~~ in this section, for purposes of supporting emergency medical services pursuant to Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code, in addition to the

penalties set forth in Section 76000, the county board of supervisors may elect to levy an additional penalty in the amount of two dollars ($2) for every ten dollars ($10), or part of ten dollars ($10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including violations of Division 9 (commencing with Section 23000) of the Business and Professions Code relating to the control of alcoholic beverages, and all offenses involving a violation of the Vehicle Code or ~~any~~ *a* local ordinance adopted pursuant to the Vehicle Code. This penalty shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code.

(2) This additional penalty does not apply to the following:

(A) ~~Any~~ *A* restitution fine.

(B) ~~Any~~ *A* penalty authorized by Section 1464 of the Penal Code or this chapter.

(C) ~~Parking offenses~~ *A parking offense* subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(D) The state surcharge authorized by Section 1465.7 of the Penal Code.

(b) Funds shall be collected pursuant to subdivision (a) only if the county board of supervisors provides that the increased penalties do not offset or reduce the funding of other programs from other sources, but that these additional revenues result in increased funding to those programs.

(c) ~~Money~~ *Moneys* collected pursuant to subdivision (a) shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code.

(d) Funds collected pursuant to this section shall be deposited into the Maddy Emergency Medical Services (EMS) Fund established pursuant to Section 1797.98a of the Health and Safety Code.

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

SEC. 103. Section 76104.6 of the Government Code is amended to read:

76104.6. (a) (1) Except as otherwise provided in this section, for the purpose of implementing the DNA Fingerprint, Unsolved

Crime and Innocence Protection Act *(Proposition 69), as approved by the voters at the November 2, 2004, statewide general election*, there shall be levied an additional penalty of one dollar for every ten dollars ($10), or part of ten dollars ($10), in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or ~~any~~ *a* local ordinance adopted pursuant to the Vehicle Code.

(2) The penalty imposed by this section shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code. ~~These~~ *The* moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the ~~collected~~ moneys *collected* pursuant to this section. The moneys of the fund shall be allocated pursuant to subdivision (b).

(3) ~~This~~ *The* additional penalty does not apply to the following:

(A) ~~Any~~ *A* restitution fine.

(B) ~~Any~~ *A* penalty authorized by Section 1464 of the Penal Code or this chapter.

(C) ~~Any~~ *A* parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(D) The state surcharge authorized by Section 1465.7 of the Penal Code.

(b) (1) The fund moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects specified herein.

(2) On the last day of each calendar quarter of the year specified in this subdivision, the county treasurer shall transfer fund moneys in the county's DNA Identification Fund to the ~~state~~ Controller for credit to the state's DNA Identification Fund, which is hereby established in the State Treasury, as follows:

(A) In the first two calendar years following the effective date of this section, 70 percent of the amounts collected, including interest earned thereon~~;~~.

(B) In the third calendar year following the effective date of this section, 50 percent of the amounts collected, including interest earned thereon~~;~~.

(C) In the fourth calendar year following the effective date of this section and in each calendar year thereafter, 25 percent of the amounts collected, including interest earned thereon.

(3) Funds remaining in the county's DNA Identification Fund shall be used only to reimburse local sheriff or other law enforcement agencies to collect DNA specimens, samples, and print impressions pursuant to this chapter; for expenditures and administrative costs made or incurred to comply with the requirements of paragraph (5) of subdivision (b) of Section 298 of the Penal Code including the procurement of equipment and software integral to confirming that a person qualifies for entry into the Department of Justice DNA *and Forensic Identification* Database and Data Bank Program; and to local sheriff, police, district attorney, and regional state crime laboratories for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA crime scene samples from cases in which DNA evidence would be useful in identifying or prosecuting suspects, including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA crime scene samples from unsolved cases.

(4) The state's DNA Identification Fund shall be administered by the Department of Justice. Funds in the state's DNA Identification Fund, upon appropriation by the Legislature, shall be used by the Attorney General only to support DNA testing in the state and to offset the impacts of increased testing and shall be allocated as follows:

(A) Of the amount transferred pursuant to subparagraph (A) of paragraph (2) of subdivision (b), 90 percent to the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for

the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and ~~Databank~~ *Data Bank* Act *of 1998*, as amended *(Chapter 6 (commencing with Section 295) of Title 9 of Part 1 of the Penal Code*, and 10 percent to the Department of Justice Information Bureau Criminal History Unit for expenditures and administrative costs that have been approved by the Chief of the Department of Justice Bureau of Forensic Services made or incurred to update equipment and software to facilitate compliance with the requirements of subdivision (e) of Section 299.5 of the Penal Code.

(B) Of the amount transferred pursuant to subparagraph (B) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and ~~Databank~~ *Data Bank* Act *of 1998*, as amended.

(C) Of the amount transferred pursuant to subparagraph (C) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice to the DNA Laboratory to comply with the requirements of Section 298.3 of the Penal Code and for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and ~~Databank~~ *Data Bank* Act *of 1998*, as amended.

(c) On or before April 1 in the year following adoption of this section, and annually thereafter, the board of supervisors of each county shall submit a report to the Legislature and the Department of Justice. The report shall include the total amount of fines collected and allocated pursuant to this section, and the amounts expended by the county for each program authorized pursuant to paragraph (3) of subdivision (b) ~~of this section~~. The Department

of Justice shall make the reports publicly available on the department's *Internet* Web site.

(d) All requirements imposed on the Department of Justice pursuant to the DNA Fingerprint, Unsolved Crime and Innocence Protection Act are contingent upon the availability of funding and are limited by revenue, on a fiscal year basis, received by the Department of Justice pursuant to this section and any additional appropriation approved by the Legislature for purposes related to implementing this ~~measure~~ *act*.

(e) Upon approval of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, the Legislature shall ~~loan~~ *lend* the Department of Justice General Fund in the amount of ~~$7,000,000~~ *seven million dollars ($7,000,000)* for purposes of implementing ~~that~~ *the* act. ~~This~~ *The* loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time the loan is made. Principal and interest on the loan shall be repaid in full no later than four years from the date the loan was made and shall be repaid from revenue generated pursuant to this section.

(f) Notwithstanding any other provision of law, the Controller may use the state's DNA Identification Fund, created pursuant to paragraph (2) of subdivision (b), for loans to the General Fund as provided in Sections 16310 and 16381. Any such loan shall be repaid from the General Fund with interest computed at 110 percent of the Pooled Money Investment Account rate, with the interest commencing to accrue on the date the loan is made from the fund. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the state's DNA Identification Fund was created.

SEC. 104. Section 91530 of the Government Code is amended to read:

91530. (a) Applications for projects or companies not in accordance with the reasonable priorities and criteria that an authority may establish need not be accepted and further processed by an authority.

(b) Acceptance of any application in no way obligates an authority to adopt a resolution of intention or undertake the project proposed.

(c) Upon acceptance of any application and request of a company, the board shall determine whether it is likely that the

undertaking of the project by the authority will be a substantial factor in the accrual of one or more of the public benefits from the use of the facilities, including equipment, as proposed in the application, whether the activities or uses are in accord with Section 91503, and whether the project is otherwise in accord with the purposes and requirements of this title.

(d) Upon affirmative determinations under subdivision (c), the board may express the present intention of the authority to issue bonds in connection with the project and shall evidence the same by the adoption of a resolution of intention to undertake the project. The resolution of intention shall briefly describe the facilities, state the estimated principal amount of the bond issue (which estimate shall not limit the amount of bonds which may be issued), indicate whether it is expected that the bonds will be tax-exempt or taxable, and identify the company that is the applicant, and may include other provisions as the board shall prescribe.

(e) A notice of the filing of an application, naming the company that is the applicant, briefly describing the facilities, stating the estimated principal amount of the bond issue and referring to the application for further particulars, shall be published by the secretary of the authority pursuant to Section 6061, and in the event the facilities are proposed to be located in a city and the project is proposed to be undertaken by an authority the jurisdiction of which is countywide, a copy of the notice shall be mailed by the secretary of the authority to the governing body of the city. Any amendment, supplement, or clarification of an application that changes the company that is the applicant, the description of the facilities, or the estimated principal amount of the bond issue, as previously noticed, shall be noticed in the same manner.

(f) A copy of the application shall be filed with the public agency. The authority shall not issue bonds with respect to any project unless the public agency shall approve, conditionally or unconditionally, the project, including the issuance of bonds therefor. Action to approve or disapprove a project shall be taken within 45 days of the filing with the public agency. Certification of approval or disapproval shall be made by the clerk of the public agency to the authority. If the governing body has declared itself to be the board pursuant to Section 91523, the approvals and other actions required of the authority or the public agency by this section

may be taken and performed on a joint and consolidated basis, as may be deemed practicable in the discretion of the public agency.

(g) A resolution of intention may be revoked, amended, supplemented or clarified by the board, at any time prior to entry into the project agreements. The project agreements, indenture, bonds and other proceedings shall be consistent with the resolution of intention, and shall supersede it except to the extent otherwise expressed.

SEC. 105. Section 91533 of the Government Code is amended to read:

91533. Authorities shall undertake projects by entry into project agreements in substance not inconsistent with the following:

(a) The company shall comply with (or cause to be complied with) all legal requirements relating to the project and the operation, repair, and maintenance of the facilities, including (1) obtaining any rezonings or variances, building, development, and other permits and approvals, and licenses and other entitlements for use, without regard to any exemption for public projects~~,~~ and (2) securing the issuance of any certificates of need, convenience, and necessity or other certificates or franchises; and shall provide satisfactory evidence of compliance.

(b) The company shall comply with all conditions imposed by the public agency in its approval of the project pursuant to subdivision (f) of Section 91530.

(c) The company shall provide, or cause to be provided by others, all amounts required for the project and all property relating to the project that are not to be provided as or by expenditure of bond proceeds, and in the case of any amounts and property that the company proposes to cause to be provided by others, as by contract, grant, subsidy, loan, or other form of assistance, shall provide satisfactory evidence that those amounts and property will be provided when required.

(d) Expenditure of bond proceeds shall be supervised to assure proper application to the project.

(e) The company shall at its own expense insure, repair, and maintain the facilities, pay taxes with respect to its interests in the property relating to the project as ~~Division~~ *Part* 1 (commencing with Section 101) of *Division 1 of* the Revenue and Taxation Code requires, and pay assessments and other public charges secured by liens, upon those interests as constitute the tax base for property

taxation on the same basis as other property, or shall cause the same to be provided by others to the satisfaction of the authority.

(f) The amounts payable pursuant to the project agreements to or for the benefit of an authority shall in the aggregate not be less than amounts sufficient (1) to pay any bonds that shall be issued by the authority to pay the cost of the project, (2) to maintain any required reserves, (3) to make payments as may be required into any sinking fund or other similar fund, and (4) to pay those administration expenses that relate to the administration of the project agreements, the indenture, and the bonds.

(g) The term shall extend at least until the date on which all those bonds and all other obligations incurred by an authority in connection with a project shall have been paid in full or adequate funds for that payment shall have been otherwise provided.

(h) The additional provisions as in the determination of the board are necessary or appropriate to effectuate the purposes of this article, including provisions for the following:

(1) For payments pursuant to the project agreements that include amounts for administration expenses in addition to the amounts that the agreement is required to obligate the company or others to pay.

(2) For payment before a facility exists or becomes functional, or after a facility has ceased to exist or be functional to any extent and from any cause.

(3) For payment whether or not the company is in possession or is entitled to be in possession of the facilities or for payment in the event of sale or other transfer of ownership of or the encumbering of the facilities.

(4) Relating to the carrying out and completion of the project, including the allocation of responsibility between the authority and the company regarding the payment of administrative expenses and costs of issuance, the acquisition of property, the making of other purchases, the contracting for construction of the facilities, with or without competitive bidding, and the payment therefor and the designation of particular deposits or investments otherwise authorized for the deposit, investment, and reinvestment of revenues.

(5) That some or all of the obligations of a company shall be unconditional and shall be binding and enforceable in all circumstances whatsoever notwithstanding any other law.

(6) Relating to the use, maintenance, repair, insurance, and replacement of property relating to the project, such as the authority and the company deem necessary for the protection of themselves or others, including, but not limited to, liability insurance, and indemnification in the event of default.

(7) Defining events of default and providing remedies therefor, which may include an acceleration of future payments thereunder.

(i) The company shall provide for the payment of relocation assistance as provided by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, and shall reimburse the authority or the public agency, as the case may be, for relocation assistance services, and notwithstanding any other provision of this title, the authority shall determine that those services are provided and that relocation assistance payments are made.

(j) Notwithstanding any other provision of this title, projects undertaken and carried out pursuant to this title shall be consistent with the requirements of the general plan as contained in Article 5 (commencing with Section 65300) of Chapter 3 of *Division 1 of* Title 7 at the time of entry into the project agreement, or in the event inconsistent at that time, then at the time of delivery of any bonds.

(k) The company may, pursuant to project agreements, provide or cause to be provided other security, such as, but not limited to, an agreement of guaranty, either of itself or another person, or other consideration directly to the bondholders, their agent or the trustee under an indenture, and neither the company nor any such other person~~,~~ shall be precluded by the project agreements from having other contractual relationships with those bondholders~~,~~ *or that* agent or trustee.

(*l*) Authorities shall require, whether or not authorities, companies, or others are the ~~contract awarding~~ *contract-awarding* bodies, that on any construction, improvement, reconstruction, or rehabilitation financed in whole or in part by means of bonds issued pursuant to this title, the resolution of intention for which is adopted on or after January 1, 1983, all workers employed in that work, exclusive of maintenance work, shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. Those rates shall be determined by the Director

of ~~the Department of~~ Industrial Relations in accordance with the standards set forth in Section 1773 of the Labor Code. The director's determination shall be final, and Sections 1773.1, 1773.5, 1774, and 1776 (excepting subdivision (f) of Section 1776) of the Labor Code shall apply.

SEC. 106. Section 86 of the Harbors and Navigation Code is amended to read:

86. (a) The local public agency shall annually certify to the department that for a small craft harbor or boating facility project that is, or has been, funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3, or a harbor constructed with funds from the State Lands Commission from tidelands oil revenues, adequate restroom and sanitary facilities, parking, refuse disposal, vessel pumpout facilities as required pursuant to Section 776, walkways, oil recycling facilities, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, and other necessary shoreside facilities sufficient for the use and operation of all vessels using the harbor or facility are provided or provide written findings showing why the facility cannot certify to these conditions.

(b) A city, county, or district, which has received or is receiving ~~money~~ *moneys* under this division for the construction or improvement of small craft harbors that provides facilities for the operation of commercial fishing vessels registered pursuant to Article 4 (commencing with Section 7880) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, shall not prohibit the commercial operation and use of those facilities by commercial passenger fishing vessels of the same or similar displacement, which are licensed pursuant to Section 7920 of the Fish and Game Code, or the use by private recreational vessels unless otherwise expressly provided by law, unless the city, county, or district provides, elsewhere in the same harbor, alternative, equivalent facilities available at comparable cost for the commercial operation and use of commercial passenger fishing vessels and private recreational vessels or unless the city, county, or district adopts written findings showing why the existing facility cannot accommodate the operation of commercial fishing vessels, including commercial passenger fishing vessels, or private recreational vessels and why the facility cannot be modified to do so or why alternative, equivalent facilities cannot be provided in the same harbor to accommodate those operations. This subdivision

does not require a facility to accept an application for the operation of an additional commercial passenger fishing boat at that facility if the harbor provides alternative, equivalent, adequate, safe facilities at comparable cost for the operation and use of commercial passenger fishing boats or if accommodations for the operation of the additional commercial passenger fishing boat are not reasonably available at the facility under the contract or agreement.

For the purposes of this subdivision, an alternative, equivalent facility in the same harbor shall provide, at comparable cost, adequate restroom and sanitary facilities, parking, refuse disposal, vessel pumpout facilities, walkways, oil recycling facilities, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, power and water service, and other shoreside facilities and equivalent docks, water channels, navigation aids, and weather protection, including, but not limited to, breakwaters, which are equivalent to the facility funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3.

(c) (1) A loan, grant, contract or agreement, or plan funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3 for a small craft harbor or boating facility project shall provide for construction, development, or improvement of facilities to meet the provisions of subdivisions (a) and (b), and provide vehicular access roads to the harbor or facility, as recommended by the Department of Transportation pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, unless the reasons for not meeting those provisions and recommendations are set forth in the contract or agreement with the department, or an addendum thereto.

(2) The small craft harbor or boating facility shall be designed, constructed, developed, improved, and operated to meet, at a minimum, applicable certification standards described in the Tier 1 standards of the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations).

(d) During the term of any existing or new loan contract made pursuant to Section 71.4~~,~~ or 76.3, or any existing or new contract or agreement pursuant to Section 70, 70.2, or 70.8, the department shall supervise and monitor compliance with this section and the operation and maintenance of the harbor or facility to assure that the planning, construction, development, or improvement fully

complies with this section and the contract or agreement terms and conditions.

(e) For the purposes of this chapter and Article ~~2~~ *3* (commencing with Section 70) of Chapter 2, a harbor or facility that is the subject of a contract or agreement as described in subdivision (d), is under the jurisdiction of the department.

SEC. 107. Section 652 of the Harbors and Navigation Code is amended to read:

652. (a) The department may issue regulations to do all of the following:

(1) Establish minimum safety standards for boats and associated equipment.

(2) Require the installation, carrying, or using of associated equipment.

(3) Prohibit the installation, carrying, or using of associated equipment that does not conform with safety standards established pursuant to this chapter.

(b) The regulations shall conform with the federal navigation laws or with the navigation rules promulgated by the United States Coast Guard, or any successor thereto.

(c) A person or public agency shall not use or give permission for the use of a vessel that does not carry the equipment or meet the standards established pursuant to this chapter.

(d) A peace officer or harbor police officer authorized to enforce this chapter may order the termination of the operation of a vessel that is found to be unsafe for operation pursuant to Section 6550.5 of Title 14 of the California Code of Regulations. A violation of an order under this subdivision is a misdemeanor.

(e) A person found guilty of a misdemeanor violation of subdivision (d), or of any regulation adopted by the department pursuant to this section, shall be subject to a fine not *to* exceed one thousand dollars ($1,000) ~~or~~, imprisonment in ~~the~~ *a* county jail not to exceed six months, or both that fine and imprisonment.

SEC. 108. Section 1176 of the Harbors and Navigation Code is amended to read:

1176. (a) The board shall appoint a physician or physicians who are qualified to determine the suitability of a person to perform his or her duties as a pilot, an inland pilot, or a pilot trainee in accordance with subdivision (c).

(b) An applicant for a pilot trainee position or for a pilot license, *or* an existing pilot trainee, a pilot, or ~~or~~ an inland pilot seeking renewal of his or her license shall undergo a physical examination by a ~~board appointed~~ *board-appointed* physician in accordance with standards prescribed by the board. Within 30 days prior to the examination, the applicant or licensee shall submit to the physician conducting the physical examination a complete list of all prescribed medications being taken by or administered to the applicant or licensee.

(c) On the basis of both the examination and an evaluation of the effects of the prescription medications named on the submitted list, the physician shall designate to the board whether or not the pilot, inland pilot, or pilot trainee is fit to perform his or her duties as a pilot, an inland pilot, or a pilot trainee.

(d) The license of a pilot or an inland pilot shall not be renewed unless he or she is found fit for duty pursuant to subdivision (c).

(e) Whenever a pilot, an inland pilot, or a pilot trainee is prescribed either a new dosage of a medication or a new medication, or suspends the use of a prescribed medication, he or she shall, within 10 days, submit that information to the ~~board appointed~~ *board-appointed* physician having possession of the prescribed medication list submitted pursuant to subdivision (b). Whenever the physician receives the updated information, the physician shall determine whether or not the medication change affects the licensee's or trainee's fitness for duty. If the physician determines that the medication change results in the pilot, inland pilot, or pilot trainee being unfit for duty, the physician shall inform the board.

(f) The board may terminate a pilot trainee or suspend or revoke the license of a pilot or an inland pilot who fails to submit the prescribed medication information required by this section.

SEC. 109. Section 5864 of the Harbors and Navigation Code is amended to read:

5864. The ballot to be used at the election shall be substantially in the following form:

HARBOR DISTRICT

OFFICIAL BALLOT

Instructions to voters: To vote in favor of the formation of the harbor district and the incurring of the indebtedness thereby, mark in the voting area at the right of the words "For the harbor district."

To vote against the formation of the harbor district and the incurring of the indebtedness thereby, mark in the voting area at the right of the words "Against the harbor district."

All erasures and distinguishing marks are forbidden and make the ballot void. If you wrongly stamp, tear, or deface this ballot, return it to the inspector of ~~election~~ *elections* and obtain another.

PROPOSITION

"For the harbor district" (here set forth a general statement of the purposes for which the indebtedness is to be incurred, and the amount of the indebtedness).

"Against the harbor district" (here set forth a general statement of the purposes for which the indebtedness is to be incurred and the amount of the indebtedness).

SEC. 110. Section 6035 of the Harbors and Navigation Code is amended to read:

6035. The ballot to be used at the election shall be substantially in the following form:

(Name) Harbor District Official Ballot

Instructions to voters: to vote in favor of the formation of the harbor district, mark in the voting area at the right of the words "For the harbor district." To vote against the formation of the harbor district mark in the voting area at the right of the words "Against the harbor district." To vote for a candidate for harbor commissioner mark after the name of the candidate; but no more persons shall be voted for than there are offices of harbor commissioner to be filled at this election.

All erasures and distinguishing marks are forbidden and make the ballot void. If you wrongfully stamp, tear, or deface this ballot, return it to the inspector of ~~election~~ *elections* and obtain another.

"For the harbor district."

"Against the harbor district."

"For harbor commissioners."

SEC. 111. Section 1261.5 of the Health and Safety Code is amended to read:

1261.5. (a) The number of oral dosage form or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c) or (d), or both *subdivisions* (c) and (d), of Section 1250 *of this code* for storage in a secured emergency supplies container, pursuant to Section 4119 of the Business and

Professions Code, shall be limited to 48. The State Department of Public Health may limit the number of doses of each drug available to not more than 16 doses of any separate drug dosage form in each emergency supply.

(b) Not more than four of the 48 oral form or suppository form drugs secured for storage in the emergency supplies container shall be psychotherapeutic drugs, except that the department may grant a program flexibility request to the facility to increase the number of psychotherapeutic drugs in the emergency supplies container to not more than 10 if the facility can demonstrate the necessity for an increased number of drugs based on the needs of the patient population at the facility. In addition, the four oral form or suppository form psychotherapeutic drug limit shall not apply to a special treatment program service unit distinct part, as defined in Section 1276.9. The department shall limit the number of doses of psychotherapeutic drugs available to not more than four doses in each emergency supply. Nothing in this section shall alter or diminish informed consent requirements, including, but not limited to, the requirements of Section 1418.9.

(c) Any limitations established pursuant to subdivisions (a) and (b) on the number and quantity of oral dosage or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c)~~,~~ *or* (d), or both *subdivisions* (c) and (d), of Section 1250 for storage in a secured emergency supplies container shall not apply to an automated drug delivery system, as defined in Section 1261.6, when a pharmacist controls access to the drugs.

SEC. 112. Section 1289.4 of the Health and Safety Code is amended to read:

1289.4. A theft and loss program shall be implemented by the long-term health care facilities within 90 days after January 1, 1988. The program shall include all of the following:

(a) Establishment and posting of the facility's policy regarding theft and investigative procedures.

(b) Orientation to the policies and procedures for all employees within 90 days of employment.

(c) Documentation of lost and stolen patient property with a value of twenty-five dollars ($25) or more and, upon request, the documented theft and loss record for the past 12 months shall be made available to the State Department of *Public* Health ~~Services~~, the county health department~~,~~ or law enforcement agencies, and

to the office of the State Long-Term Care Ombudsman in response to a specific complaint. The documentation shall include, but not be limited to, the following:

(1) A description of the article.

(2) Its estimated value.

(3) The date and time the theft or loss was discovered.

(4) If determinable, the date and time the loss or theft occurred.

(5) The action taken.

(d) A written patient personal property inventory is established upon admission and retained during the resident's stay in the long-term health care facility. A copy of the written inventory shall be provided to the resident or the person acting on the resident's behalf. Subsequent items brought into or removed from the facility shall be added to or deleted from the personal property inventory by the facility at the written request of the resident, the resident's family, a responsible party, or a person acting on behalf of a resident. The facility shall not be liable for items which have not been requested to be included in the inventory or for items which have been deleted from the inventory. A copy of a current inventory shall be made available upon request to the resident, responsible party, or other authorized representative. The resident, resident's family, or a responsible party may list those items ~~which~~ *that* are not subject to addition or deletion from the inventory, such as personal clothing or laundry, ~~which~~ *that* are subject to frequent removal from the facility.

(e) Inventory and surrender of the resident's personal effects and valuables upon discharge to the resident or authorized representative in exchange for a signed receipt.

(f) Inventory and surrender of personal effects and valuables following the death of a resident to the authorized representative in exchange for a signed receipt. Immediate notice to the public administrator of the county upon the death of a resident without known next of kin as provided in Section 7600.5 of the Probate Code.

(g) Documentation, at least semiannually, of the facility's efforts to control theft and loss, including the review of theft and loss documentation and investigative procedures and results of the investigation by the administrator and, when feasible, the resident council.

(h) Establishment of a method of marking, to the extent feasible, personal property items for identification purposes upon admission and, as added to the property inventory list, including engraving of dentures and tagging of other prosthetic devices.

(i) Reports to the local law enforcement agency within 36 hours when the administrator of the facility has reason to believe patient property with a ~~then current~~ *then-current* value of one hundred dollars ($100) or more has been stolen. Copies of those reports for the preceding 12 months shall be made available to the State Department of *Public* Health ~~Services~~ and law enforcement agencies.

(j) Maintenance of a secured area for patients' property which is available for safekeeping of patient property upon the request of the patient or the patient's responsible party. Provide a lock for the resident's bedside drawer or cabinet upon request of and at the expense of the resident, the resident's family, or authorized representative. The facility administrator shall have access to the locked areas upon request.

(k) A copy of this section and Sections 1289.3 and 1289.5 is provided by a facility to all of the residents and their responsible parties, and, available upon request, to all of the facility's prospective residents and their responsible parties.

(*l*) Notification to all current residents and all new residents, upon admission, of the facility's policies and procedures relating to the facility's theft and loss prevention program.

SEC. 113. Section 1348.8 of the Health and Safety Code is amended to read:

1348.8. (a) ~~Every~~ *A* health care service plan that provides, operates, or contracts for telephone medical advice services to its enrollees and subscribers shall do all of the following:

(1) Ensure that the in-state or out-of-state telephone medical advice service is registered pursuant to Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code.

(2) Ensure that the staff providing telephone medical advice services for the in-state or out-of-state telephone medical advice service are licensed as follows:

(A) For full service health care service plans, the staff hold a valid California license as a registered nurse or a valid license in the state within which they provide telephone medical advice

services as a physician and surgeon or physician assistant, and are operating in compliance with the laws governing their respective scopes of practice.

(B) (i) For specialized health care service plans providing, operating, or contracting with a telephone medical advice service in California, the staff shall be appropriately licensed, registered, or certified as a *dentist pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code, as a dental hygienist pursuant to Article 7 (commencing with Section 1740) of Chapter 4 of Division 2 of the Business and Professions Code, as a* physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, ~~as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code,~~ as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, *as an optometrist pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code,* as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section ~~4990.1)~~ *4991)* of Division 2 of the Business and Professions Code, ~~as an optometrist pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code,~~ or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating in compliance with the laws governing their respective scopes of practice.

(ii) For specialized health care service plans providing, operating, or contracting with an out-of-state telephone medical advice service, the staff shall be health care professionals, as identified in clause (i), who are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating in compliance with the laws governing their respective scopes of practice. All registered nurses providing telephone medical advice services to both in-state and

out-of-state business entities registered pursuant to this chapter shall be licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code.

(3) Ensure that every full service health care service plan provides for a physician and surgeon who is available on an on-call basis at all times the service is advertised to be available to enrollees and subscribers.

(4) Ensure that staff members handling enrollee or subscriber calls, who are not licensed, certified, or registered as required by paragraph (2), do not provide telephone medical advice. Those staff members may ask questions on behalf of a staff member who is licensed, certified, or registered as required by paragraph (2), in order to help ascertain the condition of an enrollee or subscriber so that the enrollee or subscriber can be referred to licensed staff. However, under no circumstances shall those staff members use the answers to those questions in an attempt to assess, evaluate, advise, or make any decision regarding the condition of an enrollee or subscriber or determine when an enrollee or subscriber needs to be seen by a licensed medical professional.

(5) Ensure that no staff member uses a title or designation when speaking to an enrollee or subscriber that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered professional described in Section 4999.2 *of the Business and Professions Code* unless the staff member is a licensed, certified, or registered professional.

(6) Ensure that the in-state or out-of-state telephone medical advice service designates an agent for service of process in California and files this designation with the director.

(7) Requires that the in-state or out-of-state telephone medical advice service makes and maintains records for a period of five years after the telephone medical advice services are provided, including, but not limited to, oral or written transcripts of all medical advice conversations with the health care service plan's enrollees or subscribers in California and copies of all complaints. If the records of telephone medical advice services are kept out of state, the health care service plan shall, upon the request of the director, provide the records to the director within 10 days of the request.

(8) Ensure that the telephone medical advice services are provided consistent with good professional practice.

(b) The director shall forward to the Department of Consumer Affairs, within 30 days of the end of each calendar quarter, data regarding complaints filed with the department concerning telephone medical advice services.

(c) For ~~the~~ purposes of this section, "telephone medical advice" means a telephonic communication between a patient and a health care professional in which the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment. "Telephone medical advice" includes assessment, evaluation, or advice provided to patients or their family members.

SEC. 114. Section 1357 of the Health and Safety Code is amended to read:

1357. As used in this article:

(a) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health care plan contract covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (o).

(b) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, at the small employer's regular places of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business and included as employees under a health care plan contract of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee, as defined in this paragraph, who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer. Permanent employees who work at least 20 hours but not more than 29 hours are deemed to be eligible employees if all four of the following apply:

(A) They otherwise meet the definition of an eligible employee except for the number of hours worked.

(B) The employer offers the employees health coverage under a health benefit plan.

(C) All similarly situated individuals are offered coverage under the health benefit plan.

(D) The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter. The health care service plan may request any necessary information to document the hours and time period in question, including, but not limited to, payroll records and employee wage and tax filings.

(2) Any member of a guaranteed association as defined in subdivision (o).

(c) "In force business" means an existing health benefit plan contract issued by the plan to a small employer.

(d) "Late enrollee" means an eligible employee or dependent who has declined enrollment in a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's plan contract and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, any other person eligible for coverage through a guaranteed association pursuant to subdivision (o), or an eligible dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) He or she was covered under another employer health benefit plan, the Healthy Families Program, the Access for Infants and Mothers (AIM) Program, or the Medi-Cal program at the time the individual was eligible to enroll.

(B) He or she certified at the time of the initial enrollment that coverage under another employer health benefit plan, the Healthy

Families Program, the AIM Program, or the Medi-Cal program was the reason for declining enrollment, provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) He or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, *or* divorce~~, loss of~~*; or he or she has lost or will lose* coverage under the Healthy Families Program, the AIM Program, or the Medi-Cal program.

(D) He or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan, or requests enrollment within 60 days after termination of Medi-Cal program coverage, AIM Program coverage, or Healthy Families Program coverage.

(2) The employer offers multiple health benefit plans and the employee elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) (A) In the case of an eligible employee, as defined in paragraph (1) of subdivision (b), the plan cannot produce a written statement from the employer stating that the individual or the person through whom the individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed, acknowledgment of an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(B) In the case of an association member who did not purchase coverage through a guaranteed association, the plan cannot produce a written statement from the association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or meets the requirements of paragraph (2) or (3).

(C) In the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or meets the requirements of paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for enrollment was made within 30 days of the change.

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program, the AIM Program, or the Medi-Cal program and requests enrollment within 60 days after termination of that coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf and

on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(e) "New business" means a health care service plan contract issued to a small employer that is not the plan's in force business.

(f) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the employee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(g) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement

other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The ~~federal~~ Medicare program pursuant to Title XVIII of the *federal* Social Security Act *(42 U.S.C. Sec. 1395 et seq.)*.

(3) The ~~medicaid~~ *Medicaid* program pursuant to Title XIX of the *federal* Social Security Act *(42 U.S.C. Sec. 1396 et seq.)*.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(h) "Rating period" means the period for which premium rates established by a plan are in effect and shall be no less than six months.

(i) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(j) "Risk adjustment factor" means the percentage adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard cost of services. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(k) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family composition of the employee, plus the health benefit plan selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30

30–39

40–49

50–54

55–59

60–64

65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the plan contract will be primary or secondary to benefits provided by the ~~federal~~ Medicare program pursuant to Title XVIII of the federal Social Security Act *(42 U.S.C. Sec. 1395 et seq.)*.

(2) Small employer health care service plans shall base rates to small employers using no more than the following family size categories:

(A) Single.

(B) Married couple.

(C) One adult and child or children.

(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a plan that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county, and divide no county into more than two regions. Plans shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the

entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) (i) In determining rates for small employers, a plan that does not operate statewide shall use no more than the number of geographic regions in the state that is determined by the following formula: the population, as determined in the last federal census, of all counties that are included in their entirety in a plan's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No plan shall have less than one geographic area.

(ii) If the formula in clause (i) results in a plan that operates in more than one county having only one geographic region, then the formula in clause (i) shall not apply and the plan may have two geographic regions, provided that no county is divided into more than one region.

Nothing in this section shall be construed to require a plan to establish a new service area or to offer health coverage on a statewide basis, outside of the plan's existing service area.

(*l*) "Small employer" means either of the following:

(1) Any person, firm, proprietary or nonprofit corporation, partnership, public agency, or association that is actively engaged in business or service, that, on at least 50 percent of its working days during the preceding calendar quarter or preceding calendar year, employed at least two, but no more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health care service plan contracts, and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, a health care service plan shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (a), (b), and (c) of Section 1357.03, the definition shall include employers with at

least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health care service plan contract to a small employer pursuant to this article, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided in this article, provisions of this article that apply to a small employer shall continue to apply until the plan contract anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (n), that purchases health coverage for members of the association.

(m) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(n) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, and that (1) includes one or more small employers as defined in paragraph (1) of subdivision (*l*), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered to the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has included health insurance as a membership benefit for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any plan contract that is purchased to all individual

members and employer members in this state, (9) includes any member choosing to enroll in the plan contracts offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the health care service plan with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a contract issued by a plan is with an association, or a trust formed for~~,~~ or sponsored by~~,~~ an association, to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(o) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it also may include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include these persons as members of the guaranteed association, the association shall make that election in advance of purchasing a plan contract. Health care service plans may require an association to adhere to the membership composition it selects for up to 12 months.

(p) "Affiliation period" means a period that, under the terms of the health care service plan contract, must expire before health care services under the contract become effective.

SEC. 115. Section 1357.50 of the Health and Safety Code is amended to read:

1357.50. For purposes of this article:

(a) "Health benefit plan" means any individual or group insurance policy or health care service plan contract that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare

services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan, the Healthy Families Program, the Access for Infants and Mothers (AIM) Program, or the Medi-Cal program at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment, that coverage under another employer health benefit plan, the Healthy Families Program, the AIM Program, or the Medi-Cal program was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, legal separation, *or* divorce~~, loss of~~*; or the individual has lost or will lose* coverage

under the Healthy Families Program, the AIM Program, or the Medi-Cal program.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan, or requests enrollment within 60 days after termination of Medi-Cal program coverage, AIM Program coverage, or Healthy Families Program coverage.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan. The health benefit plan shall enroll a dependent child within 30 days after receipt of a court order or request from the district attorney, either parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, the employer, or the group administrator. In the case of children who are eligible for medicaid, the State Department of Health Care Services may also make the request.

(4) The plan cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision, and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program, the AIM Program, or the Medi-Cal

program and requests enrollment within 60 days of termination of that coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf, and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(c) “Preexisting condition provision” means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee’s effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The ~~federal~~ Medicare program pursuant to Title XVIII of the *federal* Social Security Act *(42 U.S.C. Sec. 1395 et seq.)*.

(3) The ~~medicaid~~ *Medicaid* program pursuant to Title XIX of the *federal* Social Security Act *(42 U.S.C. Sec. 1396 et seq.)*.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health ~~Services~~ *Service* Act (42 U.S.C. Sec. 300gg(c)).

(e) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

(f) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 116. Section 1358.4 of the Health and Safety Code is amended to read:

1358.4. The following definitions apply for the purposes of this article:

(a) "Applicant" means:

(1) An individual enrollee who seeks to contract for health coverage, in the case of an individual Medicare supplement contract.

(2) An enrollee who seeks to obtain health coverage through a group, in the case of a group Medicare supplement contract.

(b) "Bankruptcy" means that situation in which a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(c) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

(d) (1) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) Any individual or group contract, policy, certificate, or program that is written or administered by a health care service plan, health insurer, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage.

(B) Part A or B of Title XVIII of the federal Social Security Act *(42 U.S.C. Sec. 1395c et seq.)* (Medicare).

(C) Title XIX of the federal Social Security Act ~~(medicaid)~~ *(42 U.S.C. Sec. 1396 et seq.) (Medicaid)*, other than coverage consisting solely of benefits under Section 1928 of that act.

(D) Chapter 55 of Title 10 of the United States Code (CHAMPUS).

(E) A medical care program of the Indian Health Service or of a tribal organization.

(F) A state health benefits risk pool.

(G) A health plan offered under Chapter 89 of Title 5 of the United States Code (Federal Employees Health Benefits Program).

(H) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the federal Public Health Service Act, as amended by Public Law 104-191, the federal Health Insurance Portability and Accountability Act of 1996.

(I) A health benefit plan under Section 5(e) of the federal Peace Corps Act ~~(Section 2504(e) of Title 22 of the United States Code)~~ *(22 U.S.C. Sec. 2504(e)*.

(J) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(K) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health ~~Services~~ *Service* Act (42 U.S.C. Sec. 300gg(c)).

(2) "Creditable coverage" shall not include one or more, or any combination of, the following:

(A) Coverage for accident-only or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers' compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for onsite medical clinics.

(H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate, or contract or are otherwise not an integral part of the plan:

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Other similar, limited benefits as are specified in federal regulations.

(4) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(5) "Creditable coverage" shall not include the following if offered as a separate policy, certificate, or contract:

(A) Medicare supplemental health insurance as defined under Section 1882(g)(1) of the federal Social Security Act.

(B) Coverage supplemental to the coverage provided under Chapter 55 of Title 10 of the United States Code.

(C) Similar supplemental coverage provided to coverage under a group health plan.

(e) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in Section 1002 of Title 29 of the United States Code (Employee Retirement Income Security Act).

(f) "Insolvency" means when an issuer, licensed to transact the business of a health care service plan in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(g) "Issuer" means a health care service plan delivering, or issuing for delivery, Medicare supplement contracts in this state, but does not include entities subject to Article 6 (commencing with Section 10192.1) of Chapter 1 of *Part 2 of* Division 2 of the Insurance Code.

(h) "Medicare" means the federal Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as amended.

(i) "Medicare Advantage Plan" means a plan of coverage for health benefits under Medicare Part C and includes:

(1) Coordinated care plans that provide health care services, including, but not limited to, health care service plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organizations plans.

(2) Medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account.

(3) Medicare Advantage private fee-for-service plans.

(j) "Medicare supplement contract" means a group or individual plan contract of hospital and medical service associations or health care service plans, other than a contract issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 ~~U.S.C.A. Section~~ *U.S.C. Sec.* 1395mm) or an issued contract under a demonstration project specified in Section 1395ss(g)(1) of Title 42 of the United States Code, that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. "Contract" means "Medicare supplement contract," unless the context requires otherwise. "Medicare supplement contract" does not include a Medicare Advantage plan established under Medicare Part C, an outpatient prescription drug plan established under Medicare Part D, or a health care prepayment plan that provides benefits pursuant to an agreement under subparagraph (A) of paragraph (1) of subsection (a) of Section 1833 of the *federal* Social Security Act.

(k) "1990 standardized Medicare supplement benefit plan," "1990 standardized benefit plan," or "1990 plan" means a group or individual Medicare supplement contract issued on or after July 21, 1992, and with an effective date prior to June 1, 2010, and includes Medicare supplement contracts renewed on or after that date that are not replaced by the issuer at the request of the enrollee or subscriber.

(*l*) "2010 standardized Medicare supplement benefit plan," "2010 standardized benefit plan," or "2010 plan" means a group or individual Medicare supplement contract issued with an effective date on or after June 1, 2010.

(m) "Secretary" means the Secretary of the United States Department of Health and Human Services.

SEC. 117. Section 1358.12 of the Health and Safety Code is amended to read:

1358.12. (a) (1) With respect to the guaranteed issue of a Medicare supplement contract, eligible persons are those individuals described in subdivision (b) who seek to enroll under the contract during the period specified in subdivision (c), and who submit evidence of the date of termination or disenrollment or

enrollment in Medicare Part D with the application for a Medicare supplement contract.

(2) With respect to eligible persons, an issuer shall not take any of the following actions:

(A) Deny or condition the issuance or effectiveness of a Medicare supplement contract described in subdivision (e) that is offered and is available for issuance to new enrollees by the issuer.

(B) Discriminate in the pricing of that Medicare supplement contract because of health status, claims experience, receipt of health care, or medical condition.

(C) Impose an exclusion of benefits based on a preexisting condition under that Medicare supplement contract.

(b) An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare and either of the following ~~apply~~ *applies*:

(A) The plan either terminates or ceases to provide all of those supplemental health benefits to the individual.

(B) The employer no longer provides the individual with insurance that covers all of the payment for the 20-percent coinsurance.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, and any of the following circumstances apply:

(A) The certification of the organization or plan has been terminated.

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary. Those changes in circumstances shall not include termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856 *of the federal Social Security Act*, or the plan is terminated for all individuals within a residence area.

(D) The Medicare Advantage plan in which the individual is enrolled reduces any of its benefits or increases the amount of cost sharing or discontinues for other than good cause relating to quality of care, its relationship or contract under the plan with a provider who is currently furnishing services to the individual. An individual shall be eligible under this subparagraph for a Medicare supplement contract issued by the same issuer through which the individual was enrolled at the time the reduction, increase, or discontinuance described above occurs or, commencing January 1, 2007, for one issued by a subsidiary of the parent company of that issuer or by a network that contracts with the parent company of that issuer.

(E) The individual demonstrates, in accordance with guidelines established by the secretary, either of the following:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this article in relation to the individual, including the failure to provide on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards.

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual.

(F) The individual meets other exceptional conditions as the secretary may provide.

(3) The individual is 65 years of age or older, is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the *federal* Social Security Act, and circumstances similar to those described in paragraph (2) exist that would permit discontinuance of the individual's enrollment with the provider, if the individual were enrolled in a Medicare Advantage plan.

(4) The individual meets both of the following conditions:

(A) The individual is enrolled with any of the following:

(i) An eligible organization under a contract under Section 1876 of the *federal* Social Security Act (Medicare cost).

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999.

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the *federal* Social Security Act (health care prepayment plan).

(iv) An organization under a Medicare Select policy.

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) or (3).

(5) The individual is enrolled under a Medicare supplement contract, and the enrollment ceases because of any of the following circumstances:

(A) The insolvency of the issuer or bankruptcy of the nonissuer organization, or other involuntary termination of coverage or enrollment under the contract.

(B) The issuer of the contract substantially violated a material provision of the contract.

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the contract's provisions in marketing the contract to the individual.

(6) The individual meets both of the following conditions:

(A) The individual was enrolled under a Medicare supplement contract and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, any eligible organization under a contract under Section 1876 of the *federal* Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the *federal* Social Security Act, or a Medicare Select policy.

(B) The subsequent enrollment under subparagraph (A) is terminated by the individual during any period within the first 12 months of the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act).

(7) The individual upon first becoming eligible for benefits under Medicare Part A at 65 years of age, enrolls in a Medicare Advantage plan under Medicare Part C or with a PACE provider under Section 1894 of the *federal* Social Security Act, and disenrolls from the plan or program not later than 12 months after the effective date of enrollment.

(8) The individual while enrolled under a Medicare supplement contract that covers outpatient prescription drugs enrolls in a Medicare Part D plan during the initial enrollment period, terminates enrollment in the Medicare supplement contract, and

submits evidence of enrollment in Medicare Part D along with the application for a contract described in paragraph (4) of subdivision (e).

(c) (1) In the case of an individual described in paragraph (1) of subdivision (b), the guaranteed issue period begins on the later of the following two dates and ends on the date that is 63 days after the date the applicable coverage terminated:

(A) The date the individual receives a notice of termination or cessation of all supplemental health benefits or, if no notice is received, the date of the notice denying a claim because of a termination or cessation of benefits.

(B) The date that the applicable coverage terminates or ceases.

(2) In the case of an individual described in paragraphs (2), (3), (4), (6), and (7) of subdivision (b) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

(3) In the case of an individual described in subparagraph (A) of paragraph (5) of subdivision (b), the guaranteed issue period begins on the earlier of the following two dates and ends on the date that is 63 days after the date the coverage is terminated:

(A) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other similar notice if any.

(B) The date that the applicable coverage is terminated.

(4) In the case of an individual described in paragraph (2), (3), (6), or (7) of, or in subparagraph (B) or (C) of paragraph (5) of, subdivision (b) who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date of the disenrollment.

(5) In the case of an individual described in paragraph (8) of subdivision (b), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the *federal* Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial enrollment period for Medicare Part D and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D.

(6) In the case of an individual described in subdivision (b) who is not included in this subdivision, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date of disenrollment.

(d) (1) In the case of an individual described in paragraph (6) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (6) of subdivision (b).

(2) In the case of an individual described in paragraph (7) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with a plan or in a program described in paragraph (7) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (7) of subdivision (b).

(3) For purposes of paragraphs (6) and (7) of subdivision (b), an enrollment of an individual with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b), or with a plan or in a program described in paragraph (7) of subdivision (b), shall not be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(e) (1) Under paragraphs (1), (2), (3), (4), and (5) of subdivision (b), an eligible individual is entitled to a Medicare supplement contract that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L offered by any issuer.

(2) (A) Under paragraph (6) of subdivision (b), an eligible individual is entitled to the same Medicare supplement contract in which he or she was most recently enrolled, if available from the same issuer. If that contract is not available, the eligible individual is entitled to a Medicare supplement contract that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L offered by any issuer.

(B) On and after January 1, 2006, an eligible individual described in this paragraph who was most recently enrolled in a Medicare supplement contract with an outpatient prescription drug benefit, is entitled to a Medicare supplement contract that is available from the same issuer but without an outpatient prescription drug benefit or, at the election of the individual, has a benefit package classified as a Plan A, B, C, F (including high deductible Plan F), K, or L that is offered by any issuer.

(3) Under paragraph (7) of subdivision (b), an eligible individual is entitled to any Medicare supplement contract offered by any issuer.

(4) Under paragraph (8) of subdivision (b), an eligible individual is entitled to a Medicare supplement contract that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L and that is offered and is available for issuance to a new enrollee by the same issuer that issued the individual's Medicare supplement contract with outpatient prescription drug coverage.

(f) (1) At the time of an event described in subdivision (b) by which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy or contract, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section and of the obligations of issuers of Medicare supplement contracts under subdivision (a). The notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in subdivision (b) by which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy or contract, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement contracts under subdivision (a). The notice shall be communicated within 10 working days of the date the issuer received notification of disenrollment.

(g) An issuer shall refund any unearned premium that an enrollee or subscriber paid in advance and shall terminate coverage upon the request of an enrollee or subscriber.

SEC. 118. Section 1358.91 of the Health and Safety Code is amended to read:

1358.91. The following standards are applicable to all Medicare supplement contracts delivered or issued for delivery in this state with an effective date on or after June 1, 2010. No contract may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement contract unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement contracts issued with an effective date before June 1, 2010, remain subject to the requirements of Section 1358.9.

(a) (1) An issuer shall make available to each prospective enrollee and subscriber a contract containing only the basic (core) benefits, as defined in subdivision (b) of Section 1358.81.

(2) If an issuer makes available any of the additional benefits described in subdivision (c) of Section 1358.81, or offers standardized benefit plan K or L, as described in paragraphs (8) and (9) of subdivision (e), then the issuer shall make available to each prospective enrollee and subscriber, in addition to a contract with only the basic (core) benefits as described in paragraph (1), a contract containing either standardized benefit plan C, as described in paragraph (3) of subdivision (e), or standardized benefit plan F, as described in paragraph (5) of subdivision (e).

(b) No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in subdivision (f) and by Section 1358.10.

(c) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans listed in subdivision (e) and conform to the definitions in Section 1358.4. Each benefit shall be structured in accordance with the format provided in subdivisions (b) and (c) of Section 1358.81; or, in the case of plan K or L, in ~~paragraphs~~ *paragraph* (8) or (9) of subdivision (e) of Section 1358.91 and list the benefits in the order shown in subdivision (e). For purposes of this section, “structure, language, and format” means style, arrangement, and overall content of a benefit.

(d) In addition to the benefit plan designations required in subdivision (c), an issuer may use other designations to the extent permitted by law.

(e) With respect to the makeup of 2010 standardized benefit plans, the following shall apply:

(1) Standardized Medicare supplement benefit plan A shall include only the following: the basic (core) benefits as defined in subdivision (b) of Section 1358.81.

(2) Standardized Medicare supplement benefit plan B shall include only the following: the basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible as defined in paragraph (1) of subdivision (c) of Section 1358.81.

(3) Standardized Medicare supplement benefit plan C shall include only the following: the basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country, as defined in paragraphs (1), (3), (4), and (6) of subdivision (c) of Section 1358.81, respectively.

(4) Standardized Medicare supplement benefit plan D shall include only the following: the basic (core) benefit, as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country, as defined in paragraphs (1), (3), and (6) of subdivision (c) of Section 1358.81, respectively.

(5) Standardized Medicare supplement benefit plan F shall include only the following: the basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country, as defined in paragraphs (1), (3), (4), (5), and (6) of subdivision (c) of Section 1358.81, respectively.

(6) Standardized Medicare supplement benefit high deductible plan F shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in subparagraph (B).

(A) The basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country, as defined in paragraphs (1), (3), (4), (5), and (6) of subdivision (c) of Section 1358.81, respectively.

(B) The annual deductible in high deductible plan F shall consist of out-of-pocket expenses, other than premiums, for services covered by plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be one thousand five hundred dollars ($1,500) and shall be adjusted annually from 1999 by the Secretary of the United States Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10).

(7) Standardized Medicare supplement benefit plan G shall include only the following: the basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country, as defined in paragraphs (1), (3), (5), and (6) of subdivision (c) of Section 1358.81, respectively.

(8) Standardized Medicare supplement benefit plan K shall include only the following:

(A) Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period.

(B) Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period.

(C) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider

shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(D) Coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph (J).

(E) Coverage for 50 percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph (J).

(F) Coverage for 50 percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph (J).

(G) Coverage for 50 percent, under Medicare Part A or B, of the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subparagraph (J).

(H) Except for coverage provided in subparagraph (I), coverage for 50 percent of the cost sharing otherwise applicable under Medicare Part B after the enrollee or subscriber pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph (J).

(I) Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the enrollee or subscriber pays the Part B deductible.

(J) Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars ($4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the United States Department of Health and Human Services.

(9) Standardized Medicare supplement benefit plan L shall include only the following:

(A) The benefits described in subparagraphs (A), (B), (C), and (I) of paragraph (8).

(B) The ~~benefit~~ *benefits* described in subparagraphs (D), (E), (F), (G), and (H) of paragraph (8), but substituting 75 percent for 50 percent.

(C) The benefit described in subparagraph (J) of paragraph (8), but substituting two thousand dollars ($2,000) for four thousand dollars ($4,000).

(10) Standardized Medicare supplement benefit plan M shall include only the following: the basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 50 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country, as defined in paragraphs (2), (3), and (6) of subdivision (c) of Section 1358.81, respectively.

(11) Standardized Medicare supplement benefit plan N shall include only the following: the basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country, as defined in paragraphs (1), (3), and (6) of subdivision (c) of Section 1358.81, respectively, with copayments in the following amounts:

(A) The lesser of twenty dollars ($20) or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists.

(B) The lesser of fifty dollars ($50) or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the enrollee or subscriber is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(f) An issuer may, with the prior approval of the director, offer contracts with new or innovative benefits, in addition to the standardized benefits provided in a contract that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement contracts, are new or innovative, are not otherwise available, and are cost effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

SEC. 119. Section 1367.66 of the Health and Safety Code is amended to read:

1367.66. Every individual or group health care service plan contract, except for a specialized health care service plan, that is issued, amended, or renewed~~,~~ on or after January 1, 2002, and that includes coverage for treatment or surgery of cervical cancer shall also be deemed to provide coverage for an annual cervical cancer screening test upon the referral of the patient's physician and surgeon, a nurse practitioner, or *a* certified nurse midwife, providing care to the patient and operating within the scope of practice otherwise permitted for the licensee.

The coverage for an annual cervical cancer screening test provided pursuant to this section shall include the conventional Pap test, a human papillomavirus screening test that is approved by the federal Food and Drug Administration, and the option of any cervical cancer screening test approved by the federal Food and Drug Administration, upon the referral of the patient's health care provider.

Nothing in this section shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in an existing plan contract. The Legislature intends in this section to provide that cervical cancer screening services are deemed to be covered if the plan contract includes coverage for cervical cancer treatment or surgery.

SEC. 120. Section 1418.21 of the Health and Safety Code is amended to read:

1418.21. (a) A skilled nursing facility that has been certified for purposes of Medicare or Medicaid shall post the overall facility rating information determined by the federal Centers for Medicare and Medicaid Services (CMS) in accordance with the following requirements:

(1) The information shall be posted in at least the following locations~~,~~ in the facility:

(A) An area accessible and visible to members of the public.

(B) An area used for employee breaks.

(C) An area used by residents for communal functions, such as dining, resident council meetings, or activities.

(2) The information shall be posted on white or light-colored paper that includes all of the following, in the following order:

(A) The full name of the facility, in a clear and easily readable font of at least 28 point.

(B) The full address of the facility in a clear and easily readable font of at least 20 point.

(C) The most recent overall star rating given by CMS to that facility, except that a facility shall have seven business days from the date when it receives a different rating from ~~the~~ CMS to include the updated rating in the posting. The star rating shall be aligned in the center of the page. The star rating shall be expressed as the number that reflects the number of stars given to the facility by ~~the~~ CMS. The number shall be in a clear and easily readable font of at least two inches print.

(D) Directly below the star symbols shall be the following text in a clear and easily readable font of at least 28 point:

"The above number is out of 5 stars."

(E) Directly below the text described in subparagraph (D) shall be the following text in a clear and easily readable font of at least 14 point:

"This facility is reviewed annually and has been licensed by the State of California and certified by the federal Centers for Medicare and Medicaid Services (CMS). CMS rates facilities that are certified to accept Medicare or Medicaid. CMS gave the above rating to this facility. A detailed explanation of this rating is maintained at this facility and will be made available upon request. This information can also be accessed online at the Nursing Home Compare Internet Web site at ~~<http://www.medicare.gov/NHcompare>~~ *http://www.medicare.gov/NHcompare*. Like any information, the Five-Star Quality Rating System has strengths and limits. The criteria upon which the rating is determined may not represent all of the aspects of care that may be important to you. You are encouraged to discuss the rating with facility staff. The Five-Star Quality Rating System was created to help consumers, their families, and caregivers compare nursing homes more easily and help identify areas about which you may want to ask questions. Nursing home ratings are assigned based on ratings given to health inspections, staffing, and quality measures. Some areas are assigned a greater weight than other areas. These ratings are combined to calculate the overall rating posted here."

(F) Directly below the text described in subparagraph (E), the following text shall appear in a clear and easily readable font of at least 14 point:

"State licensing information on skilled nursing facilities is available on the State Department of Public Health's Internet Web site at: www.cdph.ca.gov, under Programs, Licensing and Certification, Health Facilities Consumer Information System."

(3) For the purposes of this section, "a detailed explanation of this rating" shall include, but shall not be limited to, a printout of the information explaining the Five-Star Quality Rating System that is available on the CMS Nursing Home Compare Internet Web site. This information shall be maintained at the facility and shall be made available upon request.

(4) The requirements of this section shall be in addition to any other posting or inspection report availability requirements.

(b) Violation of this section shall constitute a class B violation, as defined in subdivision (e) of Section 1424 and, notwithstanding Section 1290, shall not constitute a crime. Fines from a violation of this section shall be deposited into the State Health Facilities Citation Penalties Account, created pursuant to Section 1417.2.

(c) This section shall be operative on January 1, 2011.

SEC. 121. Section 1429 of the Health and Safety Code is amended to read:

1429. (a) Each class "AA" and class "A" citation specified in subdivisions ~~(b)~~ *(c)* and ~~(c)~~ *(d)* of Section 1424 that is issued, or a copy or copies thereof, shall be prominently posted for 120 days. The citation or copy shall be posted in a place or places in plain view of the patients or residents in the long-term health care facility, persons visiting those patients or residents, and persons who inquire about placement in the facility.

(1) The citation shall be posted in at least the following locations in the facility:

(A) An area accessible and visible to members of the public.

(B) An area used for employee breaks.

(C) An area used by residents for communal functions, such as dining, resident council meetings, or activities.

(2) The citation, along with a cover sheet, shall be posted on a white or light-colored sheet of paper, at least 8½ by 11 inches in size, that includes all of the following information:

(A) The full name of the facility, in a clear and easily readable font in at least 28-point type.

(B) The full address of the facility, in a clear and easily readable font in at least 20-point type.

(C) Whether the citation is class "AA" or class "A."

(3) The facility may post the plan of correction.

(4) The facility may post a statement disputing the citation or a statement showing the appeal status, or both.

(5) The facility may remove and discontinue the posting required by this section if the citation is withdrawn or dismissed by the department, or is dismissed as a result of a citation review conference.

(b) Each class "B" citation specified in subdivision ~~(d)~~ *(e)* of Section 1424 that is issued pursuant to this section and that has become final, or a copy or copies thereof, shall be retained by the licensee at the facility cited until the violation is corrected to the satisfaction of the department. Each citation shall be made promptly available by the licensee for inspection or examination by any member of the public who so requests. In addition, every licensee shall post in a place or places in plain view of the patient or resident in the long-term health care facility, persons visiting those patients or residents, and persons who inquire about placement in the facility, a prominent notice informing those persons that copies of all final uncorrected citations issued by the department to the facility will be made promptly available by the licensee for inspection by any person who so requests.

(c) A violation of this section shall constitute a class "B" violation, and shall be subject to a civil penalty in the amount of one thousand dollars ($1,000), as provided in subdivision (e) of Section 1424. Notwithstanding Section 1290, a violation of this section shall not constitute a crime. Fines imposed pursuant to this section shall be deposited into the State Health Facilities Citation Penalties Account, created pursuant to Section 1417.2.

SEC. 122. Section 1499 of the Health and Safety Code is amended to read:

1499. (a) Any person or entity licensed or certificated under Chapter 1 (commencing with Section 1200), Chapter 2

(commencing with Section 1250), Chapter 2.3 (commencing with Section 1400), Chapter 2.35 (commencing with Section 1416), Chapter 3.3 (commencing with Section 1570), Chapter 8 (commencing with Section 1725), Chapter 8.3 (commencing with Section 1743), Chapter 8.5 (commencing with Section 1745), *or* Chapter 8.6 (commencing with Section 1760) *of this code,* ~~or Chapter 11 (commencing with Section 1794.01),~~ or under Section 1247.6 of the Business and Professions Code, shall, in addition to all other requirements, disclose as part of the application for the license or certificate any revocation or other final administrative action taken against a license, certificate, registration, or other approval to engage in a profession, vocation, or occupation, or a license or other permission to operate a facility or institution.

(b) The department may consider, in determining whether to grant or deny the license or certification, any final revocation or other final administrative action taken against a license, certificate, registration, or other permission to engage in a profession, vocation, or occupation or a license or other permission to operate a facility or institution.

(c) An applicant and any other person specified in this subdivision, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal background clearance process. Every applicant shall provide information on any prior administrative action taken against him or her by any federal, state, or local government agency and shall certify that, to the best of his or her knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of his or her application or exemption or revocation of any exemption previously granted.

SEC. 123. Section 1568.03 of the Health and Safety Code is amended to read:

1568.03. (a) No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential care facility in this state without first obtaining and maintaining a valid license therefor, as provided in this chapter.

(b) A facility may accept or retain residents requiring varying levels of care. However, a facility shall not accept or retain residents who require a higher level of care than the facility is authorized to provide. Persons who require 24-hour skilled nursing intervention shall not be appropriate for a residential care facility.

(c) This chapter shall not apply to the following:

(1) Any health facility, as defined in Section 1250.

(2) Any clinic, as defined in Section 1200.

(3) Any arrangement for the receiving and care of persons with chronic, life-threatening illness by a relative, guardian or conservator, significant other, or close friend; or any arrangement for the receiving and care of persons with chronic, life-threatening illness from only one family as respite for the relative, guardian or conservator, significant other, or close friend, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department.

(4) (A) Any house, institution, hotel, foster home, shared housing project, or other similar facility that is limited to providing any of the following: housing, meals, transportation, housekeeping, recreational and social activities, the enforcement of house rules, counseling on activities of daily living, and service referrals, as long as both of the following conditions are met:

(i) After any referral, all residents thereof independently obtain care and supervision and medical services without the assistance of the facility or of any person or entity with an organizational or financial connection with that facility.

(ii) No resident thereof has an unmet need for care and supervision or protective supervision. A memorandum of understanding between the facility and any service agency to which it refers residents does not necessarily itself constitute an agreement for care and supervision of the resident.

(B) In determining the applicability of this paragraph, the department shall determine the residents' need for care and supervision, if any, and shall identify the persons or entities providing or assisting in the provision of care and supervision.

This paragraph shall apply only if the department determines that the care and supervision needs of all residents are being independently met.

(5) (A) (i) Any housing occupied by elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C. Sec. 1751*l*), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(ii) Any housing that qualifies for a low-income housing credit pursuant to Section 252 of Public Law 99-514 (26 U.S.C. Sec. 42) or that is subject to the requirements for rental dwellings for low-income families pursuant to Section 8 of Public Law 93-383 (42 U.S.C. Sec. 1437f), and that is occupied by elderly or disabled persons, or both, where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(B) The project owner or operator to which subparagraph (A) applies may coordinate, or help residents gain access to, the supportive services, either directly~~,~~ or through a service coordinator.

~~(7)~~

(6) Any similar facility determined by the director.

(d) A holder of a residential care facility license may hold or obtain an additional license or a child day care facility license, as long as the services required by each license are provided at separate locations or distinctly separate sections of the building.

(e) The director may bring an action to enjoin the violation or threatened violation of this section in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or

loss. The court shall, if it finds the allegations to be true, issue its order enjoining continuance of the violation.

SEC. 124. Section 1569.69 of the Health and Safety Code is amended to read:

1569.69. (a) Each residential care facility for the elderly licensed under this chapter shall ensure that each employee of the facility who assists residents with the self-administration of medications meets the following training requirements:

(1) In facilities licensed to provide care for 16 or more persons, the employee shall complete 16 hours of initial training. This training shall consist of eight hours of hands-on shadowing training, which shall be completed prior to assisting with the self-administration of medications, and eight hours of other training or instruction, as described in subdivision (f), which shall be completed within the first two weeks of employment.

(2) In facilities licensed to provide care for 15 or fewer persons, the employee shall complete six hours of initial training. This training shall consist of two hours of hands-on shadowing training, which shall be completed prior to assisting with the self-administration of medications, and four hours of other training or instruction, as described in subdivision (f), which shall be completed within the first two weeks of employment.

(3) An employee shall be required to complete the training requirements for hands-on shadowing training described in this subdivision prior to assisting any resident in the self-administration of medications. The training and instruction described in this subdivision shall be completed, in their entirety, within the first two weeks of employment.

(4) The training shall cover all of the following areas:

(A) The role, responsibilities, and limitations of staff who assist residents with the self-administration of medication, including tasks limited to licensed medical professionals.

(B) An explanation of the terminology specific to medication assistance.

(C) An explanation of the different types of medication orders: prescription, over-the-counter, controlled, and other medications.

(D) An explanation of the basic rules and precautions of medication assistance.

(E) Information on medication forms and routes for medication taken by residents.

(F) A description of procedures for providing assistance with the self-administration of medications in and out of the facility, and information on the medication documentation system used in the facility.

(G) An explanation of guidelines for the proper storage, security, and documentation of centrally stored medications.

(H) A description of the processes used for medication ordering, refills, and the receipt of medications from the pharmacy.

(I) An explanation of medication side effects, adverse reactions, and errors.

(5) To complete the training requirements set forth in this subdivision, each employee shall pass an examination that tests the employee's comprehension of, and competency in, the subjects listed in paragraph ~~(3)~~ *(4)*.

(6) Residential care facilities for the elderly shall encourage pharmacists and licensed medical professionals to use plain English when preparing labels on medications supplied to residents. As used in this section, "plain English" means that no abbreviations, symbols, or Latin medical terms shall be used in the instructions for the self-administration of medication.

(7) The training requirements of this section are not intended to replace or supplant those required of all staff members who assist residents with personal activities of daily living as set forth in Section 1569.625.

(8) The training requirements of this section shall be repeated if either of the following ~~occur~~ *occurs*:

(A) An employee returns to work for the same licensee after a break of service of more than 180 consecutive calendar days.

(B) An employee goes to work for another licensee in a facility in which he or she assists residents with the self-administration of medication.

(b) Each employee who received training and passed the examination required in paragraph (5) of subdivision (a), and who continues to assist with the self-administration of medicines, shall also complete four hours of in-service training on medication-related issues in each succeeding 12-month period.

(c) The requirements set forth in subdivisions (a) and (b) do not apply to persons who are licensed medical professionals.

(d) Each residential care facility for the elderly that provides employee training under this section shall use the training material

and the accompanying examination that are developed by, or in consultation with, a licensed nurse, pharmacist, or physician. The licensed residential care facility for the elderly shall maintain the following documentation for each medical consultant used to develop the training:

(1) The name, address, and telephone number of the consultant.

(2) The date when consultation was provided.

(3) The consultant's organization affiliation, if any, and any educational and professional qualifications specific to medication management.

(4) The training topics for which consultation was provided.

(e) Each person who provides employee training under this section shall meet the following education and experience requirements:

(1) A minimum of five hours of initial, or certified continuing, education or three semester units, or the equivalent, from an accredited educational institution, on topics relevant to medication management.

(2) The person shall meet any of the following practical experience or licensure requirements:

(A) Two years of full-time experience, within the last four years, as a consultant with expertise in medication management in areas covered by the training described in subdivision (a).

(B) Two years of full-time experience, or the equivalent, within the last four years, as an administrator for a residential care facility for the elderly, during which time the individual has acted in substantial compliance with applicable regulations.

(C) Two years of full-time experience, or the equivalent, within the last four years, as a direct care provider assisting with the self-administration of medications for a residential care facility for the elderly, during which time the individual has acted in substantial compliance with applicable regulations.

(D) Possession of a license as a medical professional.

(3) The licensed residential care facility for the elderly shall maintain the following documentation on each person who provides employee training under this section:

(A) The person's name, address, and telephone number.

(B) Information on the topics or subject matter covered in the training.

(C) The time, dates, and hours of training provided.

(f) Other training or instruction, as required in paragraphs (1) and (2) of subdivision (a), may be provided offsite, and may use various methods of instruction, including, but not limited to, all of the following:

(1) Lectures by presenters who are knowledgeable about medication management.

(2) Video recorded instruction, interactive material, online training, and books.

(3) Other written or visual materials approved by organizations or individuals with expertise in medication management.

(g) Residential care facilities for the elderly licensed to provide care for 16 or more persons shall maintain documentation that demonstrates that a consultant pharmacist or nurse has reviewed the facility's medication management program and procedures at least twice a year.

(h) Nothing in this section authorizes unlicensed personnel to directly administer medications.

SEC. 125. Section 1599.645 of the Health and Safety Code is amended to read:

1599.645. (a) Within 30 days of approval of a change of ownership by the ~~California~~ *State* Department of Public Health, the skilled nursing facility shall send written notification to all current residents and patients and to the primary contacts listed in the admission agreement of each resident and patient. The notice shall disclose the name of the owner and licensee of the skilled nursing facility and the name and contact information of a single entity that is responsible for all aspects of patient care and the operation of the facility.

(b) The ~~Department~~ *department* shall accept a copy of the written notice and a copy of the list of individuals and mailing addresses to whom the facility sent the notification as satisfactory evidence that the facility provided the required written notification.

SEC. 126. Section 1736.5 of the Health and Safety Code is amended to read:

1736.5. (a) The ~~state~~ department shall deny a training application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4,

245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, *or* Section 487, 488, 496, 503, 518, or 666, unless any of the following ~~apply~~ *applies*:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(b) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (a), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (a) is provided.

(c) (1) The ~~state~~ department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(A) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(B) Conviction of a crime substantially related to the qualifications, functions, and duties of a home health aide, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the ~~state~~ department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(C) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000) *of this code*, or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the home health aide, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(D) Procuring a home health aide certificate by fraud, misrepresentation, or mistake.

(E) Making or giving any false statement or information in conjunction with the application for issuance of a home health aide certificate or training and examination application.

(F) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(G) Impersonating another home health aide, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(H) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of, this article.

(2) In determining whether or not to deny an application or deny, suspend, or revoke a certificate issued under this article pursuant to this subdivision, the department shall take into consideration the following factors as evidence of good character and rehabilitation:

(A) The nature and seriousness of the offense under consideration and its relationship to the person's employment duties and responsibilities.

(B) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(C) The time that has elapsed since the commission of the conduct or offense referred to in subparagraph (A) or (B) and the number of offenses.

(D) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(E) Any rehabilitation evidence, including character references, submitted by the person.

(F) Employment history and current employer recommendations.

(G) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(H) Granting by the Governor of a full and unconditional pardon.

(I) A certificate of rehabilitation from a superior court.

(d) When the ~~state~~ department determines that a certificate shall be suspended, the ~~state~~ department shall specify the period of actual suspension. The ~~state~~ department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the ~~state~~ department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the ~~state~~ department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (g), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters~~,~~ including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the ~~state~~ department may proceed with a formal action to suspend or revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, shall be deemed a conviction within the meaning of this article. The ~~state~~ department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the ~~state~~ department shall notify the applicant or certificate holder in writing by certified mail of ~~all~~ *both* of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(g) (1) Upon written notification that the ~~state~~ department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the ~~state~~ department within 20 business days of receipt of the written notification. Upon receipt of a written request, the ~~state~~ department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location, other than the work facility, that is convenient to the applicant or certificate holder. The hearing shall be audio or video recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(h) The ~~state~~ department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (f). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the ~~state~~ department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, the certificate holder shall be reinstated by the ~~state~~ department and shall be entitled to resume practice unless it is established to the satisfaction of the ~~state~~ department that the person has practiced as a home

health aide in California during the term of suspension. In this event, the ~~state~~ department shall revoke the person's certificate.

(j) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

SEC. 127. Section 1798.200 of the Health and Safety Code is amended to read:

1798.200. (a) (1) (A) Except as provided in paragraph (2), an employer of an EMT-I or EMT-II may conduct investigations, as necessary, and take disciplinary action against an EMT-I or EMT-II who is employed by that employer for conduct in violation of subdivision (c). The employer shall notify the medical director of the local EMS agency that has jurisdiction in the county in which the alleged violation occurred within three days when an allegation has been validated as a potential violation of subdivision (c).

(B) Each employer of an EMT-I or EMT-II employee shall notify the medical director of the local EMS agency that has jurisdiction in the county in which a violation related to subdivision (c) occurred within three days after the EMT-I or EMT-II is terminated or suspended for a disciplinary cause, the EMT-I or EMT-II resigns following notification of an impending investigation based upon evidence that would indicate the existence of a disciplinary cause, or the EMT-I or EMT-II is removed from EMT-related duties for a disciplinary cause after the completion of the employer's investigation.

(C) At the conclusion of an investigation, the employer of an EMT-I or EMT-II may develop and implement, in accordance with the guidelines for disciplinary orders, temporary suspensions, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. Upon adoption of the disciplinary plan, the employer shall submit that plan to the local EMS agency within three working days. The employer's

disciplinary plan may include a recommendation that the medical director of the local EMS agency consider taking action against the holder's certificate pursuant to paragraph (3).

(2) If an EMT-I or EMT-II is not employed by an ambulance service licensed by the Department of the California Highway Patrol or a public safety agency or if that ambulance service or public safety agency chooses not to conduct an investigation pursuant to paragraph (1) for conduct in violation of subdivision (c), the medical director of a local EMS agency shall conduct the investigations, and, upon a determination of disciplinary cause, take disciplinary action as necessary against ~~this~~ *the* EMT-I or EMT-II. At the conclusion of these investigations, the medical director shall develop and implement, in accordance with the recommended guidelines for disciplinary orders, temporary orders, and conditions of probation adopted pursuant to Section 1797.184, a disciplinary plan for the EMT-I or EMT-II. The medical director's disciplinary plan may include action against the holder's certificate pursuant to paragraph (3).

(3) The medical director of the local EMS agency may, upon a determination of disciplinary cause and in accordance with regulations for disciplinary processes adopted pursuant to Section 1797.184, deny, suspend, or revoke any EMT-I or EMT-II certificate issued under this division, or may place any EMT-I or EMT-II certificate holder on probation, upon the finding by that medical director of the occurrence of any of the actions listed in subdivision (c) and the occurrence of one of the following:

(A) The EMT-I or EMT-II employer, after conducting an investigation, failed to impose discipline for the conduct under investigation, or the medical director makes a determination that the discipline imposed was not according to the guidelines for disciplinary orders and conditions of probation and the conduct of the EMT-I or EMT-II certificate holder constitutes grounds for disciplinary action against the certificate.

(B) Either the employer of an EMT-I or EMT-II further determines, after an investigation conducted under paragraph (1), or the medical director determines after an investigation conducted under paragraph (2), that the conduct requires disciplinary action against the certificate.

(4) The medical director of the local EMS agency, after consultation with the employer of an EMT-I or EMT-II, may

temporarily suspend, prior to a hearing, any EMT-I or EMT-II certificate or both EMT-I and EMT-II certificates upon a determination that both of the following conditions have been met:

(A) The certificate holder has engaged in acts or omissions that constitute grounds for revocation of the EMT-I or EMT-II certificate.

(B) Permitting the certificate holder to continue to engage in the certified activity without restriction would pose an imminent threat to the public health or safety.

(5) If the medical director of the local EMS agency temporarily suspends a certificate, the local EMS agency shall notify the certificate holder that his or her EMT-I or EMT-II certificate is suspended and shall identify the reasons therefor. Within three working days of the initiation of the suspension by the local EMS agency, the agency and employer shall jointly investigate the allegation in order for the agency to make a determination of the continuation of the temporary suspension. All investigatory information not otherwise protected by law held by the agency and employer shall be shared between the parties via facsimile transmission or overnight mail relative to the decision to temporarily suspend. The local EMS agency shall decide, within 15 calendar days, whether to serve the certificate holder with an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If the certificate holder files a notice of defense, the hearing shall be held within 30 days of the local EMS agency's receipt of the notice of defense. The temporary suspension order shall be deemed vacated if the local EMS agency fails to make a final determination on the merits within 15 days after the administrative law judge renders the proposed decision.

(6) The medical director of the local EMS agency shall refer, for investigation and discipline, any complaint received on an EMT-I or EMT-II to the relevant employer within three days of receipt of the complaint, pursuant to subparagraph (A) of paragraph (1) of subdivision (a).

(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). Proceedings against

any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate *holder* or licenseholder under this division:

(1) Fraud in the procurement of any certificate or license under this division.

(2) Gross negligence.

(3) Repeated negligent acts.

(4) Incompetence.

(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

(8) Violating or attempting to violate any federal or state statute or regulation that regulates narcotics, dangerous drugs, or controlled substances.

(9) Addiction to, the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

(11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

(12) Unprofessional conduct exhibited by any of the following:

(A) The mistreatment or physical abuse of any patient resulting from force in excess of what a reasonable and prudent person trained and acting in a similar capacity while engaged in the

performance of his or her duties would use if confronted with a similar circumstance. Nothing in this section shall be deemed to prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace officer, or a peace officer who is acting in the dual capacity of peace officer and EMT-I, EMT-II, or EMT-P, from using that force that is reasonably necessary to effect a lawful arrest or detention.

(B) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Part ~~2.53~~ *2.6* (commencing with Section 56) of Division 1 of the Civil Code.

(C) The commission of any sexually related offense specified under Section 290 of the Penal Code.

(d) The information shared among EMT-I, EMT-II, and EMT-P employers, medical directors of local EMS agencies, the authority, and EMT-I and EMT-II certifying entities shall be deemed to be an investigative communication that is exempt from public disclosure as a public record pursuant to subdivision (f) of Section 6254 of the Government Code. A formal disciplinary action against an EMT-I, EMT-II, or EMT-P shall be considered a public record available to the public, unless otherwise protected from disclosure pursuant to state or federal law.

(e) For purposes of this section, "disciplinary cause" means an act that is substantially related to the qualifications, functions, and duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat to the public health and safety described in subdivision (c).

SEC. 128. Section 13221 of the Health and Safety Code is amended to read:

13221. The State Fire Marshal shall adopt regulations for the furnishing of emergency procedure information according to this chapter. Those regulations may include the general contents of brochures, pamphlets, signs, or video recordings used in furnishing emergency procedure information, but shall provide for at least the following:

(a) A reference to the posting of exit plans for the structure.

(b) A general explanation of *the* operation of the fire alarm system of the structure.

(c) Other fire emergency procedures.

SEC. 129. Section 25396 of the Health and Safety Code is amended to read:

25396. Unless the context indicates otherwise, the following definitions govern the construction of this chapter.

(a) "Affected community" means the local residents or workers living or working, and owners of businesses operating, in proximity to the site, who are, or may be, directly impacted by the conditions at the site, or by any response action. "Affected community" also includes the legislative body of the jurisdiction in which a site is located.

(b) "Agency" means the California Environmental Protection Agency.

(c) "Arbitration panel" means the arbitration panel convened pursuant to Section 25398.10.

(d) "Beneficial uses of water" means uses of the waters of the state that are identified in the current State Water Resources Control Board and California regional water quality control boards' water quality control plans for the area in which the site is located.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Engineering controls" means measures to control or contain migration of hazardous substances or to prevent, minimize, or mitigate environmental damage which may otherwise result from a release or threatened release, including, but not limited to, caps, covers, dikes, trenches, leachate collection systems, treatment systems, and groundwater containment systems or procedures.

(g) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act ~~of 1980~~, as amended~~,~~ (42 U.S.C. Sec. 9601 et seq.).

(h) "Fund administrator" means the state officer assigned the responsibility of protecting the viability of the trust fund as the representative of the state for the orphan share in all actions concerning apportionment of liability if there is a potential apportionment of liability to the orphan share for payment from the trust fund.

(i) "Hazardous substance" shall have the same meaning as set forth in Sections 25316 and 25317.

(j) (1) "Insolvent" means a person or entity who has received a discharge of liability under Section 727, 944, 1141, 1228, or 1328 of Title 11 of the United States Code, for ~~pre-petition~~ *prepetition* response costs relating to a site selected for response actions pursuant to this chapter.

(2) Notwithstanding paragraph (1), a person or entity is not insolvent with respect to any payment that the department receives or will receive for any ~~pre-petition~~ *prepetition* response costs as a result of the bankruptcy, or with respect to any postpetition response costs.

(k) "Interim endangerment" means conditions at a site which pose a significant risk either of harm to human health or of serious environmental damage unless immediate response action is initiated before remedial action measures set forth in a remedial action plan prepared for the site are implemented.

(*l*) "Land use controls" means recorded instruments restricting the present and future uses of the site, including, but not limited to, recorded easements, covenants, restrictions, or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(m) "Orphan share" means that share of liability for the costs of response actions apportioned to responsible persons who are insolvent or cannot be identified or located. The department may adopt regulations to further define a process to determine when a responsible person cannot be identified or located.

(n) "Person" shall have the same meaning as set forth in Section 25319.

(o) "Planned use" means the reasonably expected future land uses based on all of the following factors:

(1) The land use history of the site and surrounding properties, the current land uses of the site and surrounding properties and recent development patterns in the area where the site is located.

(2) Land use designations at the site and surrounding properties, including current and likely future zoning and local land use plans and the presence, if any, of groundwater and surface water recharge areas.

(3) The potential for economic redevelopment.

(4) Current plans for the site by the property owner or owners.

(5) Affected community comments on the proposals for use of the site.

(p) "Release" has the same meaning as set forth in Sections 25320 and 25321.

(q) "Remedy" or "remedial action" means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance and that, when carried through to completion, allow a site to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. "Remedy" or "remedial action" includes, but is not limited to, all of the following:

(1) Actions at the location of the release, such as storage~~,~~*;* confinement~~,~~*;* perimeter protection using dikes, trenches, or ditches~~,~~*;* clay cover~~,~~*;* neutralization~~,~~*;* cleanup of released hazardous substances and associated contaminated materials~~,~~*;* recycling, reuse, diversion, destruction, or segregation of reactive wastes~~,~~*;* dredging, excavation, repair, or replacement of leaking containers~~,~~*;* collection of leachate and runoff~~,~~*;* onsite treatment or incineration~~,~~*;* provision of alternative water supplies~~,~~*;* and any monitoring reasonably required to ensure that these actions protect human health and safety, or the environment.

(2) The costs of permanent relocation of residents and businesses and community facilities where the Governor determines that, alone or in combination with other measures, that relocation is more ~~costeffective~~ *cost effective* than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect human health and safety, or the environment.

(3) Offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(r) "Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment~~,~~*;* those actions ~~which~~ *that* may be necessarily taken in the event of the threat or release of hazardous substances into the environment~~,~~*;* those actions ~~which~~ *that* may be necessary to monitor, assess, and evaluate the release, or threat of release, of hazardous substances~~,~~*;* the disposal of removed material~~,~~*;* and the taking of other actions which may be necessary to prevent, minimize, or mitigate damage to human health and safety, or the environment, ~~which~~ *that* may

otherwise result from a release or threat of release. “Remove” or “removal” also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided.

(s) “Respond,” “response,” or “response action” means removal actions, and remedial actions, including, but not limited to, operation and maintenance measures.

(t) “Response costs” means all costs incurred by the state or ~~any~~ *a* responsible person in taking response actions under this chapter at a specific site, including costs incurred by ~~any~~ *a* state agency in implementing and administering this chapter pursuant to the limitations established in subdivision (f) of Section 25399, and in overseeing response actions under this chapter. Those costs shall include all costs incurred by the state in relation to any judicial review of a decision of an arbitration panel pursuant to subdivision (e) of Section 25398.10 or any arbitration conducted pursuant to this chapter.

(u) “Responsible person” has the same meaning as set forth in Section 25323.5 for “responsible party” or “liable person.”

(v) “Secretary” means the Secretary for Environmental Protection.

(w) “Site” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(x) “Site Designation Committee” or “committee” means the Site Designation Committee created pursuant to Section 25261.

(y) “State board” means the State Water Resources Control Board.

(z) “Trust fund” means the Expedited Site Remediation Trust Fund created pursuant to subdivision (a) of Section 25399.1.

SEC. 130. Section 44272 of the Health and Safety Code is amended to read:

44272. (a) The Alternative and Renewable Fuel and Vehicle Technology Program is hereby created. The program shall be administered by the commission. The commission shall implement

the program by regulation pursuant to the requirements of Chapter 3.5 (commencing with Section 11340) of *Part 1 of* Division 3 of Title 2 of the Government Code. The program shall provide, upon appropriation by the Legislature, competitive grants, revolving loans, loan guarantees, loans, or other appropriate funding measures, to public agencies, vehicle and technology entities, businesses and projects, public-private partnerships, workforce training partnerships and collaboratives, fleet owners, consumers, recreational boaters, and academic institutions to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. The emphasis of this program shall be to develop and deploy technology and alternative and renewable fuels in the marketplace, without adopting any one preferred fuel or technology.

(b) A project funded by the commission shall be approved at a noticed public hearing of the commission and shall be consistent with the priorities established by the investment plan adopted pursuant to Section 44272.5.

(c) The commission shall provide preferences to those projects that maximize the goals of the Alternative and Renewable Fuel and Vehicle Technology Program, based on the following criteria, as applicable:

(1) The project's ability to provide a measurable transition from the nearly exclusive use of petroleum fuels to a diverse portfolio of viable alternative fuels that meet petroleum reduction and alternative fuel use goals.

(2) The project's consistency with existing and future state climate change policy and low-carbon fuel standards.

(3) The project's ability to reduce criteria air pollutants and air toxics and reduce or avoid multimedia environmental impacts.

(4) The project's ability to decrease, on a life-cycle basis, the discharge of water pollutants or any other substances known to damage human health or the environment, in comparison to the production and use of California Phase 2 Reformulated Gasoline or diesel fuel produced and sold pursuant to California diesel fuel regulations set forth in Article 2 (commencing with Section 2280) of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

(5) The project does not adversely impact the sustainability of the state's natural resources, especially state and federal lands.

(6) The project provides nonstate matching funds.

(7) The project provides economic benefits for California by promoting California-based technology firms, jobs, and businesses.

(8) The project uses existing or proposed fueling infrastructure to maximize the outcome of the project.

(9) The project's ability to reduce on a ~~life-cycle~~ *life cycle* assessment greenhouse gas emissions by at least 10 percent, and higher percentages in the future, from current reformulated gasoline and diesel fuel standards established by the state board.

(10) The project's use of alternative fuel blends of at least 20 percent, and higher blend ratios in the future, with a preference for projects with higher blends.

(11) The project drives new technology advancement for vehicles, vessels, engines, and other equipment, and promotes the deployment of that technology in the marketplace.

(d) Only the following shall be eligible for funding:

(1) Alternative and renewable fuel projects to develop and improve alternative and renewable low-carbon fuels, including electricity, ethanol, dimethyl ether, renewable diesel, natural gas, hydrogen, and biomethane, among others, and their feedstocks that have high potential for long-term or short-term commercialization, including projects that lead to sustainable feedstocks.

(2) Demonstration and deployment projects that optimize alternative and renewable fuels for existing and developing engine technologies.

(3) Projects to produce alternative and renewable low-carbon fuels in California.

(4) Projects to decrease the overall impact of an alternative and renewable fuel's life cycle carbon footprint and increase sustainability.

(5) Alternative and renewable fuel infrastructure, fueling stations, and equipment. The preference in paragraph (10) of subdivision (c) shall not apply to renewable diesel or biodiesel infrastructure, fueling stations, and equipment used solely for renewable diesel or biodiesel fuel.

(6) Projects to develop and improve light-, medium-, and heavy-duty vehicle technologies that provide for better fuel efficiency and lower greenhouse gas emissions, alternative fuel usage and storage, or emission reductions, including propulsion

systems, advanced internal combustion engines with a ~~40 percent~~ *40-percent* or better efficiency level over the current market standard, ~~light-weight~~ *lightweight* materials, energy storage, control systems and system integration, physical measurement and metering systems and software, development of design standards and testing and certification protocols, battery recycling and reuse, engine and fuel optimization electronic and electrified components, hybrid technology, plug-in hybrid technology, battery electric vehicle technology, fuel cell technology, and conversions of hybrid technology to plug-in technology through the installation of safety certified supplemental battery modules.

(7) Programs and projects that accelerate the commercialization of vehicles and alternative and renewable fuels including buy-down programs through near-market and market-path deployments, advanced technology warranty or replacement insurance, development of market niches, supply-chain development, and research related to the pedestrian safety impacts of vehicle technologies and alternative and renewable fuels.

(8) Programs and projects to retrofit medium- and heavy-duty on-road and nonroad vehicle fleets with technologies that create higher fuel efficiencies, including alternative and renewable fuel vehicles and technologies, idle management technology, and aerodynamic retrofits that decrease fuel consumption.

(9) Infrastructure projects that promote alternative and renewable fuel infrastructure development connected with existing fleets, public transit, and existing transportation corridors, including physical measurement or metering equipment and truck stop electrification.

(10) Workforce training programs related to alternative and renewable fuel feedstock production and extraction, renewable fuel production, distribution, transport, and storage, high-performance and low-emission vehicle technology and high tower electronics, automotive computer systems, mass transit fleet conversion, servicing, and maintenance, and other sectors or occupations related to the purposes of this chapter.

(11) Block grants administered by not-for-profit technology entities for multiple projects, education and program promotion within California, and development of alternative and renewable fuel and vehicle technology centers.

(12) ~~Life-cycle~~ *Life cycle* and multimedia analyses, sustainability and environmental impact evaluations, and market, financial, and technology assessments performed by a state agency to determine the impacts of increasing the use of low-carbon transportation fuels and technologies, and to assist in the preparation of the investment plan and program implementation.

(e) The commission may make a single source or sole source award pursuant to this section for applied research. The same requirements set forth in Section 25620.5 of the Public Resources Code shall apply to awards made on a single source basis or a sole source basis. This subdivision does not authorize the commission to make a single source or sole source award for a project or activity other than for applied research. ~~The commission may pursuant to this subdivision make a single source or sole source award for the applied research to be conducted by the Quiet Motorized Road Vehicle and Safe Mobility Committee created pursuant to Section 25227 of the Public Resources Code, if Senate Bill 1174 of the 2007–08 Regular Session, which would add that section, is enacted.~~

(f) Until January 1, 2012, the commission may contract with the Treasurer to expend funds through programs implemented by the Treasurer, if that expenditure is consistent with all of the requirements of this chapter.

SEC. 131. Section 50843.5 of the Health and Safety Code is amended to read:

50843.5. (a) Subject to the availability of funding, the department shall make matching grants available to cities, counties, ~~city~~ *cities* and counties, and charitable nonprofit organizations organized under Section 501(c)(3) of the Internal Revenue Code that have created and are operating or will operate housing trust funds. These funds shall be awarded through the issuance of a Notice of Funding Availability (NOFA).

(1) Applicants that provide matching funds from a source or sources other than impact fees on residential development shall receive a priority for funding.

(2) The department shall set aside funding for new trusts, as defined by the department in the NOFA.

(b) Housing trusts eligible for funding under this section shall have the following characteristics:

(1) Utilization of a public or joint public and private fund established by legislation, ordinance, resolution, or a public-private partnership to receive specific revenue to address local housing needs.

(2) Receipt of ongoing revenues from dedicated sources of funding such as taxes, fees, loan repayments, or private contributions.

(c) The minimum allocation to an applicant that is a newly established trust, and is in a county with a population that conforms with paragraph (2) of subdivision (c) of Section 53545.9, shall be five hundred thousand dollars ($500,000). The minimum allocation for all other trusts shall be one million dollars ($1,000,000). No applicant may receive an allocation in excess of two million dollars ($2,000,000). All funds provided pursuant to this section shall be matched on a dollar-for-dollar basis with ~~money~~ *moneys* that ~~is~~ *are* not required by any state or federal law to be spent on housing. No application for an existing housing trust shall be considered unless the department has received adequate documentation of the deposit in the local housing trust fund of the local match and the identity of the source of matching funds. An application for a new trust shall not be considered unless the department has received adequate documentation, as determined by the department, that an ordinance imposing or dedicating a tax or fee to be deposited into the new trust has been enacted or the applicant has adopted a legally binding commitment to deposit matching funds into the new trust. Funds shall not be disbursed by the department to any trust until all matching funds are on deposit and then funds may be disbursed only in amounts necessary to fund projects identified to receive a loan from the trust within a reasonable period of time, as determined by the department. Applicants shall be required to continue funding the local housing trust fund from these identified local sources, and continue the trust in operation, for a period of no less than five years from the date of award. If the funding is not continued for a five-year period, then (1) the amount of the department's grant to the local housing trust fund, to the extent that the trust fund has unencumbered funds available, shall be immediately repaid, and (2) any payments from any projects funded by the local housing trust fund that would have been paid to the local housing trust fund shall be paid instead to the department and used for the program or its successor. The total amount paid

to the department pursuant to (1) and (2), combined, shall not exceed the amount of the department's grant.

(d) (1) Funds shall be used for the predevelopment costs, acquisition, construction, or rehabilitation of the following types of housing or projects:

(A) Rental housing projects or units within rental housing projects. The affordability of all assisted units shall be restricted for not less than 55 years.

(B) Emergency shelters, ~~safe havens~~ *Safe Havens,* and transitional housing, as these terms are defined in Section 50801.

(C) For sale housing projects or units within for sale housing projects.

(2) At least 30 percent of the total amount of the grant and the match shall be expended on projects, units, or shelters that are affordable to, and restricted for, extremely low income persons and families, as defined in Section 50106. No more than 20 percent of the total amount of the grant and the match shall be expended on projects or units affordable to, and restricted for, moderate-income persons and families whose income does not exceed 120 percent of the area median income. The remaining funds shall be used for projects, units, or shelters that are affordable to, and restricted for, lower income persons and families, as defined in Section 50079.5.

(3) If funds are used for the acquisition, construction, or rehabilitation of for sale housing projects or units within for sale housing projects, the grantee shall record a deed restriction against the property that will ensure compliance with one of the following requirements upon resale of the for sale housing units, unless it is in conflict with the requirements of another public funding source or law:

(A) If the property is sold within 30 years from the date that trust funds are used to acquire, construct, or rehabilitate the property, the owner or subsequent owner shall sell the home at an affordable housing cost, as ~~defined~~ *described* in Section ~~50025.5~~ *50052.5*, to a household that meets the relevant income qualifications.

(B) The owner and grantee shall share the equity in the unit pursuant to an equity sharing agreement. The grantee shall reuse the proceeds of the equity sharing agreement consistent with this section. To the extent not in conflict with another public funding

source or law, all of the following shall apply to the equity-sharing agreement provided for by the deed restriction:

(i) Upon resale by an owner-occupant of the home, the owner-occupant of the home shall retain the market value of any improvements, the downpayment, and his or her proportionate share of appreciation. The grantee shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used to make housing available to persons and families of the same income category as the original grant and for any type of housing or shelter specified in paragraph (1).

(ii) For purposes of this subdivision, the initial subsidy shall be equal to the fair market value of the home at the time of initial sale to the owner-occupant minus the initial sale price to the owner-occupant, plus the amount of any downpayment assistance or mortgage assistance. If upon resale by the owner-occupant the market value is lower than the initial market value, ~~then~~ the value at the time of the resale shall be used as the initial market value.

(iii) For purposes of this subdivision, the grantee's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of the initial sale.

(e) Loan repayments shall accrue to the grantee housing trust for use pursuant to this section. If the trust no longer exists, loan repayments shall accrue to the department for use in the program or its successor.

(f) (1) In order for a city, county, or city and county to be eligible for funding, the applicant shall, at the time of application, meet both of the following requirements:

(A) Have an adopted housing element that the department has determined, pursuant to Section 65585 of the Government Code, is in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) Have submitted to the department the annual progress report required by Section 65400 of the Government Code within the preceding 12 months, if the department has adopted the forms and definitions pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 65400 of the Government Code.

(2) In order for a nonprofit organization applicant to be eligible for funding, the applicant shall agree to utilize funds provided under this chapter only for projects located in cities, counties, or

a city and county that, at the time of application, meet both of the following requirements:

~~(1)~~

(i) Have an adopted housing element that the department has determined, pursuant to Section 65585 of the Government Code, to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

~~(2)~~

(ii) Have submitted to the department the annual progress report required by Section 65400 of the Government Code within the preceding 12 months, if the department has adopted the forms and definitions pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 65400 of the Government Code.

(g) Recipients shall have held, or shall agree to hold, a public hearing or hearings to discuss and describe the project or projects that will be financed with funds provided pursuant to this section. As a condition of receiving a grant pursuant to this section, any nonprofit organization shall agree that it will hold one public meeting a year to discuss the criteria that will be used to select projects to be funded. That meeting shall be open to the public, and public notice of this meeting shall be provided, except to the extent that any similar meeting of a city or county would be permitted to be held in closed session.

(h) No more than 5 percent of the funds appropriated to the department for the purposes of this program shall be used to pay the costs of administration of this section.

(i) A local housing trust fund shall encumber funds provided pursuant to this section no later than 36 months after receipt. Any funds not encumbered within that period shall revert to the department for use in the program or its successor.

(j) Recipients shall be required to file periodic reports with the department regarding the use of funds provided pursuant to this section. No later than December 31 of each year in which funds are awarded by the program, the department shall provide a report to the Legislature regarding the number of trust funds created, a description of the projects supported, the number of units assisted, and the amount of matching funds received.

SEC. 132. Section 103526.5 of the Health and Safety Code is amended to read:

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

(b) All certified copies of birth, death, and marriage records issued pursuant to Section 103525 shall be printed on chemically sensitized security paper that measures 8½ inches by 11 inches and that has the following features:

~~(A)~~

(1) Intaglio print.

~~(B)~~

(2) Latent image.

~~(C)~~

(3) Fluorescent, consecutive numbering with matching barcode.

~~(D)~~

(4) Microprint line.

~~(E)~~

(5) Prismatic printing.

~~(F)~~

(6) Watermark.

~~(G)~~

(7) Void pantograph.

~~(H)~~

(8) Fluorescent security threads.

~~(I)~~

(9) Fluorescent fibers.

~~(J)~~

(10) Any other security features deemed necessary by the State Registrar.

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

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

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

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

SEC. 133. Section 112877 of the Health and Safety Code, as amended by Section 120 of Chapter 140 of the Statutes of 2009, is repealed.

~~112877. Olive oil grades are defined as follows:~~

~~(a) "Virgin olive oils" means those oils fit for consumption as they are, obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decanting, centrifuging, and filtration. Virgin olive oils fit for consumption as they are include:~~

~~(1) "Extra virgin olive oil" means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams oil, has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil and meets the sensory standards of extra virgin olive oil as determined by a taste panel certified by the International Olive Council, or, if the International Olive Council ceases to certify taste panels, meets the sensory standards of a taste panel that is operated by the University of California or California State University according to guidelines adopted by the International Olive Council as of 2007.~~

~~(2) "Virgin olive oil" means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 2 grams per 100 grams oil and has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil.~~

~~(3) "Ordinary virgin olive oil" means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3.3 grams per 100 grams oil and has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil.~~

~~(b) "Olive oil" is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are as defined in this section. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams oil.~~

~~(c) "Refined olive oil" means the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams oil.~~

~~(d) "Olive-pomace oils" means oils obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by reesterification processes and of any mixture with oils of other kinds. They shall be labeled and marketed with the following designations and definitions:~~

~~(1) "Olive-pomace oil" is the oil comprising the blend of refined olive-pomace oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams oil. In no case shall this blend be called or labeled "olive oil."~~

~~(2) "Refined olive-pomace oil" is the oil obtained from crude olive-pomace oil by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams oil.~~

~~(3) "Crude olive-pomace oil" means olive-pomace oil that is intended for refining for use for human consumption or that is intended for technical use.~~

SEC. 134. Section 114850 of the Health and Safety Code is amended to read:

114850. As used in this chapter:

(a) "Department" means the State Department of Public Health.

(b) "Committee" means the Radiologic Technology Certification Committee.

(c) "Radiologic technology" means the application of X-rays on human beings for diagnostic or therapeutic purposes.

(d) "Radiologic technologist" means any person, other than a licentiate of the healing arts, making application of X-rays to human beings for diagnostic or therapeutic purposes pursuant to subdivision (b) of Section 114870.

(e) "Limited permit" means a permit issued pursuant to subdivision (c) of Section 114870 to persons to conduct radiologic technology limited to the performance of certain procedures or the application of X-rays to specific areas of the human body, except for a mammogram.

(f) "Approved school for radiologic technologists" means a school that the department has determined provides a course of instruction in radiologic technology that is adequate to meet the purposes of this chapter.

(g) "Supervision" means responsibility for, and control of, quality, radiation safety, and technical aspects of all X-ray examinations and procedures.

(h) (1) "Licentiate of the healing arts" means a person licensed under the provisions of the Medical Practice Act, the provisions of the initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation thereof, and repealing all acts and parts of acts inconsistent herewith," approved by electors November 7, 1922, as amended, or the Osteopathic ~~Act."~~ *Act.*

(2) For purposes of Section 114872, a licentiate of the healing arts means a person licensed under the Physician Assistant Practice Act (Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code) who practices under the supervision of a qualified physician and surgeon pursuant to the act and pursuant to Division 13.8 of Title 16 of the California Code of Regulations.

(i) "Certified supervisor or operator" means a licentiate of the healing arts who has been certified under subdivision (e) of Section 114870 or 107111 to supervise the operation of X-ray machines or to operate X-ray machines, or both.

(j) "Student of radiologic technology" means a person who has started and is in good standing in a course of instruction that, if completed, would permit the person to be certified a radiologic technologist or granted a limited permit upon satisfactory completion of any examination required by the department. "Student of radiologic technology" does not include any person who is a student in a school of medicine, chiropractic, podiatry, dentistry, dental radiography, or dental hygiene.

(k) "Mammogram" means an X-ray image of the human breast.

(*l*) "Mammography" means the procedure for creating a mammogram.

SEC. 135. Section 116064.2 of the Health and Safety Code is amended to read:

116064.2. (a) As used in this section, the following words have the following meanings:

(1) “ASME/ANSI performance standard” means a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) “ASTM performance standard” means a standard that is developed and published by ASTM International.

(3) “Main drain” means a submerged suction outlet typically located at the bottom of a swimming pool that conducts water to a recirculating pump.

(4) “Public swimming pool” means an outdoor or indoor structure, whether in-ground or above-ground, intended for swimming or recreational bathing, including a swimming pool, hot tub, spa, or nonportable wading pool, that is any of the following:

(A) Open to the public generally, whether for a fee or free of charge.

(B) Open exclusively to members of an organization and their guests, residents of a multiunit apartment building, apartment complex, residential real estate development, or other multifamily residential area, or patrons of a hotel or other public accommodations facility.

(C) Located on the premises of an athletic club, or public or private school.

(5) “Qualified individual” means a contractor who holds a current valid license issued by the State of California or a professional engineer licensed in the State of California who has experience working on public swimming pools.

(6) “Safety vacuum release system” means a vacuum release system that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected.

(7) “Skimmer equalizer line” means a suction outlet located below the waterline and connected to the body of a skimmer that prevents air from being drawn into the pump if the water level drops below the skimmer weir. However, a skimmer equalizer line is not a main drain.

(8) “Unblockable drain” means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(b) Subject to subdivision (c), an ASME/ANSI or ASTM performance standard relating to ~~anti-entrapment~~ *antientrapment*

devices or systems or an amendment or successor to, or later published edition of an ASME/ANSI or ASTM performance standard relating to ~~anti-entrapment~~ *antientrapment* devices or systems shall become the applicable standard in California 90 days after publication by ASME/ANSI or ASTM, respectively, provided that the performance standard or amendment or successor to, or later published edition is approved by the department within 90 days of the publication of the performance standard by ASME/ANSI or ASTM, respectively. Notwithstanding any other law, the department may implement, interpret, or make specific the provisions of this section by means of a policy letter or similar instruction and this action by the department shall not be subject to the rulemaking requirements 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).

(c) Subject to subdivision (f), every public swimming pool shall be equipped with ~~anti-entrapment~~ *antientrapment* devices or systems that comply with ASME/ANSI performance standard A112.19.8, as in effect December 31, 2009, or any applicable ASME/ANSI performance standard that has been adopted by the department pursuant to subdivision (b).

(d) Subject to subdivisions (e) and (f), every public swimming pool with a single main drain that is not an unblockable drain shall be equipped with at least one or more of the following devices or systems that are designed to prevent physical entrapment by pool drains:

(1) A safety vacuum release system that has been tested by a department-approved independent third party and found to conform to ASME/ANSI performance standard A112.19.17, as in effect on December 31, 2009, or any applicable ASME/ANSI performance standard that has been adopted by the department pursuant to subdivision (b), or ASTM performance standard F2387, as in effect on December 31, 2009, or any applicable ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(2) A suction-limiting vent system with a tamper-resistant atmospheric opening, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(3) A gravity drainage system that utilizes a collector tank, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(4) An automatic pump shut-off system tested by a department-approved independent third party and found to conform to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(5) Any other system that is deemed, in accordance with federal law, to be equally effective as, or more effective than, the systems described in paragraphs (1) to (4), inclusive, at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(e) Every public swimming pool constructed on or after January 1, 2010, shall have at least two main drains per pump that are hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least three feet in any dimension between the drains. A public swimming pool constructed on or after January 1, 2010, that meets the requirements of this subdivision, shall be exempt from the requirements of subdivision (d).

(f) A public swimming pool constructed prior to January 1, 2010, shall be retrofitted to comply with subdivisions (c) and (d) by no later than July 1, 2010, except that no further retrofitting is required for a public swimming pool that completed a retrofit between December 19, 2007, and January 1, 2010, that complied with the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. Sec. 8001 et seq.) as in effect on the date of issue of the construction permit, or for a nonportable wading pool that completed a retrofit prior to January 1, 2010, that complied with state law on the date of issue of the construction permit. A public swimming pool owner who meets the exception described in this subdivision shall do one of the following prior to September 30, 2010:

(1) File the form issued by the department pursuant to subdivision (g), as otherwise provided in subdivision ~~(h)~~ *(i)*.

(2) (A) File a signed statement attesting that the required work has been completed.

(B) Provide a document containing the name and license number of the qualified individual who completed the required work.

(C) Provide either a copy of the final building permit, if required by the local agency, or a copy of one of the following documents if no permit was required:

(i) A document that describes the modification in a manner that provides sufficient information to document the work that was done to comply with federal law.

(ii) A copy of the final paid invoice. The amount paid for the services may be omitted or redacted from the final invoice prior to submission.

(g) Prior to March 31, 2010, the department shall issue a form for use by an owner of a public swimming pool to indicate compliance with this section. The department shall consult with county health officers and directors of departments of environmental health in developing the form and shall post the form on the department's Internet Web site. The form shall be completed by the owner of a public swimming pool prior to filing the form with the appropriate city, county, or city and county department of environmental health. The form shall include, but not be limited to, the following information:

(1) A statement of whether the pool operates with a single or split main drain.

(2) Identification of the type of ~~anti-entrapment~~ *antientrapment* devices or systems that have been installed pursuant to subdivision (c) and the date or dates of installation.

(3) Identification of the type of devices or systems designed to prevent physical entrapment that have been installed pursuant to subdivision (d) in a public swimming pool with a single main drain that is not an unblockable drain and the date or dates of installation or the reason why the requirement is not applicable.

(4) A signature and license number of a qualified individual who certifies that the factual information provided on the form in response to paragraphs (1) to (3), inclusive, is true to the best of his or her knowledge.

(h) A qualified individual who improperly certifies information pursuant to paragraph (4) of subdivision (g) shall be subject to potential disciplinary action at the discretion of the licensing authority.

(i) Except as provided in subdivision (f), each public swimming pool owner shall file a completed copy of the form issued by the department pursuant to this section with the city, county, or city and county department of environmental health in the city, county, or city and county in which the swimming pool is located. The form shall be filed within 30 days following the completion of the swimming pool construction or installation required pursuant to this section or, if the construction or installation is completed prior to the date that the department issues the form pursuant to this section, within 30 days of the date that the department issues the form. The public swimming pool owner or operator shall not make a false statement, representation, certification, record, report, or otherwise falsify information that he or she is required to file or maintain pursuant to this section.

(j) In enforcing this section, health officers and directors of city, county, or city and county departments of environmental health shall consider documentation filed on or with the form issued pursuant to this section by the owner of a public swimming pool as evidence of compliance with this section. A city, county, or city and county department of environmental health may verify the accuracy of the information filed on or with the form.

(k) To the extent that the requirements for public wading pools imposed by Section 116064 conflict with this section, the requirements of this section shall prevail.

(*l*) (1) Until January 1, 2014, the department may assess an annual fee on the owners of each public swimming pool, to be collected by the applicable local health department, in an amount not to exceed the amount necessary to defray the department's costs of carrying out its duties under Section 116064.1 and this section but in no case shall this fee exceed six dollars ($6).

(2) The local health department may retain a portion of the fee collected pursuant to paragraph (1) in an amount necessary to cover the administrative costs of collecting the fee, but in no case to exceed one dollar ($1).

(3) The local health department shall bill the owner of each public swimming pool in its jurisdiction for the amount of the state fee. The local health department shall transmit the collected state fee to the Controller for deposit into the Recreational Health Fund, which is hereby created in the State Treasury. The local health department shall not be required to take action to collect an unpaid

state fee, but shall submit to the department, every six months, a list containing the name and address of the owner of each public swimming pool who has failed to pay the state fee for more than 90 days after the date that the bill was provided to the owner of the public swimming pool.

(4) Owners that are exempt from local swimming pool permit fees shall also be exempt from the fees imposed pursuant to this subdivision.

(5) Except as provided in paragraph (2), all moneys collected by the department pursuant to this section shall be deposited into the Recreational Health Fund. Notwithstanding Section 16305.7 of the Government Code, interest and dividends on moneys in the Recreational Health Fund shall also be deposited in the fund. Moneys in the fund shall, upon appropriation by the Legislature, be available to the department for carrying out its duties under Section 116064.1 and this section and shall not be redirected for any other purpose.

SEC. 136. Section 116540 of the Health and Safety Code is amended to read:

116540. Following completion of the investigation and satisfaction of the requirements of subdivisions (a) and (b), the department shall issue or deny the permit. The department may impose permit conditions, requirements for system improvements, and time schedules as it deems necessary to ~~assure~~ *ensure* a reliable and adequate supply of water at all times that is pure, wholesome, potable, and does not endanger the health of consumers.

(a) No public water system that was not in existence on January 1, 1998, shall be granted a permit unless the system demonstrates to the department that the water supplier possesses adequate financial, managerial, and technical capability to ~~assure~~ *ensure* the delivery of pure, wholesome, and potable drinking water. This section shall also apply to any change of ownership of a public water system that occurs after January 1, 1998.

(b) No permit under this chapter shall be issued to an association organized under Title 3 (commencing with Section 18000) of ~~Division 3 of~~ the Corporations Code. This section shall not apply to unincorporated associations that as of December 31, 1990, are holders of a permit issued under this chapter.

SEC. 137. Section 124991 of the Health and Safety Code is amended to read:

124991. (a) (1) The Birth Defects Monitoring Program, within the State Department of Public Health, shall collect and store any umbilical cord blood samples it receives from hospitals for storage and research. For purposes of ensuring financial stability, the Birth Defects Monitoring Program shall ensure that the following conditions, alone or in combination, are met:

(A) The fees paid by researchers pursuant to subdivision (c) shall be used for, and be sufficient to cover the cost of, collecting and storing blood samples, including umbilical cord blood samples.

(B) The department receives confirmation that a researcher has requested umbilical cord blood samples from the Birth Defects Monitoring Program for research or has requested umbilical cord blood samples to be included within a request for pregnancy or newborn blood samples through the program and has provided satisfactory evidence that adequate funding will be provided to the department from the fees paid by the researcher for the request.

(C) The department receives federal grant moneys to pay for initial startup costs for the collection and storage of umbilical cord blood samples.

(2) The department may limit the number of umbilical cord blood samples the program collects each year.

(b) (1) All information relating to umbilical cord blood samples collected and utilized by the department shall be confidential, and shall be used solely for the purposes of the program, or, if approved by the department, research. Access to confidential information shall be limited to authorized persons who agree, in writing, to maintain the confidentiality of that information. Notwithstanding any other provision of law, when the blood samples specified in subdivision (c), including those samples with any information identifying the person from whom the samples were obtained, are stored, processed, analyzed, or otherwise shared for research purposes with nondepartment staff, those samples may be shared by the program with department-authorized researchers for research purposes, and department representatives approved by the department, subject to the confidentiality and security requirements for confidential information established in this section and in Section 103850.

(2) The department shall maintain an accurate record of all persons who are given confidential information pursuant to this section, and any disclosure of confidential information shall be

made only upon written agreement that the information will be kept confidential, used for its approved purpose, and not be further disclosed.

(3) ~~Any~~ *A* person who, in violation of a written agreement to maintain confidentiality, discloses ~~any~~ information provided pursuant to this section, or who uses information provided pursuant to this section in a manner other than as approved pursuant to this section may be denied further access to ~~any~~ confidential information maintained by the department, and shall be subject to a civil penalty not exceeding one thousand dollars ($1,000). The penalty provided in this section ~~shall not be construed as to~~ *does not* limit or otherwise restrict ~~any~~ *a* remedy, provisional or otherwise, provided by law for the benefit of the department or ~~any other~~ *a* person covered by this section.

(c) In order to implement this section, the department shall establish fees in an amount that shall not exceed the costs of administering the program and the collection and storage of these samples, which the department shall collect from researchers who have been approved by the department and who seek to use the following types of blood samples for research:

(1) Umbilical cord blood.

(2) Pregnancy blood collected by the Genetic Disease Screening Program, and stored by the Birth Defects Monitoring Program.

(3) Newborn blood collected by the Genetic Disease Screening Program.

(d) Fees collected pursuant to subdivision (c) shall be collected by the department and deposited into the Birth Defects Monitoring Program Fund, the Genetic Disease Testing Fund, created pursuant to Section 124996, or the Cord Blood Banking Fund, which is hereby created as a special fund in the State Treasury. The amount of fees deposited into each of these funds shall be based on the program that is providing those pregnancy blood samples, and the purpose for which the blood sample was obtained. Notwithstanding any other provision of law, the moneys in the Birth Defects Monitoring Program Fund, the Genetic Disease Testing Fund, and the Cord Blood Banking Fund that are collected pursuant to subdivision (c), may be used by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (e).

(e) Moneys in those funds shall be used for the costs related to data management, including data linkage and entry, and blood collection, storage, retrieval, processing, inventory, and shipping.

(f) The department shall comply with the existing requirements in the Birth Defects Monitoring Program, as set forth in Chapter 1 (commencing with Section 103825) of Part 2 of Division 102.

(g) The department, any entities approved by the department, and researchers shall maintain the confidentiality of patient information and blood samples in accordance with existing law and in the same manner as other medical record information with patient identification that they possess, and shall use the information only for the following purposes:

(1) Research to identify risk factors for children's and women's diseases.

(2) Research to develop and evaluate screening tests.

(3) Research to develop and evaluate prevention strategies.

(4) Research to develop and evaluate treatments.

(h) (1) For purposes of ensuring the security of a donor's personal information, before any blood samples are released pursuant to this section for research purposes, the State Committee for the Protection of Human Subjects (CPHS) shall determine if all of the following criteria have been met:

(A) The department, contractors, researchers, or other entities approved by the department have provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The department, contractors, researchers, or other entities approved by the department have provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research activity, unless the program contractors, researchers, or other entities approved by the department have demonstrated an ongoing need for the personal information for the research activity and have provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The department, contractors, researchers, or other entities approved by the department have provided sufficient written assurances that the personal information will not be reused or

disclosed to ~~any other~~ *a* person or entity, or used in ~~any~~ *a* manner not approved in the research protocol, except as required by law or for authorized oversight of the research activity.

(2) As part of its review and approval of the research activity for the purpose of protecting personal information held in agency databases, CPHS shall accomplish at least all of the following:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research activity.

(C) Permit access only to the minimum ~~necessary~~ personal information ~~needed~~ *necessary* for the research activity.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can ~~still~~ be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(i) In addition to the fees described in subdivision (c), the department may bill a researcher for the costs associated with the department's process of protecting personal information, including, but not limited to, the department's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(j) ~~Nothing in this section shall~~ *This section does not* prohibit the department from using its existing authority to enter into written agreements to enable other institutional review boards to approve research activities, projects or classes of projects for the department, provided *that* the data security requirements set forth in this section are satisfied.

SEC. 138. Section 128730 of the Health and Safety Code is amended to read:

128730. (a) Effective January 1, 1986, the office shall be the single state agency designated to collect the following health facility or clinic data for use by all state agencies:

(1) That data required by the office pursuant to Section 127285.

(2) That data required in the Medi-Cal cost reports pursuant to Section 14170 of the Welfare and Institutions Code.

(3) Those data items formerly required by the California Health Facilities Commission that are listed in Sections 128735 and 128740. Information collected pursuant to subdivision (g) of Section 128735 and Sections 128736 and 128737 shall be made available to the State Department of Health Care Services and the State Department of Public Health. The departments shall ensure that the patient's rights to confidentiality shall not be violated in any manner. The departments shall comply with all applicable policies and requirements involving review and oversight by the State Committee for the Protection of Human Subjects.

(b) The office shall consolidate any and all of the reports listed under this section or Sections 128735 and 128740, to the extent feasible, to minimize the reporting burdens on *hospitals*, provided, however, that the office shall neither add nor delete data items from the Hospital Discharge Abstract Data Record or the quarterly reports without prior authorizing legislation, unless specifically required by federal law or regulation or judicial decision.

SEC. 139. Section 130060 of the Health and Safety Code is amended to read:

130060. (a) (1) After January 1, 2008, any general acute care hospital building that is determined to be a potential risk of collapse or pose significant loss of life shall only be used for nonacute care hospital purposes. A delay in this deadline may be granted by the office upon a demonstration by the owner that compliance will result in a loss of health care capacity that may not be provided by other general acute care hospitals within a reasonable proximity. In its request for an extension of the deadline, a hospital shall state why the hospital is unable to comply with the January 1, 2008, deadline requirement.

(2) Prior to granting an extension of the January 1, 2008, deadline pursuant to this section, the office shall do all of the following:

(A) Provide public notice of a hospital's request for an extension of the deadline. The notice, at a minimum, shall be posted on the office's Internet Web site, and shall include the facility's name and identification number, the status of the request, and the beginning and ending dates of the comment period, and shall advise the public of the opportunity to submit public comments pursuant to subparagraph (C). The office shall also provide notice of all

requests for the deadline extension directly to interested parties upon request of the interested parties.

(B) Provide copies of extension requests to interested parties within 10 working days to allow interested parties to review and provide comment within the 45-day comment period. The copies shall include those records that are available to the public pursuant to the *California* Public Records Act~~, Chapter~~ *(Chapter* 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government ~~Code~~ *Code)*.

(C) Allow the public to submit written comments on the extension proposal for a period of not less than 45 days from the date of the public notice.

(b) (1) It is the intent of the Legislature, in enacting this subdivision, to facilitate the process of having more hospital buildings in substantial compliance with this chapter and to take nonconforming general acute care hospital inpatient buildings out of service more quickly.

(2) The functional contiguous grouping of hospital buildings of a general acute care hospital, each of which provides, as the primary source, one or more of the hospital's eight basic services as specified in subdivision (a) of Section 1250, may receive a five-year extension of the January 1, 2008, deadline specified in subdivision (a) of this section pursuant to this subdivision for both structural and nonstructural requirements. A functional contiguous grouping refers to buildings containing one or more basic hospital services that are either attached or connected in a way that is acceptable to the State Department of Health Care Services. These buildings may be either on the existing site or a new site.

(3) To receive the five-year extension, a single building containing all of the basic services or at least one building within the contiguous grouping of hospital buildings shall have obtained a building permit prior to 1973 and this building shall be evaluated and classified as a nonconforming, Structural Performance Category-1 (SPC-1) building. The classification shall be submitted to and accepted by the Office of Statewide Health Planning and Development. The identified hospital building shall be exempt from the requirement in subdivision (a) until January 1, 2013, if the hospital agrees that the basic service or services that were provided in that building shall be provided, on or before January 1, 2013, as follows:

(A) Moved into an existing conforming Structural Performance Category-3 (SPC-3), Structural Performance Category-4 (SPC-4), or Structural Performance Category-5 (SPC-5) and Non-Structural Performance Category-4 (NPC-4) or Non-Structural Performance Category-5 (NPC-5) building.

(B) Relocated to a newly built compliant SPC-5 and NPC-4 or NPC-5 building.

(C) Continued in the building if the building is retrofitted to a SPC-5 and NPC-4 or NPC-5 building.

(4) A five-year extension is also provided to a ~~post 1973~~ *post-1973* building if the hospital owner informs the Office of Statewide Health Planning and Development that the building is classified as ~~a~~ SPC-1, SPC-3, or SPC-4 and will be closed to general acute care inpatient service use by January 1, 2013. The basic services in the building shall be relocated into a SPC-5 and NPC-4 or NPC-5 building by January 1, 2013.

(5) SPC-1 buildings, other than the building identified in paragraph (3) or (4), in the contiguous grouping of hospital buildings shall also be exempt from the requirement in subdivision (a) until January 1, 2013. However, on or before January 1, 2013, at a minimum, each of these buildings shall be retrofitted to a SPC-2 and NPC-3 building, or no longer be used for general acute care hospital inpatient services.

(c) On or before March 1, 2001, the office shall establish a schedule of interim work progress deadlines that hospitals shall be required to meet to be eligible for the extension specified in subdivision (b). To receive this extension, the hospital building or buildings shall meet the year 2002 nonstructural requirements.

(d) A hospital building that is eligible for an extension pursuant to this section shall meet the January 1, 2030, nonstructural and structural deadline requirements if the building is to be used for general acute care inpatient services after January 1, 2030.

(e) Upon compliance with subdivision (b), the hospital shall be issued a written notice of compliance by the office. The office shall send a written notice of violation to hospital owners that fail to comply with this section. The office shall make copies of these notices available on its *Internet* Web site.

(f) (1) A hospital that has received an extension of the January 1, 2008, deadline pursuant to subdivision (a) or (b) may request an additional extension of up to two years for a hospital building

that it owns or operates and that meets the criteria specified in paragraph (2), (3), or (5).

(2) The office may grant the additional extension if the hospital building subject to the extension meets all of the following criteria:

(A) The hospital building is under construction at the time of the request for extension under this subdivision and the purpose of the construction is to meet the requirements of subdivision (a) to allow the use of the building as a general acute care hospital building after the extension deadline granted by the office pursuant to subdivision (a) or (b).

(B) The hospital building plans were submitted to the office and were deemed ready for review by the office at least four years prior to the applicable deadline for the building. The hospital shall indicate, upon submission of its plans, the SPC-1 building or buildings that will be retrofitted or replaced to meet the requirements of this section as a result of the project.

(C) The hospital received a building permit for the construction described in subparagraph (A) at least two years prior to the applicable deadline for the building.

(D) The hospital submitted a construction timeline at least two years prior to the applicable deadline for the building demonstrating the hospital's intent to meet the applicable deadline. The timeline shall include all of the following:

(i) The projected construction start date.

(ii) The projected construction completion date.

(iii) Identification of the contractor.

(E) The hospital is making reasonable progress toward meeting the timeline set forth in subparagraph (D), but factors beyond the hospital's control make it impossible for the hospital to meet the deadline.

(3) The office may grant the additional extension if the hospital building subject to the extension meets all of the following criteria:

(A) The hospital building is owned by a health care district that has, as owner, received the extension of the January 1, 2008, deadline, but where the hospital is operated by an unaffiliated third-party lessee pursuant to a facility lease that extends at least through December 31, 2009. The district shall file a declaration with the office with a request for an extension stating that, as of the date of the filing, the district has lacked, and continues to lack, unrestricted access to the subject hospital building for seismic

planning purposes during the term of the lease, and that the district is under contract with the county to maintain hospital services when the hospital comes under district control. The office shall not grant the extension if an unaffiliated third-party lessee will operate the hospital beyond December 31, 2010.

(B) The hospital building plans were submitted to the office and were deemed ready for review by the office at least four years prior to the applicable deadline for the building. The hospital shall indicate, upon submission of its plans, the SPC-1 building or buildings that will be retrofitted or replaced to meet the requirements of this section as a result of the project.

(C) The hospital received a building permit for the construction described in subparagraph (B) by December 31, 2011.

(D) The hospital submitted, by December 31, 2011, a construction timeline for the building demonstrating the hospital's intent and ability to meet the deadline of December 31, 2014. The timeline shall include all of the following:

(i) The projected construction start date.

(ii) The projected construction completion date.

(iii) Identification of the contractor.

(E) The hospital building is under construction at the time of the request for the extension, the purpose of the construction is to meet the requirements of subdivision (a) to allow the use of the building as a general acute care hospital building after the extension deadline granted by the office pursuant to subdivision (a) or (b), and the hospital is making reasonable progress toward meeting the timeline set forth in subparagraph (D).

(F) The hospital granted an extension pursuant to this paragraph shall submit an additional status report to the office, equivalent to that required by subdivision (c) of Section 130061, no later than June 30, 2013.

(4) An extension granted pursuant to paragraph (3) shall be applicable only to the health care district applicant and its affiliated hospital while the hospital is operated by the district or an entity under the control of the district.

(5) The office may grant the additional extension if the hospital building subject to the extension meets all of the following criteria:

(A) The hospital owner submitted to the office, prior to June 30, 2009, a request for review using current computer modeling utilized by the office and based upon software developed by the

Federal Emergency Management Agency, referred to as Hazards US, and the building was deemed SPC-1 after that review.

(B) The hospital building plans for the building are submitted to the office and deemed ready for review by the office prior to July 1, 2010. The hospital shall indicate, upon submission of its plans, the SPC-1 building or buildings that shall be retrofitted or replaced to meet the requirements of this section as a result of the project.

(C) The hospital receives a building permit from the office for the construction described in subparagraph (B) prior to January 1, 2012.

(D) The hospital submits, prior to January 1, 2012, a construction timeline for the building demonstrating the hospital's intent and ability to meet the applicable deadline. The timeline shall include all of the following:

(i) The projected construction start date.

(ii) The projected construction completion date.

(iii) Identification of the contractor.

(E) The hospital building is under construction at the time of the request for the extension, the purpose of the construction is to meet the requirements of subdivision (a) to allow the use of the building as a general acute care hospital building after the extension deadline granted by the office pursuant to subdivision (a) or (b), and the hospital is making reasonable progress toward meeting the timeline set forth in subparagraph (D).

(F) The hospital owner completes construction such that the hospital meets all criteria to enable the office to issue a certificate of occupancy by the applicable deadline for the building.

(6) A hospital denied an extension pursuant to this subdivision may appeal the denial to the Hospital Building Safety Board.

(7) The office may revoke an extension granted pursuant to this subdivision for any hospital building where the work of construction is abandoned or suspended for a period of at least one year, unless the hospital demonstrates in a public document that the abandonment or suspension was caused by factors beyond its control.

SEC. 140. Section 130251 of the Health and Safety Code is amended to read:

130251. (a) The California Health and Human Services Agency or one of the departments under its jurisdiction may apply for

federal funds made available through the federal American Recovery and Reinvestment Act of 2009 ~~(Public Law~~ *(P.L.* 111-5) for health information technology and exchange.

(b) In the event that the California Health and Human Services Agency or one of the departments under its jurisdiction elects not to submit an application described in subdivision (a), the Governor shall designate a qualified nonprofit entity to be the state-designated entity for the purposes of health information exchange, pursuant to the requirements set forth in ARRA.

(c) The agency or state-designated entity shall execute tasks related to accessing federal stimulus funds made available through ARRA, and facilitate and expand the use and disclosure of health information electronically among organizations according to nationally recognized standards and implementation specifications while protecting, to the greatest extent possible, individual privacy and the confidentiality of electronic medical records.

(d) The agency or state-designated entity shall develop a plan to ensure that health information exchange capabilities are available, adopted, and utilized statewide so that patients do not experience disparities in access to the benefits of this technology by age, race, ethnicity, language, income, insurance status, geography, or otherwise.

(e) The agency or state-designated entity shall create a plan for a self-sustaining funding mechanism that does not include use of General Fund moneys that shall cover all reasonable costs of the administration of health information exchange when federal ARRA funds expire or are exhausted.

(f) The state-designated entity shall continually meet any conditions for being so designated as determined by the Secretary of California Health and Human Services. Failure to comply with this subdivision may result in the entity losing its designation.

(g) As a condition of receiving the state designation, the state-designated entity shall comply with all of the following requirements:

(1) It shall be subject to oversight by the California Health and Human Services Agency.

(2) (A) It shall be governed by a board with a diverse composition from multiple types of organizations from multiple regions throughout the state. The governing board shall include, at a minimum, all of the following:

(i) The Secretary of California Health and Human Services ~~on~~ *or* his or her designee.

(ii) The ~~Chair~~ *chairperson* of the Senate Committee on Health or his or her designee.

(iii) The ~~Chair~~ *chairperson* of the Assembly Committee on Health ~~on~~ *or* his or her designee.

(iv) At least two consumer representatives, one of whom shall have expertise in privacy and security of health information.

(B) The majority of the board shall be comprised of ~~`nongovernmental~~ *nongovernmental* employees.

(3) If the board convenes workgroups or subcommittees, the workgroups or subcommittees shall be comprised of representatives from multiple types of organizations from multiple regions throughout the state, and meetings of any workgroup or subcommittee shall be held in an open, public, and transparent way.

(4) It shall have nondiscrimination and conflict-of-interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by stakeholders.

(h) The state-designated entity shall report to the California Health and Human Services Agency and the Legislature on its progress and activities at least annually.

SEC. 141. Section 38.5 of the Insurance Code is amended to read:

38.5. Any written notice required to be given or mailed to any person by an insurer relating to any insurance on risks or on operations in this state not excepted by Section 1851 from the coverage of Chapter 9 (commencing with Section 1850.4) of Part 2 of Division 1~~,~~ *of this code* may, if not excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code, be provided by electronic transmission pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has agreed to conduct the transaction by electronic means pursuant to Section 1633.5 of the Civil Code. The affidavit of the person who initiated the electronic transmission, stating the facts of that transmission into an information processing system outside of the control of the sender or of any person that sent the electronic record on behalf of the sender, is prima facie evidence that the notice was transmitted and shall be sufficient proof of notice. Any notice provided by electronic transmission shall be treated as if

mailed or given for the purposes of any provision of ~~the Insurance Code~~ *this code*, except as provided by subdivision (g) of Section 1633.15 of the Civil Code. The insurance company shall maintain a system for confirming that any notice or document that is to be provided by electronic means has been sent in a manner consistent with Section 1633.15 of the Civil Code. A valid electronic signature shall be sufficient for any provision of law requiring a written signature. The insurance company shall retain a copy of the confirmation and electronic signature, when either is required, with the policy information so that they are retrievable upon request by the Department of Insurance while the policy is in force and for five years thereafter.

SEC. 142. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means an insurer that was a member insurer of the association, consistent with paragraph (11) of subdivision (c), either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction, or, in the case of the State Compensation Insurance Fund, if a finding of insolvency is made by a duly enacted legislative measure.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, that satisfy all of the following requirements:

(A) Imposed by law and within the coverage of an insurance policy of the insolvent insurer.

(B) Which were unpaid by the insolvent insurer.

(C) Which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings.

(D) Which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed.

(E) For which the assets of the insolvent insurer are insufficient to discharge in full.

(F) In the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state.

(G) In the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" also includes the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (A) to (G), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) "Covered claims" does not include obligations arising from the following:

(A) Life, annuity, health, or disability insurance.

(B) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(C) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(D) Credit insurance.

(E) Title insurance.

(F) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(G) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to subdivision (c) of Section 3702.8 of the Labor Code that covers all or any part of workers' compensation liabilities of an employer that is issued, or was previously issued, a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars ($100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars ($500,000).

(8) "Covered claims" does not include any amount awarded as punitive or exemplary damages, nor any amount awarded by the

Workers' Compensation Appeals Board pursuant to Section 5814 or 5814.5 of the Labor Code because payment of compensation was unreasonably delayed or refused by the insolvent insurer.

(9) "Covered claims" does not include (A) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured or (B) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian, or other personal representative or trustee in bankruptcy, and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) "Covered claims" does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) "Covered claims" does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(12) "Covered claims" does not include surplus deposits of subscribers as defined in Section 1374.1.

(13) "Covered claims" shall also include obligations arising under an insurance policy written to indemnify a permissibly self-insured employer pursuant to subdivision (b) or (c) of Section 3700 of the Labor Code for its liability to pay workers' compensation benefits in excess of a specific or aggregate retention, provided, however, that for purposes of this article, those claims shall not be considered workers' compensation claims and therefore are subject to the per claim limit in paragraph (7) and any payments and expenses related thereto shall be allocated to category (c) for claims other than workers' compensation, homeowners, and automobile, as provided in Section 1063.5.

These provisions shall apply to obligations arising under any policy as described herein issued to a permissibly self-insured employer or group of self-insured employers pursuant to Section 3700 of the Labor Code and notwithstanding any other provision of ~~the Insurance Code~~ *this code*, those obligations shall be governed

by this provision in the event that the Self-Insurers' Security Fund is ordered to assume the liabilities of a permissibly self-insured employer or group of self-insured employers pursuant to Section 3701.5 of the Labor Code. The provisions of this paragraph apply only to insurance policies written to indemnify a permissibly self-insured employer or group of self-insured employers under subdivision (b) or (c) of Section 3700 *of the Labor Code*, for its liability to pay workers' compensation benefits in excess of a specific or aggregate retention, and this paragraph does not apply to special excess workers' compensation insurance policies unless issued pursuant to authority granted in subdivision (c) of Section 3702.8 of the Labor Code, and as provided for in subparagraph (G) of paragraph (3) ~~of subdivision (c)~~. In addition, this paragraph does not apply to any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses as are excluded in subparagraph (G) of paragraph (3) ~~of subdivision (c)~~.

Each permissibly self-insured employer or group of self-insured employers, or the Self-Insurers' Security Fund, shall, to the extent required by the Labor Code, be responsible for paying, adjusting, and defending each claim arising under policies of insurance covered under this section, unless the benefits paid on a claim exceed the specific or aggregate retention, in which case:

(A) If the benefits paid on the claim exceed the specific or aggregate retention, and the policy requires the insurer to defend and adjust the claim, the California Insurance Guarantee Association (CIGA) shall be solely responsible for adjusting and defending the claim, and shall make all payments due under the claim, subject to the limitations and exclusions of this article with ~~regards~~ *regard* to covered claims. As to each claim subject to this paragraph, notwithstanding any other provisions of ~~the Insurance Code~~ *this code* or the Labor Code, and regardless of whether the amount paid by CIGA is adequate to discharge a claim obligation, neither the self-insured employer, group of self-insured employers, nor the Self-Insurers' Security Fund, shall have any obligation to pay benefits over and above the specific or aggregate retention, except as provided in *this* subdivision ~~(c)~~.

(B) If the benefits paid on the claim exceed the specific or aggregate retention, and the policy does not require the insurer to defend and adjust the claim, the permissibly self-insured employer

or group of self-insured employers, or the Self-Insurers' Security Fund, shall not have any further payment obligations with respect to the claim, but shall continue defending and adjusting the claim, and shall have the right, but not the obligation, in any proceeding to assert all applicable statutory limitations and exclusions as contained in this article with regard to the covered claim. CIGA shall have the right, but not the obligation, to intervene in any proceeding where the self-insured employer, group of self-insured employers, or the Self-Insurers' Security Fund is defending any such claim and shall be permitted to raise the appropriate statutory limitations and exclusions as contained in this article with respect to covered claims. Regardless of whether the self-insured employer or group of self-insured employers, or the Self-Insurers' Security Fund, asserts the applicable statutory limitations and exclusions, or whether CIGA intervenes in any such proceeding, CIGA shall be solely responsible for paying all benefits due on the claim, subject to the exclusions and limitations of this article with respect to covered claims. As to each claim subject to this paragraph, notwithstanding any other provision of the Insurance Code or the Labor Code and regardless of whether the amount paid by CIGA is adequate to discharge a claim obligation, neither the self-insured employer, group of self-insured employers, nor the Self-Insurers' Security Fund, shall have any obligation to pay benefits over and above the specific or aggregate retention, except as provided in this subdivision.

(C) In the event that the benefits paid on the covered claim exceed the per claim limit in paragraph (7) ~~of subdivision (c)~~, the responsibility for paying, adjusting, and defending the claim shall be returned to the permissibly self-insured employer or group of employers, or the Self-Insurers' Security Fund.

These provisions shall apply to all pending and future insolvencies. For purposes of this paragraph, a pending insolvency is one involving a company that is currently receiving benefits from the ~~guaranty~~ *guarantee* association.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the department.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the

year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means any insured making a first party claim or any person instituting a liability claim~~.~~, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) "Ocean marine insurance" includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders' risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) "Unearned premium" means that portion of a premium as calculated by the liquidator that had not been earned because of the cancellation of the insolvent insurer's policy and is that premium remaining for the unexpired term of the insolvent insurer's policy. "Unearned premium" does not include any amount sought as return of a premium under any policy providing retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the

premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

SEC. 143. Section 1063.2 of the Insurance Code is amended to read:

1063.2. (a) The association shall pay and discharge covered claims and in connection therewith pay for or furnish loss adjustment services and defenses of claimants when required by policy provisions. It may do so either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to the association and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by the association.

(b) The association shall be a party in interest in all proceedings involving a covered claim, and shall have the same rights as the insolvent insurer would have had if not in liquidation, including, but not limited to, the right to: (1) appear, defend, and appeal a claim in a court of competent jurisdiction, (2) receive notice of, investigate, adjust, compromise, settle, and pay a covered claim, and (3) investigate, handle, and deny a noncovered claim. The association shall have no cause of action against the insureds of the insolvent insurer for any sums it has paid out, except as provided by this article.

(c) (1) If damages against uninsured motorists are recoverable by the claimant from his or her own insurer, the applicable limits of the uninsured motorist coverage shall be a credit against a covered claim payable under this article. Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the permanent location of the property, and if it is a workers' compensation claim, he or she shall seek recovery first from the association of the residence of the claimant. Any recovery under this article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. A member insurer may recover in subrogation from the association only

one-half of any amount paid by that insurer under uninsured motorist coverage for bodily injury or wrongful death (and nothing for a payment for anything else), in those cases where the injured person insured by such an insurer has proceeded under his or her uninsured motorist coverage on the ground that the ~~tort-feasor~~ *tortfeasor* is uninsured as a result of the insolvency of his or her liability insurer (an insolvent insurer as defined in this article), provided that the member insurer shall waive all rights of subrogation against ~~such tort-feasor~~ *the tortfeasor*. Any amount paid a claimant in excess of the amount authorized by this section may be recovered by action, or other proceeding, brought by the association.

(2) Any claimant having collision coverage on a loss ~~which~~ *that* is covered by the insolvent company's liability policy shall first proceed against his or her collision carrier. Neither that claimant nor the collision carrier, if it is a member of the association, shall have the right to sue or continue a suit against the insured of the insolvent insurance company for that collision damage.

(d) The association shall have the right to recover from any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this article the amount of any covered claim and allocated claims expense paid on behalf of that person pursuant to this article.

(e) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to first exhaust his or her right under the program. Any amount payable on a covered claim shall be reduced by the amount of any recovery under the program.

(f) "Covered claims" for unearned premium by lenders under insurance premium finance agreements as defined in Section 673 shall be computed as of the earliest cancellation date of the policy pursuant to Section 673 ~~or subdivision (g) of this section~~.

(g) "Covered claims" shall not include any judgments against or obligations or liabilities of the insolvent insurer or the commissioner, as liquidator, or otherwise resulting from alleged or proven torts, nor shall any default judgment or stipulated judgment against the insolvent insurer, or against the insured of the insolvent insurer, be binding against the association.

(h) "Covered claims" shall not include any loss adjustment expenses, including adjustment fees and expenses, attorney's fees and expenses, court costs, interest, and bond premiums, incurred prior to the appointment of a liquidator.

SEC. 144. Section 10136 of the Insurance Code is amended to read:

10136. (a) No direct or indirect transfer of structured settlement payment rights ~~shall be effective~~ by a payee to which this article applies *shall be effective,* and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied.

(b) Ten or more days before the payee executes a transfer agreement, the transferee shall provide the payee with a separate written disclosure statement, accurately completed with the information that applies to the transfer agreement, in substantially the following form, in at least 12-point type unless otherwise indicated (bracketed instructions shall not appear in the form):

"Disclosure Notice Required By Law [14-point boldface type]

You are selling (technically called ~~'transferring')~~ *'transferring')* your right to receive your payments under a structured settlement. You should get this disclosure notice at least 10 days before you sign any contract.

IMPORTANT TERMS: [14-point boldface type]

You have agreed to sell to the transferee future payments totaling ____ dollars ($____) in exchange for a purchase price of ____ dollars ($____).

Those future payments have a discounted present value equal to ____ dollars ($____), calculated by applying the discount rate of ____ percent utilized by the Internal Revenue Service to value annuities in probate proceedings.

The purchase price to be paid to you was calculated using a discount rate of ____ percent.

The purchase price payable to you is less than the present value of the future payments stated above because the discount rate of your transaction is greater than the rate utilized by the Internal Revenue Service.

For comparison purposes:

If you did not sell your right to receive structured settlement payments, but instead borrowed the net amount of $____ and paid that loan back in installments with each of the payments you are now selling, the equivalent interest rate you would be paying for that loan would be ____% per year.

[The text and information set forth above under 'IMPORTANT TERMS' shall be in 14-point type and circumscribed by a box with a bold border]

To figure the net amount we are paying, we have charged you for the following expenses:

[itemize in a list by type and amount]

for a total of $____ in expenses.

You should get independent professional advice about whether selling your structured settlement payments is a good idea for you and for your dependents.

You are advised to seek independent legal or financial advice regarding the transaction and, under the law, the cost of that advice, up to one thousand five hundred dollars ($1,500), will be paid by the transferee, the person or entity to whom you have agreed to transfer and assign the payments in question. The transferee or purchaser's accountant, counsel, or actuary may not advise you in this transaction.

You also should get independent professional advice from an accountant or lawyer experienced in tax matters about any income tax consequences from selling your structured settlement payments. We cannot give you the name of anyone to advise you.

Court approval is needed [14-point boldface type]. A court must approve any agreement you sign to sell your rights under a structured settlement. You will not receive any money until the court approves the sale. Court approval could take more than 30 days following the day you sign an agreement selling your rights under a structured settlement.

A sale of future structured settlement payments will mean that you will no longer receive the future payments that are sold. You are advised to enter into this transaction only after you have carefully considered the consequences of the transaction.

You may cancel the contract before court approval [14-point boldface type]. You may cancel the agreement selling (or transferring) your rights under a structured settlement without any cost or obligation. You may cancel at any time before the court approves the contract. You will get notice of the date of the court hearing.

If you want to cancel, you do not need any special form. But, you must cancel in writing. Send your cancellation to: [insert transferee's name and address].

If you believe that you have been treated unfairly or have been misled, you should contact your local district attorney or the state Attorney General."

(c) The transfer agreement shall be written in at least 12-point type and shall be complete and without blank spaces to be completed after the payee's signature. The transfer agreement shall set forth clear and conspicuously, and in no less than 12-point type, all of the following:

(1) A statement that the agreement is not effective until the date on which a court enters a final order approving the transfer agreement and that payment to the payee pursuant to the transfer agreement will be delayed up to 30 days or more after the date the payee signed the transfer agreement in order for the court to review and approve the transfer agreement.

(2) The amounts and due dates of the structured settlement payments to be transferred.

(3) The aggregate amount of the structured settlement payments to be transferred. This amount shall be disclosed in the form prescribed in subdivision (b).

(4) The aggregate amount of all expenses, if any, to be deducted from the purchase price to be paid to the payee in exchange for the payments to be transferred, and an itemization of all expenses by type and amount.

(5) The amount payable to the payee, net of all expenses, in exchange for the payments to be transferred. This amount shall be disclosed in the form prescribed in subdivision (b).

(6) The discounted present value of all structured settlement payments to be transferred and a statement that "This is the value of your structured settlement in current dollars." This amount shall be disclosed in the form prescribed in subdivision (b).

(7) The federal rate, as described in subdivision (c) of Section 10134, used in determining the discounted present value.

(8) The effective equivalent interest rate, which shall be disclosed in the following statement:

"YOU WILL BE PAYING THE EQUIVALENT OF AN INTEREST RATE OF ____% PER YEAR.

Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, if the transferred structured settlement payments were installment payments on a loan, with each payment applied first to accrued unpaid interest and then to principal, it would be as if you were paying interest to us of ____% per year, assuming funding on the effective date of transfer."

This percentage amount shall be disclosed in the form prescribed in subdivision (b) in the space for "the equivalent interest rate you would be paying for this loan would be ____% per year."

(9) The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments.

(10) A statement that the payee should obtain independent professional advice regarding any federal and state income tax consequences arising from the proposed transfer, and that the transferee may not refer the payee to any specific adviser for that purpose.

(11) A statement that the court approving the transfer agreement retains continuing jurisdiction to interpret and monitor implementation of the agreement as justice may require.

(12) The following statement: "If you believe you were treated unfairly or were misled as to the nature of the obligations you assumed upon entering into this agreement, you should report those circumstances to your local district attorney or the office of the Attorney General."

(13) The following statement printed in 14-point type, circumscribed by a box with a bold border, and set forth immediately above or adjacent to the space reserved for the payee's signature: "You have the right to cancel this agreement without any cost or obligation until the date the court approves this

agreement. You will receive notice of the court hearing date when approval may occur. You must cancel in writing and send your cancellation to [insert transferee's name and address]."

(d) The contract for transferring the structured settlement payment rights may not violate Section 10138.

(e) At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee.

SEC. 145. Section 10192.4 of the Insurance Code is amended to read:

10192.4. The following definitions apply for the purposes of this article:

(a) "Applicant" means:

(1) The person who seeks to contract for insurance benefits, in the case of an individual Medicare supplement policy.

(2) The proposed certificate holder, in the case of a group Medicare supplement policy.

(b) "Bankruptcy" means that situation in which a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(c) "Certificate" means a certificate issued for delivery in this state under a group Medicare supplement policy.

(d) "Certificate form" means the form on which the certificate is issued for delivery by the issuer.

(e) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

(f) (1) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) Any individual or group contract, policy, certificate, or program that is written or administered by a health care service plan, health insurer, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage

not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage.

(B) Part A or B of Title XVIII of the federal Social Security Act *(42 U.S.C. Sec. 1395c et seq.)* (Medicare).

(C) Title XIX of the federal Social Security Act *(42 U.S.C. Sec. 1396 et seq.)* (Medicaid (known as Medi-Cal in California)), other than coverage consisting solely of benefits under Section 1928 of that act.

(D) Chapter 55 of Title 10 of the United States Code (CHAMPUS).

(E) A medical care program of the Indian Health Service or of a tribal organization.

(F) A state health benefits risk pool.

(G) A health plan offered under Chapter 89 of Title 5 of the United States Code (Federal Employees Health Benefits Program).

(H) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the federal Public Health Service Act, as amended by Public Law 104-191, the federal Health Insurance Portability and Accountability Act of 1996.

(I) A health benefit plan under Section 5(e) of the federal Peace Corps Act (Section 2504(e) of Title 22 of the United States Code).

(J) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(K) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health ~~Services~~ *Service* Act (42 U.S.C. Sec. 300gg(c)).

(2) "Creditable coverage" shall not include one or more, or any combination of, the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers' compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for onsite medical clinics.

(H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Other similar, limited benefits as are specified in federal regulations.

(4) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(5) "Creditable coverage" shall not include the following if offered as a separate policy, certificate, or contract of insurance:

(A) Medicare supplemental health insurance as defined under Section 1882(g)(1) of the federal Social Security Act.

(B) Coverage supplemental to the coverage provided under Chapter 55 of Title 10 of the United States Code.

(C) Similar supplemental coverage provided to coverage under a group health plan.

(g) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in Section 1002 of Title 29 of the United States Code (Employee Retirement Income Security Act).

(h) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(i) "Issuer" includes insurance companies, fraternal benefit societies, and any other entity delivering, or issuing for delivery, Medicare supplement policies or certificates in this state, except entities subject to Article 3.5 (commencing with Section ~~1358)~~ *1358.1)* of Chapter 2.2 of Division 2 of the Health and Safety Code.

(j) "Medi-Cal" means California's version of Medicaid under Title XIX of the federal Social Security Act.

(k) "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as amended.

(*l*) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C and includes:

(1) Coordinated care plans that provide health care services, including, but not limited to, health care service plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organizations plans.

(2) Medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account.

(3) Medicare Advantage private fee-for-service plans.

(m) "Medicare supplement policy" means a group or individual policy of health insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. ~~Section~~ *Sec.* 1395mm) or an issued policy under a demonstration project specified in Section 1395ss(g)(1) of Title 42 of the United States Code, that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. "Medicare supplement policy" does not include a Medicare Advantage plan established under Medicare Part C, an outpatient prescription drug plan established under Medicare Part D, or a health care prepayment plan that provides benefits pursuant to an agreement under subparagraph (A) of paragraph (1) of subsection (a) of Section 1833 of the *federal* Social Security Act.

(n) "Policy form" means the form on which the policy is issued for delivery by the issuer.

(o) "1990 standardized Medicare supplement benefit plan," "1990 standardized benefit plan," or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after July 21, 1992, and with an effective date prior to June 1, 2010, and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

(p) "2010 standardized Medicare supplement benefit plan," "2010 standardized benefit plan," or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date on or after June 1, 2010.

(q) "Secretary" means the Secretary of the United States Department of Health and Human Services.

SEC. 146. Section 10192.81 of the Insurance Code is amended to read:

10192.81. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 standardized Medicare supplement benefit plan for sale with an effective date on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date prior to June 1, 2010, remain subject to the requirements of Section 10192.8.

(a) The following general standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this article~~.~~*:*

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with those changes.

(4) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(A) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(B) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation which is shown by the issuer to be material to the acceptance for coverage. The contestability period for Medicare supplement insurance shall be two years, pursuant to Section 10350.2.

(C) If the Medicare supplement policy is terminated by the master policyholder and is not replaced as provided under subparagraph (E), the issuer shall offer certificate holders an individual Medicare supplement policy which, at the option of the certificate holder, does one of the following:

(i) Provides for continuation of the benefits contained in the group policy.

(ii) Provides for benefits that otherwise meet the requirements of one of the standardized policies defined in this article.

(D) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall do one of the following:

(i) Offer the certificate holder the conversion opportunity described in subparagraph (C).

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(E) (i) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(ii) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate that has been in force for six months or more, the replacing issuer shall not impose an exclusion or limitation based on a preexisting condition. If the original coverage has been in force for less than six months, the replacing issuer shall waive any time period applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy or certificate to the extent the time was spent under the original coverage.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(7) (A) (i) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed 24 months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Medi-Cal, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance. Upon receipt of timely notice, the insurer shall return directly to the insured that portion of the premium attributable to the period of Medi-Cal eligibility, subject to adjustment for paid claims.

(ii) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance under Medi-Cal, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement or equivalent coverage shall be provided if the prior form is no longer available.

(iii) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the *federal* Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the *federal* Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides

notice of loss of coverage within 90 days after the date of the loss and pays the applicable premium.

(B) Reinstitution of coverages shall comply with all of the following requirements:

(i) Not provide for any waiting period with respect to treatment of preexisting conditions.

(ii) Provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension.

(iii) Provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(8) A Medicare supplement policy shall not limit coverage exclusively to a single disease or affliction.

(9) A Medicare supplement policy shall provide an examination period of 30 days after the receipt of the policy by the applicant for purposes of review, during which time the applicant may return the policy as described in subdivision (e) of Section 10192.17.

(b) With respect to the standards for basic (core) benefits for benefit plans A, B, C, D, F, high deductible F, G, M, and N, every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic (core) package, but not in lieu of it. However, the benefits described in paragraphs (7) and (8) shall not be offered so long as California is required to disallow these benefits for Medicare beneficiaries by the ~~centers~~ *Centers* for Medicare and Medicaid Services or other agent of the federal government under Section 1395ss of Title 42 of the United States Code.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day, inclusive, in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the

Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(6) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(7) Coverage of the actual cost, up to the legally billed amount, of an annual mammogram as provided in Section 10123.81, to the extent not paid by Medicare.

(8) Coverage of the actual cost, up to the legally billed amount, of an annual cervical cancer screening test as provided in Section 10123.18, to the extent not paid by Medicare.

(c) The following additional benefits shall be included in Medicare supplement benefit plans B, C, D, F, high deductible F, G, M, and N, consistent with the plan type and benefits for each plan as provided in Section 10192.91:

(1) With respect to the Medicare Part A deductible, coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) With respect to the Medicare Part A deductible, coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(3) With respect to skilled nursing facility care, coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(4) With respect to the Medicare Part B deductible, coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(5) With respect to 100 percent of the Medicare Part B excess charges, coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) With respect to medically necessary emergency care in a foreign country, coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of ~~$250~~ *two hundred fifty dollars ($250)*, and a lifetime maximum benefit of ~~$50,000~~ *fifty thousand dollars ($50,000)*. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

SEC. 147. Section 10192.12 of the Insurance Code is amended to read:

10192.12. (a) (1) With respect to the guaranteed issue of a Medicare supplement policy, eligible persons are those individuals described in subdivision (b) who seek to enroll under the policy during the period specified in subdivision (c), and who submit evidence of the date of termination or disenrollment or enrollment in Medicare Part D with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not take any of the following actions:

(A) Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subdivision (e) that is offered and is available for issuance to new enrollees by the issuer.

(B) Discriminate in the pricing of that Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition.

(C) Impose an exclusion of benefits based on a preexisting condition under that Medicare supplement policy.

(b) An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare and either of the following ~~apply~~ *applies*:

(A) The plan either terminates or ceases to provide all of those supplemental health benefits to the individual.

(B) The employer no longer provides the individual with insurance that covers all of the payment for the 20-percent coinsurance.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, and any of the following circumstances apply:

(A) The certification of the organization or plan has been terminated.

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary. Those changes in circumstances shall not include termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856 *of the federal Social Security Act*, or the plan is terminated for all individuals within a residence area.

(D) The Medicare Advantage plan in which the individual is enrolled reduces any of its benefits or increases the amount of cost sharing or discontinues for other than good cause relating to quality of care, its relationship or contract under the plan with a provider who is currently furnishing services to the individual. An individual shall be eligible under this subparagraph for a Medicare supplement policy issued by the same issuer through which the individual was enrolled at the time the reduction, increase, or discontinuance described above occurs or, commencing January 1, 2007, for one issued by a subsidiary of the parent company of that issuer or by a network that contracts with the parent company of that issuer.

(E) The individual demonstrates, in accordance with guidelines established by the secretary, either of the following:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this article in relation to the individual, including the failure to provide on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards.

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual.

(F) The individual meets other exceptional conditions as the secretary may provide.

(3) The individual is 65 years of age or older, is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the *federal* Social Security Act, and circumstances similar to those described in paragraph (2) exist that would permit discontinuance of the individual's enrollment with the provider, if the individual were enrolled in a Medicare Advantage plan.

(4) The individual meets both of the following conditions:

(A) The individual is enrolled with any of the following:

(i) An eligible organization under a contract under Section 1876 of the *federal* Social Security Act (Medicare cost).

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999.

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the *federal* Social Security Act (health care prepayment plan).

(iv) An organization under a Medicare Select policy.

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) or (3).

(5) The individual is enrolled under a Medicare supplement policy, and the enrollment ceases because of any of the following circumstances:

(A) The insolvency of the issuer or bankruptcy of the nonissuer organization, or other involuntary termination of coverage or enrollment under the policy.

(B) The issuer of the policy substantially violated a material provision of the policy.

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(6) The individual meets both of the following conditions:

(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, any eligible organization under a contract under Section 1876 of the *federal* Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the *federal* Social Security Act, or a Medicare Select policy.

(B) The subsequent enrollment under subparagraph (A) is terminated by the individual during any period within the first 12 months of the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act).

(7) The individual upon first becoming eligible for benefits under Medicare Part A at 65 years of age~~,~~ enrolls in a Medicare Advantage plan under Medicare Part C or with a PACE provider under Section 1894 of the *federal* Social Security Act, and disenrolls from the plan or program not later than 12 months after the effective date of enrollment.

(8) The individual while enrolled under a Medicare supplement policy that covers outpatient prescription drugs enrolls in a Medicare Part D plan during the initial enrollment period~~,~~ terminates enrollment in the Medicare supplement policy, and submits evidence of enrollment in Medicare Part D along with the application for a policy described in paragraph (4) of subdivision (e).

(c) (1) In the case of an individual described in paragraph (1) of subdivision (b), the guaranteed issue period begins on the later of the following two dates and ends on the date that is 63 days after the date the applicable coverage terminates:

(A) The date the individual receives a notice of termination or cessation of all supplemental health benefits or, if no notice is received, the date of the notice denying a claim because of a termination or cessation of benefits.

(B) The date that the applicable coverage terminates or ceases.

(2) In the case of an individual described in paragraphs (2), (3), (4), (6), and (7) of subdivision (b) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

(3) In the case of an individual described in subparagraph (A) of paragraph (5) of subdivision (b), the guaranteed issue period begins on the earlier of the following two dates and ends on the date that is 63 days after the date the coverage is terminated:

(A) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other similar notice if any.

(B) The date that the applicable coverage is terminated.

(4) In the case of an individual described in paragraph (2), (3), (6), or (7) of, or in subparagraph (B) or (C) of paragraph (5) of, subdivision (b) who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date of the disenrollment.

(5) In the case of an individual described in paragraph (8) of subdivision (b), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the *federal* Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial enrollment period for Medicare Part D and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D.

(6) In the case of an individual described in subdivision (b) who is not included in this subdivision, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date of disenrollment.

(d) (1) In the case of an individual described in paragraph (6) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (6) of subdivision (b).

(2) In the case of an individual described in paragraph (7) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with a plan or in a program described in paragraph (7) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (7) of subdivision (b).

(3) For purposes of paragraphs (6) and (7) of subdivision (b), an enrollment of an individual with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b), or with a plan or in a program described in paragraph (7) of subdivision (b) shall not be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(e) (1) Under paragraphs (1), (2), (3), (4), and (5) of subdivision (b), an eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L offered by any issuer.

(2) (A) Under paragraph (6) of subdivision (b), an eligible individual is entitled to the same Medicare supplement policy in which he or she was most recently enrolled, if available from the same issuer. If that policy is not available, the eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L offered by any issuer.

(B) On and after January 1, 2006, an eligible individual described in this paragraph who was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit~~,~~ is entitled to a Medicare supplement policy that is available from the same issuer but without an outpatient prescription drug benefit or, at the election of the individual, has a benefit package classified as a Plan A, B, C, F (including high deductible Plan F), K, or L that is offered by any issuer.

(3) Under paragraph (7) of subdivision (b), an eligible individual is entitled to any Medicare supplement policy offered by any issuer.

(4) Under paragraph (8) of subdivision (b), an eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible

Plan F), K, or L and that is offered and is available for issuance to a new enrollee by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(f) (1) At the time of an event described in subdivision (b) by which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section and of the obligations of issuers of Medicare supplement policies under subdivision (a). The notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in subdivision (b) by which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under subdivision (a). The notice shall be communicated within 10 working days of the date the issuer received notification of disenrollment.

(g) An issuer shall refund any unearned premium that an insured paid in advance and shall terminate coverage upon the request of an insured.

SEC. 148. Section 10192.20 of the Insurance Code is amended to read:

10192.20. (a) An issuer, directly or through its producers, shall do each of the following:

(1) Establish marketing procedures to ensure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to ensure that excessive insurance is not sold or issued.

(3) Display prominently by type, stamp, or other appropriate means, on the first page of the policy, the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant for a Medicare supplement policy already has health insurance and the types and amounts of that insurance.

(5) Establish auditable procedures for verifying compliance with this subdivision.

(b) In addition to the practices prohibited by this code or any other law, the following acts and practices are prohibited:

(1) Twisting, which means knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics, which means employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising, which means making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is the solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(c) The terms “Medicare supplement,” “Medigap,” “Medicare Wrap-Around” and words of similar import shall not be used unless the policy is issued in compliance with this article.

(d) The commissioner each year shall prepare a rate guide for Medicare supplement insurance and Medicare supplement contracts. The commissioner each year shall make the rate guide available on or before the date of the fall Medicare annual open enrollment. The rate guide shall include all of the following for each company that sells Medicare supplemental insurance or Medicare supplement contracts in California:

(1) (A) For policies sold for effective dates prior to June 1, 2010, a listing of all the policies, plans A to L, inclusive, that are available from the company.

(B) For policies sold for effective dates on or after June 1, 2010, a listing of all the policies, plans A to D, inclusive, F, high

deductible F, G, and K to N, inclusive, that are available from the company.

(2) (A) For policies sold for effective dates prior to June 1, 2010, a listing of all the policies, plans A to L, inclusive, for Medicare beneficiaries under ~~the age of~~ 65 *years of age* that are available from the company.

(B) For policies sold for effective dates on or after June 1, 2010, a listing of all the policies, plans, A to D, inclusive, F, high deductible F, G, and K to N, inclusive, for Medicare beneficiaries under ~~the age~~ 65 *years of age* that are available from the company.

(3) The toll-free telephone number of the company that consumers can use to obtain information from the company.

(4) Sample rates for each policy listed pursuant to paragraphs (1) and (2). The sample rates shall be for ages 0–65, 65, 70, 75, and 80.

(5) The premium rate methodology for each policy listed pursuant to paragraphs (1) and (2). "Premium rate methodology" means attained age, issue age, or community rated.

(6) The waiting period for preexisting conditions for each policy listed pursuant to paragraphs (1) and (2).

(e) The consumer rate guide prepared pursuant to subdivision (d) shall be distributed using all of the following methods:

(1) Through Health Insurance Counseling and Advocacy Program (HICAP) offices.

(2) By telephone, using the department's consumer toll-free telephone number.

(3) On the department's Internet Web site.

(4) In addition to the distribution methods described in paragraphs (1) to (3), inclusive, each insurer that markets Medicare supplement insurance or Medicare supplement contracts in this state shall provide on the application form a statement that reads as follows: "A rate guide is available that compares the policies sold by different insurers. You can obtain a copy of this rate guide by calling the Department of Insurance's consumer toll-free telephone number (1-800-927-HELP), by calling the Health Insurance Counseling and Advocacy Program (HICAP) toll-free telephone number (1-800-434-0222), or by accessing the Department of Insurance's Internet Web site (www.insurance.ca.gov)."

SEC. 149. Section 10198.6 of the Insurance Code is amended to read:

10198.6. For purposes of this article:

(a) "Health benefit plan" means any group or individual policy or contract that provides medical, hospital, or surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer~~.~~, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan, the Healthy Families Program, the Access for Infants and Mothers (AIM) Program, or the Medi-Cal program at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan, the Healthy Families Program, the AIM Program, or the Medi-Cal program was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment

status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, legal separation, *or* divorce~~, loss of~~*; or the individual has lost or will lose* coverage under the Healthy Families ~~Program ,~~ *Program,* the AIM Program, or the Medi-Cal program.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan, or requests enrollment within 60 days after termination of Medi-Cal program coverage, AIM Program coverage, or Healthy Families Program coverage.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) The carrier cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 10116.5 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program, the AIM Program, or the Medi-Cal

program and requests enrollment within 60 days of termination of that coverage.

(c) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Creditable coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the *federal* Social Security Act *(42 U.S.C. Sec. 1395 et seq.)*.

(3) The ~~medicaid~~ *Medicaid* program pursuant to Title XIX of the *federal* Social Security Act *(42 U.S.C. Sec. 1396 et seq.)*.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the *federal* Public Health Service Act, as amended by Public Law 104-191, the *federal* Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the *federal* Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health ~~Services~~ *Service* Act (42 U.S.C. Sec. 300gg(c)).

(e) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

(f) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

SEC. 150. Section 10700 of the Insurance Code is amended to read:

10700. As used in this chapter:

(a) "Agent or broker" means a person or entity licensed under Chapter 5 (commencing with Section 1621) of Part 2 of Division 1.

(b) "Benefit plan design" means a specific health coverage product issued by a carrier to small employers, to trustees of associations that include small employers, or to individuals if the coverage is offered through employment or sponsored by an employer. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are to be provided. A benefit plan design may also be an integrated system for the financing and delivery of quality health care services which has significant incentives for the covered individuals to use the system.

(c) "Board" means the Major Risk Medical Insurance Board.

(d) "Carrier" means any disability insurance company or any other entity that writes, issues, or administers health benefit plans that cover the employees of small employers, regardless of the situs of the contract or master policyholder. For the purposes of Articles 3 (commencing with Section 10719) and 4 (commencing

with Section 10730), "carrier" also includes health care service plans.

(e) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (z).

(f) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, in the small employer's regular place of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business, and they are included as employees under a health benefit plan of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee, as defined in this paragraph, who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer. A permanent employee who works at least 20 hours but not more than 29 hours is deemed to be an eligible employee if all four of the following apply:

(A) The employee otherwise meets the definition of an eligible employee except for the number of hours worked.

(B) The employer offers the employee health coverage under a health benefit plan.

(C) All similarly situated individuals are offered coverage under the health benefit plan.

(D) The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter. The insurer may request any necessary information to document the hours and time period in question, including, but not limited to, payroll records and employee wage and tax filings.

(2) Any member of a guaranteed association as defined in subdivision (z).

(g) "Enrollee" means an eligible employee or dependent who receives health coverage through the program from a participating carrier.

(h) "Financially impaired" means, for the purposes of this chapter, a carrier that, on or after the effective date of this chapter, is not insolvent and is either:

(1) Deemed by the commissioner to be potentially unable to fulfill its contractual obligations.

(2) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(i) "Fund" means the California Small Group Reinsurance Fund.

(j) "Health benefit plan" means a policy or contract written or administered by a carrier that arranges or provides health care benefits for the covered eligible employees of a small employer and their dependents. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(k) "In force business" means an existing health benefit plan issued by the carrier to a small employer.

(*l*) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan~~,~~ and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's health benefit plan and who subsequently requests enrollment in the plan, provided that the initial enrollment period

shall be a period of at least 30 days. However, an eligible employee, another person eligible for coverage through a guaranteed association pursuant to subdivision (z), or an eligible dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) He or she was covered under another employer health benefit plan, the Healthy Families Program, the Access for Infants and Mothers (AIM) Program, or the Medi-Cal program at the time the individual was eligible to enroll.

(B) He or she certified at the time of the initial enrollment that coverage under another employer health benefit plan, the Healthy Families Program, the AIM Program, or the Medi-Cal program was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) He or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual, or of a person through whom the individual was covered as a dependent, the termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, *or* divorce~~, loss of~~*; or he or she has lost or will lose* coverage under the Healthy Families Program, the AIM Program, or the Medi-Cal program.

(D) He or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan, or requests enrollment within 60 days after termination of Medi-Cal program coverage, AIM Program coverage, or Healthy Families Program coverage.

(2) The individual is employed by an employer who offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) (A) In the case of an eligible employee as defined in paragraph (1) of subdivision (f), the carrier cannot produce a written statement from the employer stating that the individual or the person through whom an individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed acknowledgment of, an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(B) In the case of an eligible employee who is a guaranteed association member, the plan cannot produce a written statement from the guaranteed association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or meets the requirements of paragraph (2) or (3).

(C) In the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or meets the requirements of paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for coverage was made within 30 days of the change.

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has

been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section ~~1373.62~~ *10116.5* shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program, the AIM Program, or the Medi-Cal program and requests enrollment within 60 days after termination of that coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf~~,~~ and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(m) "New business" means a health benefit plan issued to a small employer that is not the carrier's in force business.

(n) "Participating carrier" means a carrier that has entered into a contract with the program to provide health benefits coverage under this part.

(o) "Plan of operation" means the plan of operation of the fund, including articles, bylaws, and operating rules adopted by the fund pursuant to Article 3 (commencing with Section 10719).

(p) "Program" means the Health Insurance Plan of California.

(q) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(r) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program, that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the *federal* Social Security Act *(42 U.S.C. Sec. 1395 et seq.)*.

(3) The ~~medicaid~~ *Medicaid* program pursuant to Title XIX of the *federal* Social Security Act *(42 U.S.C. Sec. 1396 et seq.)*.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the *federal* Public Health Service Act, as amended by Public Law 104-191, the *federal* Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the *federal* Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health ~~Services~~ *Service* Act (42 U.S.C. Sec. 300gg(c)).

(s) "Rating period" means the period for which premium rates established by a carrier are in effect and shall be no less than six months.

(t) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(u) "Risk adjustment factor" means the percent adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard claims. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(v) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family size of the employee, plus the benefit plan design selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30

30–39

40–49

50–54

55–59

60–64

65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the health benefit plan will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer carriers shall base rates to small employers using no more than the following family size categories:

(A) Single.

(B) Married couple.

(C) One adult and child or children.

(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a carrier that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county, and shall divide no county into more than two regions. Carriers shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a carrier that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties which are included in their entirety in a carrier's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No carrier shall have less than one geographic area.

(w) "Small employer" means either of the following:

(1) Any person, proprietary or nonprofit firm, corporation, partnership, public agency, or association that is actively engaged in business or service that, on at least 50 percent of its working days during the preceding calendar quarter, or preceding calendar year, employed at least two, but not more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, the insurer shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (b) and (h) of Section 10705, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined income tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer pursuant to this chapter, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this chapter that apply to a small employer shall continue to apply until the health benefit plan anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (y), that purchases health coverage for members of the association.

(x) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(y) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria which (1) includes one or more small employers as defined in paragraph (1) of subdivision (w), (2) does not condition membership directly or indirectly on the health or

claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has been offering health insurance to its members for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any benefit plan design that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the benefit plan design offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the carrier with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a master policy by an admitted insurer is delivered directly to the association or a trust formed for or sponsored by an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(z) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it may also include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include those persons as members of the guaranteed association, the association must so

elect in advance of purchasing coverage from a plan. Health plans may require an association to adhere to the membership composition it selects for up to 12 months.

(aa) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 151. Section 273 of the Labor Code is amended to read:

273. (a) The following definitions apply for purposes of this section:

(1) "All activities relating to an adverse license or registration action" includes, but is not limited to, all of the following which occur as a result of a failure to comply with this section:

(A) Denial of a new application or a renewal application for licensure or registration.

(B) Denial of reinstatement of a license or registration.

(C) Suspension of a license or registration.

(D) Assessment and recovery of civil penalties for knowingly providing false information in the statement required by paragraph (1) of subdivision (b).

(2) "Farm labor contractor" has the same meaning as set forth in Section 1682.

(3) "Final judgment issued by a court" means a judgment with respect to which all possibility of a direct attack, by way of appeal, motion for a new trial, or motion pursuant to Section 663 of the Code of Civil Procedure to vacate the judgment, has been exhausted and also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(4) "Garment manufacturer" means a person engaged in garment manufacturing as described in Section 2671.

(5) "Involving unpaid wages" means all amounts required to be paid by a final judgment, order, or accord involving a failure of the licensee or registrant to pay required wages.

(6) "Licensee" has the same meaning as set forth in Section 1682.

(7) "Registrant" means a person who holds a valid and unrevoked garment manufacturer registration.

(b) (1) The Labor Commissioner shall require an applicant for any of the following to submit a statement as to whether the

applicant has satisfied all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages:

(A) Licensure as a farm labor contractor.

(B) Registration as a garment manufacturer.

(C) Renewal or reinstatement of a farm labor contractor license or a garment manufacturer registration.

(D) A change in the persons identified pursuant to Section 1689 or subparagraph (B) of paragraph (1) of subdivision (a) of Section 2675.

(2) A person who knowingly provides false information in the statement submitted pursuant to this subdivision shall be subject to a civil penalty of no less than one thousand dollars ($1,000) ~~nor~~ *and no* more than twenty-five thousand dollars ($25,000), in addition to any civil remedies available to the Labor Commissioner. The penalty shall be recovered by the Labor Commissioner as part of a hearing relating to a denial of an application for a license or registration, a hearing relating to a denial of a renewal or reinstatement of a license or registration, a hearing to contest the civil penalties assessed under this section by the Labor Commissioner, or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions.

(c) Notwithstanding any other provision of law, the Labor Commissioner shall not approve an application described in subdivision (b) if the statement submitted with it shows that the applicant has failed to satisfy all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages, as described in subdivision (b), unless the applicant submits either of the following to the Labor Commissioner:

(1) A bond or a cash deposit, in addition to any required by Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient to guarantee payment of all amounts due under a final judgment issued by a court or ~~by~~ *under* a final order issued by the Labor Commissioner involving unpaid wages.

(2) A notarized accord between the applicant and the other parties to the judgment, order, or accord demonstrating that the

applicant has satisfied all requirements imposed by the judgment, order, or accord involving unpaid wages.

(d) Notwithstanding any other provision of law, if the Labor Commissioner determines after granting an application described in subdivision (b), that the applicant made a false representation on the statement he or she submitted, the Labor Commissioner shall suspend the farm labor contractor license or garment manufacturer registration effective on the date of its issuance, renewal, or reinstatement. The license or registration shall remain suspended until the applicant satisfies either of the following requirements:

(1) Documents to the satisfaction of the Labor Commissioner that he or she has satisfied all requirements imposed by a final judgment issued by a court or by a final order of the Labor Commissioner or by an accord involving unpaid wages.

(2) Files with the Labor Commissioner a notarized accord as described in paragraph (2) of subdivision (c).

(e) (1) A licensee or registrant shall notify the Labor Commissioner in writing within 90 days of the date of a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord that imposes on the licensee or registrant requirements involving unpaid wages. If the licensee or registrant fails to comply with this notification requirement, the Labor Commissioner shall suspend the license or registration on the date that the Labor Commissioner is informed, or is made aware of, the judgment, order, or accord. The suspension shall remain in effect until the licensee or registrant satisfies either of the requirements described in subdivision (d).

(2) A licensee or registrant who notifies the Labor Commissioner of a judgment, order, or accord pursuant to paragraph (1), shall file with the notice a bond or a cash deposit meeting the criteria of paragraph (1) of subdivision (c).

(f) (1) The Labor Commissioner may reduce the amount of a bond or cash deposit required by this section upon proof, to the satisfaction of the Labor Commissioner, of partial satisfaction of the requirements imposed by a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord involving unpaid wages. The Labor Commissioner shall not reduce the bond or cash deposit amount below the balance of the entire amount involving unpaid wages. Upon full satisfaction of the

requirements involving unpaid wages, the Labor Commissioner may terminate the bond or cash deposit requirement.

(2) Notwithstanding paragraph (1), within one year from the date of filing the bond or cash deposit pursuant to paragraph (1) of subdivision (c) or paragraph (2) of subdivision (e), a licensee or registrant shall submit a notarized accord between the licensee or registrant and the other parties to the judgment, order, or accord demonstrating satisfaction of all requirements imposed by the judgment, order, or accord involving unpaid wages. The Labor Commissioner shall suspend the license or registration of a person who fails to file the notarized accord within that timeframe. Notwithstanding paragraph (1) of subdivision (c), a person who has failed to file a notarized accord within the timeframe required by this ~~subdivision~~ *paragraph* shall have his or her license or registration reinstated only after demonstrating that he or she has satisfied all requirements imposed by a final judgment, order, or accord involving unpaid wages. As an alternative to payment in full of all debts involving unpaid wages, a person may submit a notarized copy of an accord between the licensee or registrant and the other parties to the accord.

(g) The failure of a licensee or registrant to maintain a bond required by this section or to abide by all requirements imposed on a licensee or registrant by an accord involving unpaid wages between the licensee or registrant and the other parties to the accord shall result in the automatic suspension of his or her license or registration.

(h) (1) A licensee or registrant shall not allow a person who is a judgment debtor in a final judgment issued by a court or in a final order issued by the Labor Commissioner involving unpaid wages that imposes requirements that have not been satisfied in their entirety to serve in a capacity described in Section 1689 or subparagraph (B) of paragraph (1) of subdivision (a) of Section 2675.

(2) The Labor Commissioner shall suspend the license of a farm labor contractor or the registration of a garment manufacturer who violates the provisions of paragraph (1). The Labor Commissioner shall reinstate the license or registration upon the resignation of the person named as a judgment debtor or complete satisfaction of the unpaid wages requirements.

(i) A person whose license or registration is suspended pursuant to this section, who is denied issuance or reinstatement of a license or registration, or who has been assessed a civil penalty for knowingly providing false information in the statement required by paragraph (1) of subdivision (b) shall pay to the Labor Commissioner all reasonable costs incurred by the Labor Commissioner in all activities relating to the adverse license or registration action, commencing with the first notice issued by the Labor Commissioner that he or she has taken any adverse action under this section relative to a license or registration. The Labor Commissioner shall not reinstate a license or registration unless the person has paid all costs assessed by the Labor Commissioner or has entered into an accord with the Labor Commissioner that establishes a payment plan.

(j) This section shall not apply to an applicant for a farm labor contractor license or a garment manufacturer registration or to a licensee or registrant when the unpaid wages, as described by this section, have been discharged in a bankruptcy proceeding.

SEC. 152. Section 699.5 of the Military and Veterans Code is amended to read:

699.5. (a) The department may assist every veteran of the United States and the dependent or survivor of every veteran of the United States in presenting and pursuing the claim as the veteran, dependent, or survivor may have against the United States arising out of war service and in establishing the veteran's, dependent's, or survivor's right to any privilege, preference, care, or compensation provided for by the laws of the United States or of this state. The department may cooperate and, with the approval of the Department of Finance, contract with any veterans service organization, and pursuant to the contract may compensate the organization for services within the scope of this section rendered by it to any veteran or dependent or survivor of a veteran. The contract shall not be made unless the department determines that, owing to the confidential relationships involved and the necessity of operating through agencies that the veterans, dependents, or survivors involved will ~~fail~~ *feel* to be sympathetic ~~towards~~ *toward* their problems, the services cannot satisfactorily be rendered otherwise than through the agency of the veterans organization and that the best interests of the veterans, dependents, or survivors involved will be served if the contract is made.

(b) (1) The Legislature finds and declares that services provided by veterans service organizations play an important role in the department's responsibilities to assist veterans and their dependents and survivors in presenting and pursuing claims against the United States, and that it is an efficient and reasonable use of state funds to provide compensation to veterans service organizations for these services.

(2) The Legislature further finds and declares that paragraph (1)~~ of this subdivision~~ shall not be implemented by using the General Fund until the annual budget for county~~ veteran services~~ *veterans service* officers reaches a minimum of five million dollars ($5,000,000). This subdivision shall not be construed to preclude the use of federal funding in implementing these provisions.

(c) Veterans service organizations~~,~~ that elect to contract with the department in accordance with this section~~,~~ shall document the claims processed each year by the veterans service officers employed by the veterans service organization at offices located in California. The documentation shall be in accordance with procedures established by the department.

(d) The department shall determine annually the amount of monetary benefits paid to eligible veterans and their dependents and survivors in the state as a result of the work of the veterans service officers of the contracting organizations. Beginning on January 1, 2006, the department shall, on or before January 1 of each year, prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature. The department shall also identify federal sources to support the efforts of veterans service organizations pursuant to this section. 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.

(e) For purposes of this section:

(1) "Survivor" means any relation of a deceased veteran who may be entitled to make a claim for any privilege, preference, care, or compensation under the laws of the United States or this state based upon the veteran's war service.

(2) "Veterans service officer" means an individual employed by a veterans service organization and accredited by the United States Department of Veterans Affairs to process and adjudicate

claims and other benefits for veterans and their dependents and survivors.

(3) "Veterans service organization" means an organization that meets all of the following criteria:

(A) Is formed by and for United States military veterans.

(B) Is chartered by the United States Congress.

(C) Has regularly maintained an established committee or agency in a regional office of the United States Department of Veterans Affairs in California rendering services to veterans and their dependents and survivors.

SEC. 153. Section 290.011 of the Penal Code is amended to read:

290.011. Every person who is required to register pursuant to the Act who is living as a transient shall be required to register for the rest of his or her life as follows:

(a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to subdivision (b) of Section 290, except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient convicted in another jurisdiction enters the state, he or she shall register within five working days of coming into California with the chief of police of the city in which he or she is present or the sheriff of the county if he or she is present in an unincorporated area or city that has no police department. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to subdivision (b) of Section 290. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically

present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subdivision (b) of Section 290. A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with subdivision (a).

(c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (a). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 290.015, and the information specified in subdivision (d).

(d) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(e) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to subdivision (a) shall be punished in accordance with subdivision (g) of Section 290.018. Failure to comply with any other requirement of this section shall be punished in accordance with either subdivision (a) or (b) of Section 290.018.

(f) A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, within five working days, of his or her move out of state. The

transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(g) For purposes of the act, "transient" means a person who has no residence. "Residence" means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(h) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this section became effective.

SEC. 154. Section 293 of the Penal Code is amended to read:

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

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

(c) ~~No~~ *A* law enforcement agency shall *not* disclose to ~~any~~ *a* person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense or who was forced to commit an act of prostitution because

he or she is the victim of human trafficking, as defined in Section 236.1.

(d) ~~No~~ *A* law enforcement agency shall *not* disclose to ~~any~~ *a* person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense or who was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.

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

(f) Parole officers of the Department of Corrections and Rehabilitation ~~and~~, hearing officers of the parole authority, and probation officers of county probation departments~~,~~ shall be entitled to receive information pursuant to subdivisions (c) and (d) only if the person to whom the information pertains alleges that he or she is the victim of a sex offense or was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, the alleged perpetrator of which is a parolee who is alleged to have committed the offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the offense is a probationer or is under investigation by a county probation department.

SEC. 155. Section 336.9 of the Penal Code is amended to read:

336.9. (a) Notwithstanding Section 337a, and except as provided in subdivision (b), any person who, not for gain, hire, or reward other than that at stake under conditions available to every participant, knowingly participates in any of the ways specified in paragraph (2), (3), (4), (5), or (6) of subdivision (a) of Section 337a in any bet, bets, wager, wagers, or betting pool or pools made between the person and any other person or group of persons who are not acting for gain, hire, or reward, other than that at stake under conditions available to every participant, upon the result of any lawful trial, or purported trial, or contest, or purported contest, of skill, speed, or power of endurance of person or animal, or between persons, animals, or mechanical apparatus, is guilty of

an infraction, punishable by a fine not to exceed two hundred fifty dollars ($250).

(b) Subdivision (a) does not apply to either of the following situations:

(1) Any bet, bets, wager, wagers, or betting pool or pools made online.

(2) Betting pools with more than ~~twenty-five~~ *two thousand five* hundred dollars ($2,500) at stake.

SEC. 156. Section 597.5 of the Penal Code is amended to read:

597.5. (a) Any person who does any of the following is guilty of a felony and is punishable by imprisonment in ~~a~~ *the* state prison for 16 months, or two or three years, or by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment:

(1) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog.

(2) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other.

(3) Permits any act in violation of paragraph (1) or (2) to be done on any premises under his or her charge or control, or aids or abets that act.

(b) Any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as described in paragraph (2) of subdivision (a), with the intent to be present at that exhibition, fighting, or injuring, is guilty of an offense punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(c) Nothing in this section shall prohibit any of the following:

(1) The use of dogs in the management of livestock, as defined by Section 14205 of the Food and Agricultural Code, by the owner of the livestock or his or her employees or agents or other persons in lawful custody thereof.

(2) The use of dogs in hunting as permitted by the Fish and Game Code, including, but not limited to, Sections ~~3286, 3509,~~

~~3510,~~ 4002~~,~~ and 4756, and by the rules and regulations of the Fish and Game Commission.

(3) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

SEC. 157. Section 626.10 of the Penal Code is amended to read:

626.10. (a) (1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(2) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses a razor blade or a box cutter upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part

2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile, such as a BB or a pellet,

through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, or any razor blade or box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section 12601, or a stun gun, as defined in Section 12650, upon the grounds of, or within, a public or private college or university campus is guilty of a misdemeanor.

SEC. 158. Section 831.5 of the Penal Code is amended to read:

831.5. (a) As used in this section, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of ~~San Diego County,~~ Fresno County, Kern County, ~~Stanislaus County,~~ Riverside County, *San Diego County,* Santa Clara County, *Stanislaus County,* or a county having a population of 425,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custodial officers of a county shall be employees of, and under the authority of, the sheriff, except in counties in which the

sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it. A custodial officer includes a person designated as a correctional officer, jailer, or other similar title. The duties of a custodial officer may include the serving of warrants, court orders, writs, and subpoenas in the detention facility or under circumstances arising directly out of maintaining custody of prisoners and related tasks.

(b) A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within one year following the date of the initial assignment as a custodial officer, have satisfactorily met the minimum selection and training standards prescribed by the Corrections Standards Authority pursuant to Section 6035. Persons designated as custodial officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties, but may perform the duties of a custodial officer only while under the direct supervision of a peace officer, as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer; may make arrests for misdemeanors and

felonies within the local detention facility pursuant to a duly issued warrant; may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

(g) Custodial officers employed by the Santa Clara County Department of Corrections are authorized to perform the following additional duties in the facility:

(1) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce.

(2) Search property, cells, prisoners, or visitors.

(3) Conduct strip or body cavity searches of prisoners pursuant to Section 4030.

(4) Conduct searches and seizures pursuant to a duly issued warrant.

(5) Segregate prisoners.

(6) Classify prisoners for the purpose of housing or participation in supervised activities.

These duties may be performed at the Santa Clara Valley Medical Center as needed and only as they directly relate to guarding inpatient, in-custody inmates. This subdivision shall not be construed to authorize the performance of any law enforcement activity involving any person other than the inmate or his or her visitors.

(h) Nothing in this section shall authorize a custodial officer to carry or possess a firearm when the officer is not on duty.

(i) It is the intent of the Legislature that this section, as it relates to Santa Clara County, enumerate specific duties of custodial officers (known as “correctional officers” in Santa Clara County) and to clarify the relationships of the correctional officers and deputy sheriffs in Santa Clara County. These duties are the same duties of the custodial officers prior to the date of enactment of Chapter 635 of the Statutes of 1999 pursuant to local rules and judicial decisions. It is further the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process between the County of Santa

Clara and the authorized bargaining representative for the custodial officers. However, nothing in this section shall be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs nor to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs.

(j) This section shall become operative on January 1, 2003.

SEC. 159. Section 851.8 of the Penal Code is amended to read:

851.8. (a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of the petition shall be served upon the prosecuting attorney of the county or city having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the prosecuting attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each agency, person, or entity within the State of California receiving the request shall destroy its records of the arrest and the request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the prosecuting attorney of a petition for relief under subdivision (a), the law enforcement agency and prosecuting attorney do not respond to the petition by accepting or denying the petition within 60 days after the running of the relevant statute of limitations or

within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the superior court that would have had territorial jurisdiction over the matter. A copy of the petition shall be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense at least 10 days prior to the hearing thereon. The prosecuting attorney and the law enforcement agency through the district attorney may present evidence to the court at the hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant, and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy the records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy ~~such~~ *those* records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have

given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy the records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court that dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of the petition shall be served on the prosecuting attorney of the county or city in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The prosecuting attorney may present evidence to the court at the hearing. The hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the prosecuting attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial at which the acquittal occurred that the defendant was factually innocent of the charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which the person was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) that are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) (1) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(2) Notwithstanding paragraph (1), a finding that an arrestee is factually innocent pursuant to subdivisions (a) to (e), inclusive, shall be admissible as evidence at a hearing before the California Victim Compensation and Government Claims Board.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily affecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of the records has received a certified copy of the complaint in the civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d),

or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(*l*) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) This section shall not apply to any offense which is classified as an infraction.

(o) (1) This section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence that is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any decision referred to in this subdivision which is a judgment by the appellate division of the superior court shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

SEC. 160. Section 1000.1 of the Penal Code is amended to read:

1000.1. (a) If the prosecuting attorney determines that this chapter may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include *all of* the following:

(1) A full description of the procedures for deferred entry of judgment.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process.

(3) A clear statement that in lieu of trial, the court may grant deferred entry of judgment with respect to any crime specified in subdivision (a) of Section 1000 that is charged, provided that the defendant pleads guilty to each ~~such charge~~ *of these charges* and waives time for the pronouncement of judgment, and that upon the defendant's successful completion of a program, as specified in subdivision (c) of Section 1000, the positive recommendation of the program authority and the motion of the prosecuting attorney, the court, or the probation department, but no sooner than 18 months and no later than three years from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant.

(4) A clear statement that upon any failure of treatment or condition under the program, or any circumstance specified in Section 1000.3, the prosecuting attorney or the probation department or the court on its own may make a motion to the court for entry of judgment and the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

(5) An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.

(b) If the defendant consents and waives his or her right to a speedy trial or a speedy preliminary hearing, the court may refer the case to the probation department or the court may summarily grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of

judgment. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs the defendant would benefit from and which programs would accept the defendant. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, or rehabilitation for the defendant. If the court determines that it is appropriate, the court shall grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment.

(c) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, that is made during the course of any investigation conducted by the probation department or treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, that is made to any probation officer or drug program worker subsequent to the granting of deferred entry of judgment, shall be admissible in any action or proceeding, including a sentencing hearing.

(d) A defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3.

SEC. 161. Section 1120 of the Penal Code is amended to read:

1120. If a juror has any personal knowledge respecting a fact in controversy in a cause, he *or she* must declare the same in open court during the trial. If, during the retirement of the jury, a juror ~~declare~~ *declares* a fact ~~which~~ *that* could be evidence in the cause, as of his *or her* own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be

sworn as a witness and examined in the presence of the parties in order that the court may determine whether good cause exists for his *or her* discharge as a juror.

SEC. 162. Section 1170 of the Penal Code, as amended by Section 2 of Chapter 416 of the Statutes of 2008, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In ~~any~~ *a* case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given ~~any other~~ *another* disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the

punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. ~~Nothing in this~~ *This* article ~~shall~~ *does not* affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In ~~any~~ *a* case in which the amount of preimprisonment credit under Section 2900.5 or ~~any other~~ *another* provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court ~~may~~ *shall* not impose an upper term by using the fact of ~~any~~ *an* enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court ~~shall~~ also *shall* inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided *that* the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council ~~so as~~ to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, *or* loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) ~~Any~~ *A* physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who

have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) ~~Any~~ *A* recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) ~~Any~~ *A* sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and ~~any~~ other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) This section shall become operative on January 1, 2011.

SEC. 163. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the

commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two hundred-dollar ($200) or one hundred-dollar ($100) minimum. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two hundred-dollar ($200) or one hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 *of this code* or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge authorized in Section 1465.7 *of this code*, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of

the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the Victim Compensation Program pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution

is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under

penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. The financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that

the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a

new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest during the defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

(4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) Any governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section 594, and that has sustained an economic loss as the result of a violation of ~~Sections~~ *Section* 594, 594.3, 594.4, 640.5, 640.6, or 640.7 ~~of the Penal Code~~.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or electronic mail.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in any case in which a victim has suffered economic loss as a result of the defendant's conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the ~~greater~~ *greatest* of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, ~~or~~ the value of the victim's labor as guaranteed under California law, ~~or~~ the actual income derived by the defendant from the victim's labor or services, or any other appropriate means to provide reparations to the victim.

(r) In addition to any other penalty or fine, the court shall order any person who has been convicted of any violation of Section 653h, 653s, 653u, or 653w to make restitution to any owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are

derived that suffered economic loss resulting from the violation. For the purpose of calculating restitution, the value of each nonconforming article or device shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised, unless a higher value can be proved in the case of (1) an unreleased audio work~~,~~ or (2) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. The order of restitution shall also include reasonable costs incurred as a result of any investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.

SEC. 164. Section 1202.8 of the Penal Code is amended to read:

1202.8. (a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections ~~Standard~~ *Standards* Authority all relevant statistics and relevant information regarding ~~on~~ the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections ~~Standard~~ *Standards* Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

SEC. 165. Section 1203.098 of the Penal Code is amended to read:

1203.098. (a) Unless otherwise provided, a person who works as a facilitator in a batterers' intervention program that provides programs for batterers pursuant to subdivision (c) of Section 1203.097 shall complete the following requirements before being eligible to work as a facilitator in a batterers' intervention program:

(1) Forty hours of ~~core-basic~~ *basic core* training. A minimum of eight hours of this instruction shall be provided by a shelter-based or shelter-approved trainer. The core curriculum shall include the following components:

(A) A minimum of eight hours in basic domestic violence knowledge focusing on victim safety and the role of domestic violence shelters in a community-coordinated response.

(B) A minimum of eight hours in multicultural, cross-cultural, and multiethnic diversity and domestic violence.

(C) A minimum of four hours in substance abuse and domestic violence.

(D) A minimum of four hours in intake and assessment, including the history of violence and the nature of threats and substance abuse.

(E) A minimum of eight hours in group content areas focusing on gender roles and socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others as required by Section 1203.097.

(F) A minimum of four hours in group facilitation.

(G) A minimum of four hours in domestic violence and the law, ethics, all requirements specified by the probation department pursuant to Section 1203.097, and the role of batterers' intervention programs in a coordinated-community response.

(H) Any person that provides documentation of coursework, or equivalent training, that he or she has satisfactorily completed, shall be exempt from that part of the training that was covered by the satisfactorily completed coursework.

(I) The coursework that this person performs shall count toward the continuing education requirement.

(2) Fifty-two weeks or no less than 104 hours in six months, as a trainee in an approved batterers' intervention program with a minimum of a two-hour group each week. A training program shall include at least one of the following:

(A) Cofacilitation internship in which an experienced facilitator is present in the room during the group session.

(B) Observation by a trainer of the trainee conducting a group session via a one-way mirror.

(C) Observation by a trainer of the trainee conducting a group session via a video or audio recording.

(D) Consultation ~~and~~ or supervision twice a week in a six-month program or once a week in a 52-week program.

(3) An experienced facilitator is one who has the following qualifications:

(A) Documentation on file, approved by the agency, evidencing that the experienced facilitator has the skills needed to provide quality supervision and training.

(B) Documented experience working with batterers for three years, and a minimum of two years working with batterers' groups.

(C) Documentation by January 1, 2003, of coursework or equivalent training that demonstrates satisfactory completion of the 40-hour ~~basic-core~~ *basic core* training.

(b) A facilitator of a batterers' intervention program shall complete, as a minimum continuing education requirement, 16 hours annually of continuing education in either domestic violence or a related field with a minimum of eight hours in domestic violence.

(c) A person or agency with a specific hardship may request the probation department, in writing, for an extension of time to complete the training or to complete alternative training options.

(d) (1) An experienced facilitator, as defined in paragraph (3) of subdivision (a), is not subject to the supervision requirements of this section, if he or she meets the requirements of subparagraph (C) of paragraph (3) of subdivision (a).

(2) This section does not apply to a person who provides batterers' treatment through a jail education program if the person in charge of that program determines that ~~such~~ *the* person *providing treatment* has adequate education or training in domestic violence or a related field.

(e) A person who satisfactorily completes the training requirements of a county probation department whose training program is equivalent to or exceeds the training requirements of this act shall be exempt from the training requirements of this act.

SEC. 166. Section 1203.4 of the Penal Code is amended to read:

1203.4. (a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of 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 accusations or information against the defendant and except as noted below, he or she 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 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, 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 probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct

question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery *Commission*.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Section 12021.

Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of ~~subdivision (b) of~~ Section ~~42001~~ *42002.1* of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice~~,~~ may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars ($150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars ($150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are

sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars ($150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (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 costs for services established pursuant to this subdivision.

(e) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

SEC. 167. Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of the Penal Code, as added by Section 36 of Chapter 28 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 168. Section 1229 of the Penal Code, as added by Section 2 of Chapter 608 of the Statutes of 2009, is amended to read:

1229. As used in this chapter, the following definitions apply:

(a) "Community corrections" means the placement of persons convicted of a felony offense under probation supervision, with conditions imposed by a court for a specified period.

(b) "Chief probation officer" *or "CPO"* means the chief probation officer for the county or city and county in which an adult offender is subject to probation for the conviction of a felony offense.

(c) "Community corrections program" means a program established pursuant to this act consisting of a system of felony

probation supervision services dedicated to all of the following goals:

(1) Enhancing public safety through the management and reduction of offender risk while under felony probation supervision and upon reentry from jail into the community.

(2) Providing a range of probation supervision tools, sanctions, and services applied to felony probationers based on a ~~risk/needs~~ *risk and needs* assessment for the purpose of reducing criminal conduct and promoting behavioral change that results in reducing recidivism and promoting the successful reintegration of offenders into the community.

(3) Maximizing offender restitution, reconciliation, and restorative services to victims of crime.

(4) Holding offenders accountable for their criminal behaviors and for successful compliance with applicable court orders and conditions of supervision.

(5) Improving public safety outcomes for persons placed on probation for a felony offense, as measured by their successful completion of probation and *the* commensurate reduction in the rate of felony probationers sent to prison as a result of a probation revocation or conviction of a new crime.

(d) "Evidence-based practices" refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

SEC. 169. Section 1230 of the Penal Code, as added by Section 2 of Chapter 608 of the Statutes of 2009, is amended to read:

1230. (a) Each county is hereby authorized to establish in each county treasury a Community Corrections Performance Incentives Fund (CCPIF), to receive all amounts allocated to that 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 moneys, including any interest, shall be made available to the ~~chief probation officer (CPO)~~ *CPO* of that county, within 30 days of the deposit of those moneys into the fund, for the implementation of the community corrections program authorized by this chapter.

(1) The community corrections program shall be developed and implemented by probation and advised by a local Community Corrections Partnership.

(2) The local Community Corrections Partnership shall be chaired by the ~~chief probation officer~~ *CPO* and comprised of the following membership:

(A) The presiding judge of the superior court, or his or her designee.

(B) A county supervisor or the chief administrative officer for the county.

(C) The district attorney.

(D) The public defender.

(E) The sheriff.

(F) A chief of police.

(G) The head of the county department of social services.

(H) The head of the county department of mental health.

(I) The head of the county department of employment.

(J) The head of the county alcohol and substance abuse programs.

(K) The head of the county office of education.

(L) A representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense.

(M) An individual who represents the interests of victims.

(3) Funds allocated to probation pursuant to this act shall be used to provide supervision and rehabilitative services for adult felony offenders subject to probation, and shall be spent on evidence-based community corrections practices and programs, as defined in subdivision (c) of Section 1229, which may include, but are not limited to, the following:

(A) Implementing and expanding evidence-based risk and needs assessments.

(B) Implementing and expanding intermediate sanctions that include, but are not limited to, electronic monitoring, mandatory community service, home detention, day reporting, restorative justice programs, work furlough programs, and incarceration in county jail for up to 90 days.

(C) Providing more intensive probation supervision.

(D) Expanding the availability of evidence-based rehabilitation programs including, but not limited to, drug and alcohol treatment, mental health treatment, anger management, cognitive behavior programs, and job training and employment services.

(E) Evaluating the effectiveness of rehabilitation and supervision programs and ensuring program fidelity.

(4) The ~~chief probation officer~~ *CPO* shall have discretion to spend funds on any of the above practices and programs consistent with this act but, at a minimum, shall devote at least 5 percent of all funding received to evaluate the effectiveness of those programs and practices implemented with the funds provided pursuant to this chapter. A ~~chief probation officer~~ *CPO* may petition the Administrative Office of the Courts to have this restriction waived, and the Administrative Office of the Courts shall have the authority to grant such a petition, if the CPO can demonstrate that the department is already devoting sufficient funds to the evaluation of these programs and practices.

(5) Each probation department receiving funds under this chapter shall maintain a complete and accurate accounting of all funds received pursuant to this chapter.

SEC. 170. Section 1231 of the Penal Code, as added by Section 2 of Chapter 608 of the Statutes of 2009, is amended to read:

1231. (a) Community corrections programs funded pursuant to this act shall identify and track specific outcome-based measures consistent with the goals of this act.

(b) The Administrative Office of the Courts, in consultation with the Chief Probation Officers of California, shall specify and define minimum required outcome-based measures, which shall include, but not be limited to, all of the following:

(1) The percentage of persons on felony probation who are being supervised in accordance with evidence-based practices.

(2) The percentage of state moneys expended for programs that are evidence-based, and a descriptive list of all programs that are evidence-based.

(3) Specification of supervision policies, procedures, programs, and practices that were eliminated.

(4) The percentage of persons on felony probation who successfully complete the period of probation.

(c) Each ~~chief probation officer~~ *CPO* receiving funding pursuant to Sections 1233 to 1233.6, inclusive, shall provide an annual written report to the Administrative Office of the Courts and the Department of Corrections and Rehabilitation evaluating the effectiveness of the community corrections program, including, but not limited to, the data described in subdivision (b).

(d) The Administrative Office of the Courts shall, in consultation with the ~~chief probation officer~~ *CPO* of each county and the Department of Corrections and Rehabilitation, provide a quarterly statistical report to the Department of Finance including, but not limited to, the following statistical information for each county:

(1) The number of felony filings.

(2) The number of felony convictions.

(3) The number of felony convictions in which the defendant was sentenced to the state prison.

(4) The number of felony convictions in which the defendant was granted probation.

(5) The adult felon probation population.

(6) The number of felons who had their probation revoked and were sent to prison for that revocation.

(7) The number of adult felony probationers sent to state prison for a conviction of a new felony offense, including when probation was revoked or terminated.

SEC. 171. Section 1233.1 of the Penal Code, as added by Section 2 of Chapter 608 of the Statutes of 2009, is amended to read:

1233.1. After the conclusion of each calendar year following the enactment of this section, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall calculate the following for that calendar year:

(a) The cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison. This calculation shall take into consideration factors~~,~~ including, but not limited to, the average length of stay in prison and on parole for probationers, as well as the associated parole revocation rates, and revocation costs.

(b) The statewide probation failure rate. The statewide probation failure rate shall be calculated as the total number of adult felony probationers statewide sent to prison in the previous year as a percentage of the statewide adult felony probation population as of June 30 of that year.

(c) ~~A~~ *The* probation failure rate for each county. Each county's probation failure rate shall be calculated as the number of adult felony probationers sent to prison from that county in the previous

year as a percentage of the county's adult felony probation population as of June 30 of that year.

(d) An estimate of the number of adult felony probationers each county successfully prevented from being sent to prison. For each county, this estimate shall be calculated based on the reduction in the county's probation failure rate as calculated annually pursuant to subdivision (c) of this section and the county's baseline probation failure rate as calculated pursuant to Section 1233. In making this estimate, the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, shall adjust the calculations to account for changes in each county's adult felony probation caseload in the most recent completed calendar year as compared to the county's adult felony probation population during the period 2006 to 2008, inclusive.

(e) In calculating probation failure rates for the state and individual counties, the number of adult felony probationers sent to prison shall include those adult felony probationers sent to state prison for a revocation of probation, as well as adult felony probationers sent to state prison for a conviction of a new felony offense. The calculation shall also include adult felony probationers who are sent to prison for conviction of a new crime and who simultaneously have their probation terms terminated.

SEC. 172. Section 1233.7 of the Penal Code, as added by Section 2 of Chapter 608 of the Statutes of 2009, is amended to read:

1233.7. The moneys appropriated pursuant to this chapter shall be used to supplement, not supplant, any other state or county appropriation for ~~the chief probation officer~~ *a CPO* or ~~the~~ *a* probation department.

SEC. 173. Section 1463.23 of the Penal Code is amended to read:

1463.23. Notwithstanding Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) of each fine imposed pursuant to Section ~~4383~~ *4338* of the Business and Professions Code~~,~~*;* subdivision (c) of Section 11350, subdivision (c) of Section 11377, or subdivision ~~(b)~~ *(d)* of Section 11550 of the Health and Safety Code*;* or subdivision (b) of Section 264, subdivision (m) of Section 286, subdivision (m)

of Section 288a, or Section 647.1 *of this code*, shall be deposited in a special account in the county treasury which shall be used exclusively to pay for the reasonable costs of establishing and providing for the county, or any city within the county, an AIDS (acquired immune deficiency syndrome) education program under the direction of the county health department, in accordance with Chapter 2.71 (commencing with Section 1001.10) of Title 6, and for the costs of collecting and administering funds received for purposes of this section.

SEC. 174. Section 6126.1 of the Penal Code is amended to read:

6126.1. (a) The Inspector General shall establish a certification program for peace officers under the Inspector General's jurisdiction. The peace officer training course shall be consistent with the standard courses utilized by the Commission ~~of~~ *on* Peace Officer Standards and Training and other major investigative offices, such as county sheriff and city police departments and the *Department of the* California Highway Patrol.

(b) Beginning January 1, 1999, peace officers under the Inspector General's jurisdiction conducting investigations for the Office of the Inspector General~~,~~ shall complete investigation training consistent with standard courses utilized by other major law enforcement investigative offices and be certified within six months of employment.

(c) Beginning January 1, 1999, all peace officers under the Inspector General's jurisdiction shall successfully pass a psychological screening exam before becoming employed with the Office of the Inspector General.

SEC. 175. Section 6126.5 of the Penal Code is amended to read:

6126.5. (a) Notwithstanding any other provision of law, the Inspector General, during regular business hours or at any other time determined necessary by the Inspector General, shall have access to and authority to examine and reproduce any and all books, accounts, reports, vouchers, correspondence files, documents, and other records, and to examine the bank accounts, money, or other property of the Department of Corrections and Rehabilitation for any audit, investigation, inspection, or contemporaneous oversight. Any officer or employee of any agency or entity having these records or property in his or her possession or under his or her

control shall permit access to, and examination and reproduction thereof consistent with the provisions of this section, upon the request of the Inspector General or his or her authorized representative.

(b) For the purpose of conducting any audit, investigation, inspection, or contemporaneous oversight, the Inspector General or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited, investigated, or overseen to the same extent that employees or officers of that agency or public entity have access. No provision of law or any memorandum of understanding or any other agreement entered into between the employing entity and the employee or the employee's representative providing for the confidentiality or privilege of any records or property shall prevent disclosure pursuant to subdivision (a). Access, examination, and reproduction consistent with the provisions of this section shall not result in the waiver of any confidentiality or privilege regarding any records or property.

(c) Any officer or person who fails or refuses to permit access, examination, or reproduction, as required by this section, is guilty of a misdemeanor.

(d) The Inspector General may require any employee of the Department of Corrections and Rehabilitation to be interviewed on a confidential basis. Any employee requested to be interviewed shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Inspector General or his or her designee. The Inspector General shall have the discretion to redact the name or other identifying information of any person interviewed from any public report issued by the Inspector General, where required by law or where the failure to redact the information may hinder prosecution or an action in a criminal, civil, or administrative proceeding, or where the Inspector General determines that disclosure of the information is not in the interests of justice. It is not the purpose of these communications to address disciplinary action or grievance procedures that may routinely occur. If it appears that the facts of the case could lead to punitive action, the Inspector General shall be subject to Sections 3303, 3307, 3307.5, 3308, and 3309 of the Government Code as if the Inspector General were the employer, except that the

Inspector General shall not be subject to the provisions of any memorandum of understanding or other agreement entered into between the employing entity and the employee or the employee's representative that is in conflict with, or adds to the requirements of, Sections 3303, 3307, 3307.5, 3308, and 3309 of the Government Code.

SEC. 176. Section 6128 of the Penal Code is amended to read:

6128. (a) The Office of the Inspector General may receive communications from any individual, including those employed by any department, board, or authority who believes he or she may have information that may describe an improper governmental activity, as that term is defined in subdivision (b) of Section 8547.2 of the Government Code. It is not the purpose of these communications to redress any single disciplinary action or grievance that may routinely occur.

(b) In order to properly respond to any allegation of improper governmental activity, the Inspector General shall establish a toll-free public telephone number for the purpose of identifying any alleged wrongdoing by an employee of the Department of Corrections and Rehabilitation. This telephone number shall be posted by *the* department in clear view of all employees and the public. When appropriate, the Inspector General shall initiate an investigation or audit of any alleged improper governmental activity. However, any request to conduct an investigation shall be in writing.

(c) All identifying information, and any personal papers or correspondence from any person who initiated the investigation shall not be disclosed, except in those cases where the Inspector General determines that disclosure of the information is necessary in the interests of justice.

SEC. 177. Section 6131 of the Penal Code is amended to read:

6131. (a) Upon the completion of any audit conducted by the Inspector General, he or she shall prepare a written report, which shall be disclosed, along with all underlying materials the Inspector General deems appropriate, to the Governor, the Secretary of the Department of Corrections and Rehabilitation, the appropriate director, ~~chair~~ *chairperson*, or law enforcement agency, and the Legislature. Copies of all those written reports shall be posted on the Inspector General's *Internet* Web site within 10 days of being disclosed to the above-listed entities or persons.

(b) Upon the completion of any investigation conducted by the Inspector General, he or she shall prepare a complete written report, which shall be held as confidential and disclosed in confidence, along with all underlying investigative materials the Inspector General deems appropriate, to the Governor, the Secretary of the Department of Corrections and Rehabilitation, and the appropriate director, ~~chair~~ *chairperson*, or law enforcement agency.

(c) Upon the completion of any investigation conducted by the Inspector General, he or she shall also prepare and issue on a quarterly basis~~,~~ a public investigative report that includes all investigations completed in the previous quarter. The public investigative report shall differ from the complete investigative report in the respect that the Inspector General shall have the discretion to redact or otherwise protect the names of individuals, specific locations, or other facts that, if not redacted, might hinder prosecution related to the investigation, or where disclosure of the information is otherwise prohibited by law, and to decline to produce any of the underlying investigative materials. In a case where allegations were deemed to be unfounded, all applicable identifying information shall be redacted. The public investigative report shall be made available to the public upon request and on a quarterly basis as follows:

(1) In those cases where an investigation is referred only for disciplinary action before the State Personnel Board or for other administrative proceedings, the employing entity shall, within 10 days of receipt of the State Personnel Board's order rendered in other administrative proceedings, provide the Inspector General with a copy of the order. The Inspector General shall attach the order to the public investigative report on ~~its~~ *his or her Internet* Web site and provide copies of the report and order to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(2) In those cases where the employing entity and the employee against whom disciplinary action has been taken enter into a settlement agreement concerning the disciplinary action, the employing entity shall, within 10 days of the settlement agreement becoming final, notify the Inspector General in writing of that fact and shall describe what disciplinary action, if any, was ultimately imposed on the employee. The Inspector General shall include the settlement information in the public investigative report on ~~its~~ *his*

or her Internet Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(3) In those cases where the employing entity declines to pursue disciplinary action against an employee, the employing entity shall, within 10 days of its decision, notify the Inspector General in writing of its decision not to pursue disciplinary action, setting forth the reasons for its decision. The Inspector General shall include the decision and rationale in the public investigative report on ~~its~~ *his or her Internet* Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(4) In those cases where an investigation has been referred for possible criminal prosecution, and the applicable local law enforcement agency or the Attorney General has decided to commence criminal proceedings against an employee, the report shall be made public at a time deemed appropriate by the Inspector General after consultation with the local law enforcement agency or the Attorney General, but in all cases no later than when discovery has been provided to the defendant in the criminal proceedings. The Inspector General shall thereafter post the public investigative report on ~~its~~ *his or her Internet* Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(5) In those cases where the local law enforcement agency or the Attorney General declines to commence criminal proceedings against an employee, the local law enforcement agency or the Attorney General shall, within 30 days of reaching that decision, notify the Inspector General of that fact. The Inspector General shall include the decision in the public investigative report on ~~its~~ *his or her Internet* Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(6) In those cases where an investigation has been referred for neither disciplinary action or other administrative proceedings, nor for criminal prosecution, the Inspector General shall include the decision not to refer the matter in the public investigative report on ~~its~~ *his or her Internet* Web site and provide copies of the report

to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

SEC. 178. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting health care practitioner who is treating a person reported as a possible victim of known or suspected child abuse. The agency shall make that information available to the reporting child custodian, *Child Abuse Prevention and Treatment Act (CAPTA)* guardian ad litem appointed under ~~Section 326~~ *Rule 5.662 of the California Rules of Court*, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she or the licensing agency is handling

or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) ~~of Section 11170~~

relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer

status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact ~~which~~ *with* children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph

(4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than ~~that~~ *those* described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions

Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 ~~(Public Law~~ *(P.L.* 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective

foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the

submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) ~~of this subdivision~~.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 179. Section 11411 of the Penal Code is amended to read:

11411. (a) Any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the *private* property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at the school, park, or place of employment, or who is otherwise associated with the school, park, or place of employment, shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment for the first conviction or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifteen thousand dollars ($15,000), or by both the fine and imprisonment for any subsequent conviction.

(b) Any person who places or displays a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property shall be punished by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment for the first conviction and by

imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen thousand dollars ($15,000), or by both the fine and imprisonment for any subsequent conviction.

(c) Any person who engages in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property, by placing or displaying a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another on two or more occasions, shall be punished by imprisonment in the state prison for 16 months or 2 or 3 years, by a fine not to exceed ten thousand dollars ($10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment. A violation of this subdivision shall not constitute felonious conduct for purposes of Section 186.22.

(d) Any person who burns or desecrates a cross or other religious symbol, knowing it to be a religious symbol, on the private property of another without authorization for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who burns, desecrates, or destroys a cross or other religious symbol, knowing it to be a religious symbol, on the property of a primary school, junior high school, or high school for the purpose of terrorizing any person who attends or works at the school or who is otherwise associated with the school, shall be punished by imprisonment in the state prison for 16 months or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars ($5,000), or by both the fine and imprisonment for the first conviction and by imprisonment in the state prison for 16 months or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen thousand dollars ($15,000), or by both the fine and imprisonment for any subsequent conviction.

(e) As used in this section, “terrorize” means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

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

SEC. 180. Section 13821 of the Penal Code is amended to read:

13821. (a) Of the amount deposited in the Local Safety and Protection Account in the Transportation *Tax* Fund authorized by Section 10752.2 of the Revenue and Taxation Code, the Controller shall allocate 12.68 percent in the 2008–09 fiscal year and 11.42 percent in the 2009–10 fiscal year, and each fiscal year thereafter, to the California Emergency Management Agency. The Controller shall allocate these funds on a quarterly basis beginning April 1, 2009.

(b) ~~There~~ *These* funds shall be allocated by the California Emergency Management Agency according to the agency's existing programmatic guidelines and consistent with the programs approved in the Budget Act of 2008 *(Chapters 268 and 269 of the Statutes of 2008)*. Of the amount allocated pursuant to subdivision (a), the California Emergency Management Agency shall distribute these funds according to the following percentages:

(1) The California Multi-Jurisdictional Methamphetamine Enforcement Teams shall receive 33.95 percent in the 2008–09 fiscal year and each fiscal year thereafter.

(2) The Multi-Agency Gang Enforcement Consortium shall ~~received~~ *receive* 0.15 percent in the 2008–09 fiscal year, and each fiscal year thereafter.

(3) The CALGANG program administered by the Department of Justice shall receive 0.47 percent in the 2008–09 fiscal year, and each fiscal year thereafter.

(4) The Evidentiary Medical Training Program shall receive 1.02 percent in the 2008–09 fiscal year and each fiscal year thereafter.

(5) The Public Prosecutors and Public Defenders Legal Training program shall receive 0.01 percent in the 2008–09 fiscal year and each fiscal year thereafter.

(6) The Sexual Assault Felony Enforcement Teams, authorized by Section 13887, shall receive 8.93 percent in the 2008–09 fiscal year and each fiscal year thereafter.

(7) The Vertical Prosecution Block Grant Program shall receive 25.35 percent in the 2008–09 fiscal year and each fiscal year thereafter.

(8) The High Technology Theft Apprehension and ~~Prosection~~ *Prosecution* Program, authorized by Section 13848.2, shall receive 20.84 percent in the 2008–09 fiscal year, and each fiscal year thereafter.

(9) The Gang Violence Suppression Program, authorized by Section 13826.1, shall receive 2.8 percent in the 2008–09 fiscal year and each fiscal year thereafter.

(10) The Central Valley and Central Coast Rural ~~Crim~~ *Crime* Prevention Programs, authorized by Sections 14170 and 14180, shall receive 6.49 percent in the 2008–09 fiscal year and each fiscal year thereafter.

(c) Beginning in the 2009–10 fiscal year and each fiscal year thereafter, the California Emergency Management Agency may retain up to 3 percent of the funds allocated in subdivision (a) for program administrative costs.

SEC. 181. Section 13823.16 of the Penal Code is amended to read:

13823.16. (a) The Comprehensive Statewide Domestic Violence Program established pursuant to Section 13823.15 shall be collaboratively administered by the California Emergency Management Agency (Cal EMA) and an advisory council. The membership of the ~~(Cal EMA)~~ *Cal EMA* Domestic Violence Advisory Council shall consist of experts in the provision of either direct or intervention services to victims of domestic violence and their children, within the scope and intention of the Comprehensive Statewide Domestic Violence Assistance Program.

(b) The membership of the council shall consist of domestic violence victims' advocates, battered women service providers, at least one representative of service providers serving the lesbian, gay, bisexual, and transgender community in connection with domestic violence, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence victims' advocates or battered women service providers from organizations such as the California Partnership to End Domestic Violence. It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and

geographic diversity of the state. The council shall be composed of no more than 13 voting members and two nonvoting ex officio members who shall be appointed, as follows:

(1) Seven voting members shall be appointed by the Governor.

(2) Three voting members shall be appointed by the Speaker of the Assembly.

(3) Three voting members shall be appointed by the Senate Committee on Rules.

(4) Two nonvoting ex officio members shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with the council and participate in its activities to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

(c) The Cal EMA shall collaborate closely with the council in developing funding priorities, framing the request for proposals, and soliciting proposals.

(d) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 182. Section 13848.6 of the Penal Code is amended to read:

13848.6. (a) The High Technology Crime Advisory Committee is hereby established for the purpose of formulating a comprehensive written strategy for addressing high technology crime throughout the state, with the exception of crimes that occur on state property or are committed against state employees, and to advise the California Emergency Management Agency on the appropriate disbursement of funds to regional task forces.

(b) This strategy shall be designed to be implemented through regional task forces. In formulating that strategy, the committee shall identify various priorities for law enforcement attention, including the following goals:

(1) To apprehend and prosecute criminal organizations, networks, and groups of individuals engaged in the following activities:

(A) Theft of computer components and other high technology products.

(B) Violations of ~~Penal Code~~ Sections 211, 350, 351a, 459, 496, 537e, 593d, 593e, 653h, 653s, and ~~635w~~ *653w*.

(C) Theft of telecommunications services and other violations of ~~Penal Code~~ Sections 502.7 and 502.8.

(D) Counterfeiting of negotiable instruments and other valuable items through the use of computer technology.

(E) Creation and distribution of counterfeit software and other digital information, including the use of counterfeit trademarks to misrepresent the origin of that software or digital information.

(F) Creation and distribution of pirated sound recordings or audiovisual works or the failure to disclose the origin of a recording or audiovisual work.

(2) To apprehend and prosecute individuals and groups engaged in the unlawful access, destruction, or unauthorized entry into and use of private, corporate, or government computers and networks, including wireless and wire line communications networks and law enforcement dispatch systems, and the theft, interception, manipulation, destruction, and unauthorized disclosure of data stored within those computers.

(3) To apprehend and prosecute individuals and groups engaged in the theft of trade secrets.

(4) To investigate and prosecute high technology crime cases requiring coordination and cooperation between regional task forces and local, state, federal, and international law enforcement agencies.

(c) The Secretary of California Emergency Management shall appoint the following members to the committee:

(1) A designee of the California District Attorneys Association.

(2) A designee of the California State Sheriffs Association.

(3) A designee of the California Police Chiefs Association.

(4) A designee of the Attorney General.

(5) A designee of the *Department of the* California Highway Patrol.

(6) A designee of the High Technology Crime Investigation Association.

(7) A designee of the California Emergency Management Agency.

(8) A designee of the American Electronic Association to represent California computer system manufacturers.

(9) A designee of the American Electronic Association to represent California computer software producers.

(10) A designee of CTIA - The Wireless Association.

(11) A representative of the California Internet industry.

(12) A designee of the Semiconductor Equipment and Materials International.

(13) A designee of the California Cable & Telecommunications Association.

(14) A designee of the Motion Picture Association of America.

(15) A designee of the California Communications Associations (CalCom).

(16) A representative of the California banking industry.

(17) A representative of the Office of Information Security and Privacy Protection.

(18) A representative of the Department of Finance.

(19) A representative of the State Chief Information Officer.

(20) A representative of the Recording Industry of America.

(21) A representative of the Consumers Union.

(d) The Secretary of California Emergency Management shall designate the ~~Chair~~ *chairperson* of the High Technology Crime Advisory Committee from the appointed members.

(e) The advisory committee shall not be required to meet more than 12 times per year. The advisory committee may create subcommittees of its own membership, and each subcommittee shall meet as often as the subcommittee members find necessary. It is the intent of the Legislature that all advisory committee members shall actively participate in all advisory committee deliberations required by this chapter.

Any member who, without advance notice to the Secretary of California Emergency Management and without designating an alternative representative, misses three scheduled meetings in any calendar year for any reason other than severe temporary illness or injury (as determined by the secretary) shall automatically be removed from the advisory committee. If a member wishes to send an alternative representative in his or her place, advance written notification of this substitution shall be presented to the executive director. This notification shall be required for each meeting the appointed member elects not to attend.

Members of the advisory committee shall receive no compensation for their services, but shall be reimbursed for travel

and per diem expenses incurred as a result of attending meetings sponsored by the California Emergency Management Agency.

(f) The Secretary of California Emergency Management, in consultation with the High Technology Crime Advisory Committee, shall develop specific guidelines and administrative procedures for the selection of projects to be funded by the High Technology Theft Apprehension and Prosecution Program, which guidelines shall include the following selection criteria:

(1) Each regional task force that seeks funds shall submit a written application to the committee setting forth in detail the proposed use of the funds.

(2) In order to qualify for the receipt of funds, each proposed regional task force submitting an application shall provide written evidence that the agency meets either of the following conditions:

(A) The regional task force devoted to the investigation and prosecution of high technology-related crimes is comprised of local law enforcement and prosecutors, and has been in existence for at least one year prior to the application date.

(B) At least one member of the task force has at least three years of experience in investigating or prosecuting cases of suspected high technology crime.

(3) Each regional task force shall be identified by a name that is appropriate to the area that it serves. In order to qualify for funds, a regional task force shall be comprised of local law enforcement and prosecutors from at least two counties. At the time of funding, the proposed task force shall also have at least one investigator assigned to it from a state law enforcement agency. Each task force shall be directed by a local steering committee composed of representatives of participating agencies and members of the local high technology industry.

(4) The California High Technology Crimes Task Force shall be comprised of each regional task force developed pursuant to this subdivision.

(5) Additional criteria that shall be considered by the advisory committee in awarding grant funds shall include, but not be limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, or corporations, as a result of the high technology crime cases filed, and those under active investigation by that task force.

(6) Each regional task force that has been awarded funds authorized under the High Technology Theft Apprehension and Prosecution Program during the previous grant-funding cycle, upon reapplication for funds to the committee in each successive year, shall be required to submit a detailed accounting of funds received and expended in the prior year in addition to any information required by this section. The accounting shall include all of the following information:

(A) The amount of funds received and expended.

(B) The use to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.

(C) The number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds.

(g) The committee shall annually review the effectiveness of the California High Technology Crimes Task Force in deterring, investigating, and prosecuting high technology crimes and provide its findings in a report to the Legislature and the Governor. This report shall be based on information provided by the regional task forces in an annual report to the committee which shall detail the following:

(1) Facts based upon, but not limited to, the following:

(A) The number of high technology crime cases filed in the prior year.

(B) The number of high technology crime cases investigated in the prior year.

(C) The number of victims involved in the cases filed.

(D) The number of convictions obtained in the prior year.

(E) The total aggregate monetary loss suffered by the victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include all of the following:

(A) The amount of funds received and expended.

(B) The uses to which those funds were put, including payment of salaries and expenses, purchase of supplies, and other expenditures of funds.

(C) Any other relevant information requested.

SEC. 183. Section 14029.5 of the Penal Code is amended to read:

14029.5. (a) (1) No person or private entity shall post on the Internet the home address, the telephone number, or personal identifying information that discloses the location of any witness or witness' family member participating in the Witness Relocation and Assistance Program (WRAP) with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that witness or witness' family member.

(2) A violation of this subdivision is a misdemeanor punishable by a fine of up to two thousand five hundred dollars ($2,500), or imprisonment of up to six months in a county jail, or by both that fine and imprisonment.

(3) A violation of this subdivision that leads to the bodily injury of the witness, or of any of the witness' family members who are participating in the program, is a misdemeanor punishable by a fine of up to five thousand dollars ($5,000), or imprisonment of up to one year in a county jail, or by both that fine and imprisonment.

(b) Upon admission to WRAP, local or state prosecutors shall give each participant a written opt-out form for submission to relevant Internet search engine companies or entities. This form shall notify entities of the protected person and prevent the inclusion of the participant's addresses and telephone numbers in public Internet search databases.

(c) A business, state or local agency, private entity, or person that receives the opt-out form of a WRAP participant pursuant to this ~~paragraph~~ *section* shall remove the participant's personal information from public display on the Internet within two business days of delivery of the opt-out form, and shall continue to ensure that this information is not reposted on the same Internet Web site, a subsidiary site, or any other Internet Web site maintained by the recipient of the opt-out form. No business, state or local agency, private entity, or person that has received an opt-out form from a

WRAP participant shall solicit, sell, or trade on the Internet the home address or telephone number of that participant.

(d) A business, state or local agency, private entity, or person that violates subdivision (c) shall be subject to a civil penalty for each violation in the amount of five thousand dollars ($5,000). An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

(e) A witness whose home address or telephone number is made public as a result of a violation of subdivision (c) may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declaratory relief and shall award the witness court costs and reasonable attorney's fees.

(f) Notwithstanding any other provision of law, a witness whose home address or telephone number is solicited, sold, or traded in violation of subdivision (c) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that witness in an amount up to a maximum of three times the actual damages, but in no case less than four thousand dollars ($4,000).

(g) Nothing in this section shall preclude prosecution under any other provision of law.

SEC. 184. Section 10100 of the Public Contract Code is amended to read:

10100. This ~~part~~ *chapter* may be cited as the State Contract Act.

SEC. 185. Section 10101 of the Public Contract Code is amended to read:

10101. (a) Contracts for the purchase of supplies or materials, which are purchased pursuant to Chapter 2 (commencing with Section 10290), ~~Part 2, Division 2, of the Public Contract Code,~~ are not subject to this ~~part~~ *chapter*, even though the seller is required to perform some incidental work or service in connection with the delivery of the material or supplies.

(b) Contracts for which emergency work or remedial measures are required are not subject to this ~~part~~ *chapter* if the work or remedial measures are necessary to immediately avert, alleviate, repair, or mitigate destruction of property caused by the accidental

or unplanned release of toxic substances and are necessary to protect the health, safety, and welfare of the general public.

SEC. 186. Section 10102 of the Public Contract Code is amended to read:

10102. Improvements on the property of the state on the waterfront of the City and County of San Francisco under the jurisdiction of the ~~Board of State Harbor Commissioners~~ *San Francisco Port Commission* are not subject to this ~~part~~ *chapter*.

SEC. 187. Section 10103 of the Public Contract Code is amended to read:

10103. Work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority~~,~~ is not subject to this ~~part~~ *chapter*, whether or not done under public supervision or paid for in whole or part out of public funds.

SEC. 188. Section 10103.5 of the Public Contract Code is amended to read:

10103.5. Work performed by prisoners pursuant to an order by the ~~Director~~ *Secretary* of the Department of Corrections *and Rehabilitation* or by the Prison Industry Authority is not subject to this ~~part~~ *chapter*, provided that the total cost of a project for the construction of new, previously unoccupied prison facilities or additions to an existing facility shall not exceed fifty thousand dollars ($50,000) unless it is first approved by the *State* Public Works Board.

SEC. 189. Section 10104 of the Public Contract Code is amended to read:

10104. As used in this ~~part~~ *chapter*, "mobilization" includes preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site, for the establishment of all offices, buildings and other facilities necessary for work on the project, and for all other work and operations which must be performed or costs incurred prior to beginning work on the various items on the project site.

SEC. 190. Section 10105 of the Public Contract Code is amended to read:

10105. (a) As used in this ~~part~~ *chapter*, "project" includes the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any

kind that will exceed a total cost calculated pursuant to subdivision (b).

(b) The total cost limit for calendar year 2010 shall be two hundred fifty thousand dollars ($250,000), and at two year intervals thereafter, the total cost limit shall be adjusted upward or downward by the Director of Finance to reflect the percentage change in the annual California Construction Index as used by the Department of General Services. The amount shall be rounded off to the nearest one thousand dollar ($1,000) figure.

SEC. 191. Section 10262.5 of the Public Contract Code is amended to read:

10262.5. (a) Notwithstanding any other provision of law, a prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days ~~of~~ *after* receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(b) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontract performance or nonperformance by a subcontractor.

(c) On or before September 1 of each year, the head of each state agency shall submit to the Legislature a report on the number and dollar volume of written complaints received from subcontractors and prime contractors on contracts in excess of three hundred thousand dollars ($300,000), relating to violations of this section.

SEC. 192. Section 10344 of the Public Contract Code is amended to read:

10344. (a) Contracts subject to the provisions of this article may be awarded under a procedure that makes use of a request for proposal. State agencies that use this procedure shall include in the request for proposal a clear, precise description of the work to be performed or services to be provided, a description of the format that proposals shall follow and the elements they shall contain, the standards the agency will use in evaluating proposals, the date on which proposals are due, and the timetable the agency will follow in reviewing and evaluating them.

State agencies that use a procedure that makes use of a request for proposal shall evaluate proposals and award contracts in accordance with the provisions of subdivision (b) or (c). No proposals shall be considered that have not been received at the place, and prior to the closing time, stated in the request for proposal.

(b) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a requirement that bidders submit their proposals with the bid price and all cost information in a separate, sealed envelope.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in the request for proposal.

(2) The sealed envelopes containing the bid price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.

(3) The contract shall be awarded to the lowest responsible bidder meeting the standards.

(c) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a description of the methods that will be used in evaluating and scoring the proposals. Any evaluation and scoring method shall ensure that substantial weight in relationship to all other criteria utilized shall be given to the contract price proposed by the bidder.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals shall be reviewed to determine which meet the format requirements specified in the request for proposal.

(2) All proposals meeting the formal requirements shall then be submitted to an agency evaluation committee which shall evaluate and score the proposals using the methods specified in the request for proposal. All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process.

(3) The contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.

(d) Nothing in this section shall require the awarding of the contract if no proposals are received containing bids offering a contract price that in the opinion of the state agency is a reasonable price.

(e) (1) In addition to the information required by subdivision (a), a request for proposal for a contract that involves the furnishing of equipment, materials, or supplies shall contain the following statement:

"It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code."

(2) On and after March 31, 2010, and until December 31, 2011, if a request for proposal does not contain the statement required by paragraph (1), the awarding agency shall report this error to the department within 30 days of the date the awarding agency discovers this error.

(3) The department shall post in the State Contracting Manual instructions for including the statement required by paragraph (1) in all affected contracts.

(4) The statement required by paragraph (1) shall be deemed to be part of a request for proposal even if the statement is inadvertently omitted from the request for proposal.

SEC. 193. Section 2621.7 of the Public Resources Code is amended to read:

2621.7. This chapter, except Section 2621.9, shall not apply to any of the following:

(a) The conversion of an existing apartment complex into a condominium.

(b) Any development or structure in existence prior to May 4, 1975, except for an alteration or addition to a structure that exceeds the value limit specified in subdivision (c).

(c) An alteration or addition to any structure if the value of the alteration or addition does not exceed 50 percent of the value of the structure.

(d) (1) Any structure located within the jurisdiction of the City of Berkeley or the City of Oakland which was damaged by fire between October 20, 1991, and October 23, 1991, if granted an exemption pursuant to this subdivision.

(2) The city may apply to the State Geologist for an exemption and the State Geologist shall grant the exemption only if the structure located within the earthquake fault zone is not situated upon a trace of an active fault line, as delineated in the official earthquake fault zone map or in more recent geologic data, as determined by the State Geologist.

(3) When requesting an exemption, the city shall submit to the State Geologist all of the following information:

(A) Maps noting the parcel numbers of proposed building sites that are at least 50 feet from an identified fault and a statement that there is not any more recent information to indicate a geologic hazard.

(B) Identification of any sites that are within 50 feet of an identified fault.

(C) Proof that the property owner has been notified that the granting of an exemption is not any guarantee that a geologic hazard does not exist.

(4) The granting of the exemption does not relieve a seller of real property or an agent for the seller of the obligation to disclose to a prospective purchaser that the property is located within a delineated earthquake fault zone, as required by Section 2621.9.

(e) (1) Alterations which include seismic retrofitting, as defined in Section 8894.2 of the Government Code, to any of the following buildings in existence prior to May 4, 1975:

(A) Unreinforced masonry buildings, as described in subdivision (a) of Section 8875 of the Government Code.

(B) Concrete tilt-up buildings, as described in Section 8893 of the Government Code.

(C) Reinforced concrete moment resisting frame buildings as described in Applied Technology Council Report 21 (FEMA Report 154).

(D) Any structure owned and operated by a state entity or agency that is listed on the California Register of Historical Resources or the National Register of Historic Places, including the California Memorial Stadium. This exemption shall not apply unless the state entity or agency submits a plan of proposed alterations to the State Geologist. The addition of this subparagraph does not modify, alter, conflict with, or supersede the intent ~~of~~ *or* applicability of any other provisions of this chapter.

(2) The exemption granted by subparagraphs (A), (B), and (C) of paragraph (1) shall not apply unless a city or county acts in accordance with all of the following:

(A) The building permit issued by the city or county for the alterations authorizes no greater human occupancy load, regardless of proposed use, than that authorized for the existing use permitted at the time the city or county grants the exemption. This may be accomplished by the city or county making a human occupancy load determination that is based on, and no greater than, the existing authorized use, and including that determination on the building permit application as well as a statement substantially as follows: "Under subparagraph (A) of paragraph (2) of subdivision (e) of Section 2621.7 of the Public Resources Code, the occupancy load is limited to the occupancy load for the last lawful use authorized or existing prior to the issuance of this building permit, as determined by the city or county."

(B) The city or county requires seismic retrofitting, as defined in Section 8894.2 of the Government Code, which is necessary to strengthen the entire structure and provide increased resistance to ground shaking from earthquakes.

(C) Exemptions granted pursuant to paragraph (1) are reported in writing to the State Geologist within 30 days of the building permit issuance date.

(3) Any structure with human occupancy restrictions under subparagraph (A) of paragraph (2) shall not be granted a new building permit that allows an increase in human occupancy unless a geologic report, prepared pursuant to subdivision (d) of Section 3603 of Title 14 of the California Code of Regulations in effect on January 1, 1994, demonstrates that the structure is not on the

trace of an active fault, or the requirement of a geologic report has been waived pursuant to Section 2623.

(4) A qualified historical building within an earthquake fault zone that is exempt pursuant to this subdivision may be repaired or seismically retrofitted using the State Historical Building Code, except that, notwithstanding any provision of that building code and its implementing regulations, paragraph (2) shall apply.

SEC. 194. Section 4590 of the Public Resources Code, as amended by Section 1 of Chapter 269 of the Statutes of 2009, is amended to read:

4590. (a) (1) A timber harvesting plan is effective for a period of not more than three years, unless extended pursuant to paragraph (2).

(2) A timber harvesting plan, on which timber operations have commenced but not been completed, may be extended by amendment for a one-year period in order to complete the timber operations, up to a maximum of two ~~one-year~~ *1-year* extensions, if both of the following occur:

(A) Good cause is shown.

(B) All timber operations are in conformance with the plan, this chapter, and all applicable rules and regulations, upon the filing of the notice of extension as required by this section.

(b) The extension shall apply to any area covered by the plan for which a report has not been submitted under Section 4585. The notice of extension shall be provided to the department not sooner than 30 days, but at least 10 days, prior to the expiration date of the plan. The notice shall include the circumstances that prevented a timely completion of the timber operations under the plan, written certification by a registered professional forester that neither of the conditions in subdivision (f) have occurred, and, consistent with Section 4583, an agreement to comply with this chapter and the rules and regulations of the board as they exist on the date the extension notice is filed.

(c) Stocking work may continue for more than the effective period of the plan under subdivision (a), but shall be completed within five years after the conclusion of other work.

(d) Notwithstanding subdivision (a) and the submission of a completion report pursuant to Section 4585, a timber harvesting plan, on which timber operations have commenced but not been completed, may be reopened and extended by amendment for up

to a maximum of four ~~one-year~~ *1-year* extensions if the following conditions have been met:

(1) The plan expired in 2008 or 2009.

(2) The plan complies with subparagraphs (A) and (B) of paragraph (2) of subdivision (a).

(3) The notice of extension, pursuant to subdivision (b), includes written certification by a registered professional forester that neither of the conditions in subdivision (f) ~~have~~ *has* occurred.

(e) A timber harvesting plan that is approved on or after January 1, 2010, to December 31, 2011, inclusive, may be extended by amendment for a two-year period in order to complete the timber operations, up to a maximum of two ~~two-year~~ *2-year* extensions, if the plan complies with subparagraphs (A) and (B) of paragraph (2) of subdivision (a) and the notice of extension, pursuant to subdivision (b), includes written certification by a registered professional forester that neither of the conditions in subdivision (f) ~~have~~ *has* occurred.

(f) The department shall not approve an extension pursuant to subdivision (e) if either of the following ~~have~~ *has* occurred:

(1) Listed species, as ~~defined~~ *described* in Article 1 (commencing with Section 2050) of Chapter 1.5 of Division 3 of the Fish and Game Code or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), have been discovered in the logging area of the plan since approval of the timber harvesting plan.

(2) Significant physical changes to the harvest area or adjacent areas have occurred since the timber harvesting plan's cumulative impacts were originally assessed.

(g) An extension of a timber harvesting plan on which either of the conditions in subdivision (f) has occurred may be obtained only pursuant to Section 1039 of Title 14 of the California Code of Regulations. Notwithstanding the notice provision of subdivision (b), for purposes of this subdivision the notice of extension shall be provided to the department~~,~~ not sooner than 140 days, but at least 10 days, prior to the expiration date of the plan.

(h) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 195. Section 5842 of the Public Resources Code is amended to read:

5842. (a) The Legislature hereby adopts the American River Parkway Plan so as to provide coordination with local agencies in the protection and management of the diverse and valuable natural land, water, native wildlife, and vegetation of the American River Parkway.

(b) Actions of state and local agencies with regard to land use decisions shall be consistent with the American River Parkway Plan, subject to the following provisions:

(1) This chapter does not impair the authority and responsibilities of state or local public agencies in maintaining and operating the flood channel, levees, and pump stations, except that these operations, as nearly as practicable, shall be consistent with the American River Parkway Plan.

(2) This chapter does not affect the existing authority of the City of Sacramento to conduct or settle litigation involving the validity or application of the American River Parkway Plan.

(3) This chapter does not prohibit the reasonable expansion of the water treatment facility operated by the City of Sacramento.

(4) This chapter does not impair the authority and responsibilities of state agencies in managing the California Exposition flood plain or Bushy Lake area pursuant to Chapter 9 (commencing with Section 5830).

(5) This chapter does not affect the exercise of existing water rights.

(c) Notwithstanding subdivision (a), the Legislature finds and declares that Chapter 10 of the American River Parkway Plan, titled Area Plans, which consists of maps, policies, and narrative, may be amended through a local amendment process. However, Area Plans may be amended only to the extent that they are not inconsistent with the state-adopted Area Plan policies contained in Chapter 2 of the American River Parkway Plan. The Legislature recognizes that amendments to Area Plans shall be carried out by the ~~board of~~ Sacramento County Board of Supervisors in accordance with the public hearing process described in Chapter 11 of the American River Parkway Plan, titled Implementation, and recognizes the roles and responsibilities of public agencies set forth in the public hearing process including coordination with the city councils of the Cities of Sacramento and Rancho Cordova.

SEC. 196. Section 25402.10 of the Public Resources Code is amended to read:

25402.10. (a) On and after January 1, 2009, electric and gas utilities shall maintain records of the energy consumption data of all nonresidential buildings to which they provide service. This data shall be maintained, in a format compatible for uploading to the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager, for at least the most recent 12 months.

(b) On and after January 1, 2009, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, an electric or gas utility shall upload all of the energy consumption data for the account specified for a building to the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager in a manner that preserves the confidentiality of the customer.

(c) In carrying out this section, an electric or gas utility may use any method for providing the specified data in order to maximize efficiency and minimize overall program cost, and is encouraged to work with the United States Environmental Protection Agency and customers in developing reasonable reporting options.

(d) (1) Based on a schedule developed by the commission pursuant to paragraph (2), an owner or operator of a nonresidential building shall disclose the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager benchmarking data and ratings for the most recent 12-month period to a prospective buyer, lessee of the entire building, or lender that would finance the entire building. If the data is delivered to a prospective buyer, lessee, or lender, a property owner, operator, or his or her agent is not required to provide additional information, and the information shall be deemed to be adequate to inform the prospective buyer, lessee, or lender regarding the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager benchmarking data and ratings for the most recent 12-month period for the building that is being sold, leased, financed, or refinanced.

(2) The commission shall establish a schedule by which an owner or operator is required to meet the requirements of this subdivision.

(e) Notwithstanding subdivision (d), this section does not increase or decrease the duties, if any, of a property owner, operator, or his or her broker or agent under this chapter or alter the duty of a seller, agent, or broker to disclose the existence of a material fact affecting the real property.

SEC. 197. Section 48010 of the Public Resources Code is amended to read:

48010. (a) (1) An operator of a landfill ~~maintain evidence of financial ability pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4,~~ that is operating the landfill on July 1, 2011, and that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund pursuant to this article, shall submit written notice to the board on or before July 1, 2011.

(2) An operator of multiple landfills that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund is required to submit written notice that includes all of the operator's operating landfills and all other landfills in which that operator has in common ownership.

(3) The board shall provide to the state board the name and address, and any other information necessary to administer and collect the fee imposed pursuant to ~~paragraph (2) of~~ subdivision (b) of Section 48000, of every operator of a landfill electing to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund on or before August 31, 2011.

(b) If an operator that is operating a landfill on July 1, 2011, submits a written notification to the board that it elects to participate after the trust fund fee goes into effect, the operator shall pay all trust fund fees applicable from January 1, 2012, and a 5-percent penalty before being allowed to participate.

(c) For new landfills that receive a solid waste facility permit after July 1, 2011, the operator's election to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund shall be submitted in writing to the board before the board concurs in the issuance of the permit pursuant to Section 44009.

(d) All elections to participate made by landfill operators pursuant to this section are final, binding, and irrevocable for those operators and their successors and assignees.

SEC. 198. Section 48027 of the Public Resources Code is amended to read:

48027. (a) (1) The Legislature hereby finds and declares that effective response to cleanup at solid waste disposal and codisposal sites requires that the state have sufficient funds available in the trust fund created pursuant to subdivision (b).

(2) The Legislature further finds and declares that the maintenance of the trust fund is of the utmost importance to the state and that it is essential that, except as described in subdivision (g), any moneys in the trust fund be used solely for the purposes authorized in this article and not be used, loaned, or transferred for any other purpose.

(b) The Solid Waste Disposal Site Cleanup Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the trust fund are hereby continuously appropriated to the board for expenditure, without regard to fiscal years, for the purposes of this article.

(c) The following moneys shall be deposited into the trust fund:

(1) Funds appropriated by the Legislature from the Integrated Waste Management Account to the board for solid waste disposal or codisposal site cleanup.

(2) Any interest earned on the moneys in the trust fund.

(3) Any cost recoveries from responsible parties for solid waste disposal or codisposal site cleanup and loan repayments pursuant to this article.

(d) If this article is repealed, the trust fund shall be dissolved and all moneys in the fund shall be distributed to solid waste landfill operators who have paid into the trust fund during *the* effective life of the trust fund.

(e) Any trust fund distributions received by solid waste landfill operators pursuant to subdivision (c) may be used for only any of the following activities, as related to solid waste landfills:

(1) Solid waste landfill closure and postclosure maintenance operations.

(2) Implementation of Part 258 (commencing with Section 258.1) of *Chapter I of* Title 40 of the Code of Federal Regulations.

(3) Corrective actions at the solid waste landfill.

(f) The balance in the trust fund each July 1 shall not exceed thirty million dollars ($30,000,000).

(g) Notwithstanding any other law, the Controller may use the moneys in the Solid Waste Disposal Site Cleanup Trust Fund for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code.

SEC. 199. Section 281 of the Public Utilities Code is amended to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in Decision 07-12-054.

(b) (1) All moneys collected by the surcharge authorized by the commission pursuant to that decision, whether collected before or after January 1, 2009, shall be transmitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California Advanced Services Fund.

(2) All interest earned on moneys in the fund shall be deposited in the fund.

(3) The commission may not collect moneys, by imposing the surcharge described in paragraph (1) for deposit in the fund, in an amount that exceeds a total amount of one hundred million dollars ($100,000,000).

(c) (1) Any moneys appropriated from the California Advanced Services Fund to the commission may only be expended for the program administered by the commission pursuant to subdivision (a), including the costs incurred by the commission in developing, implementing, and administering the program and the fund.

(2) Notwithstanding any other law and for the sole purpose of providing matching funds pursuant to the federal American Recovery and Reinvestment Act of 2009 ~~(Public Law~~ *(P.L.* 111-5), any entity eligible for funding pursuant to that act shall be eligible to apply to participate in the program administered by the commission pursuant to subdivision (a), if that entity otherwise satisfies the eligibility requirements under that program. Nothing in this section shall impede the ability of an incumbent local exchange carrier, as defined by subsection (h) of Section 251 of Title 47 of the United States Code, that is regulated under a ~~rate of return~~ *rate-of-return* regulatory structure, to recover, in rate base, California infrastructure investment not provided through federal or state grant funds for facilities that provide broadband service and California intrastate voice service.

(d) The commission shall conduct both a financial audit and a performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been

expended in accordance with the approved terms of the winning bids and this section. The commission shall report its findings to the Legislature by December 31, 2010. The report shall also include an update to the maps in the final report of the California Broadband Task Force.

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

SEC. 200. Section 399.20 of the Public Utilities Code is amended to read:

399.20. (a) It is the policy of this state and the intent of the Legislature to encourage electrical generation from eligible renewable energy resources.

(b) As used in this section, "electric generation facility" means an electric generation facility located within the service territory of, and developed to sell electricity to, an electrical corporation that meets all of the following criteria:

(1) Has an effective capacity of not more than three megawatts.

(2) Is interconnected and operates in parallel with the electrical transmission and distribution grid.

(3) Is strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers.

(4) Is an eligible renewable energy resource.

(c) Every electrical corporation shall file with the commission a standard tariff for electricity purchased from an electric generation facility. The commission may modify or adjust the requirements of this section for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

(d) (1) The tariff shall provide for payment for every kilowatthour of electricity purchased from an electric generation facility for a period of 10, 15, or 20 years, as authorized by the commission. The payment shall be the market price determined by the commission pursuant to Section 399.15 and shall include all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality

management district where the electric generation facility is located.

(2) The commission may adjust the payment rate to reflect the value of every kilowatthour of electricity generated on a time-of-delivery basis.

(3) The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff.

(e) An electrical corporation shall provide expedited interconnection procedures to an electric generation facility located on a distribution circuit that generates electricity at a time and in a manner so as to offset the peak demand on the distribution circuit, if the electrical corporation determines that the electric generation facility will not adversely affect the distribution grid. The commission shall consider and may establish a value for an electric generation facility located on a distribution circuit that generates electricity at a time and in a manner so as to offset the peak demand on the distribution circuit.

(f) An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 387.6. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.

(g) The electrical corporation may make the terms of the tariff available to owners and operators of an electric generation facility in the form of a standard contract subject to commission approval.

(h) Every kilowatthour of electricity purchased from an electric generation facility shall count toward meeting the electrical corporation's renewables portfolio standard annual procurement targets for purposes of paragraph (1) of subdivision (b) of Section 399.15.

(i) The physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380.

(j) (1) The commission shall establish performance standards for any electric generation facility that has a capacity greater than one megawatt to ensure that those facilities are constructed, operated, and maintained to generate the expected annual net production of electricity and do not impact system reliability.

(2) The commission may reduce the three megawatt capacity limitation of paragraph (1) of subdivision (b) if the commission finds that a reduced capacity limitation is necessary to maintain system reliability within that electrical corporation's service territory.

(k) (1) Any owner or operator of an electric generation facility that received ratepayer-funded incentives in accordance with Section 379.6 *of this code*, or with Section 25782 of the Public Resources Code, and participated in a net metering program pursuant to Sections 2827, 2827.9, and 2827.10 *of this code* prior to January 1, 2010, shall be eligible for a tariff or standard contract filed by an electrical corporation pursuant to this section.

(2) In establishing the tariffs or standard contracts pursuant to this section, the commission shall consider ratepayer-funded incentive payments previously received by the generation facility pursuant to Section 379.6 *of this code* or Section 25782 of the Public Resources Code. The commission shall require reimbursement of any funds received from these incentive programs to an electric generation facility, in order for that facility to be eligible for a tariff or standard contract filed by an electrical corporation pursuant to this section, unless the commission determines ratepayers have received sufficient value from the incentives provided to the facility based on how long the project has been in operation and the amount of renewable electricity previously generated by the facility.

(3) A customer that receives service under a tariff or contract approved by the commission pursuant to this section is not eligible to participate in any net metering program.

(*l*) An owner or operator of an electric generation facility electing to receive service under a tariff or contract approved by the commission shall continue to receive service under the tariff or contract until either of the following occurs:

(1) The owner or operator of an electric generation facility no longer meets the eligibility requirements for receiving service pursuant to the tariff or contract.

(2) The period of service established by the commission pursuant to subdivision (d) is completed.

(m) Within 10 days of receipt of a request for a tariff pursuant to this section from an owner or operator of an electric generation facility, the electrical corporation that receives the request shall post a copy of the request on its Internet Web site. The information posted on the Internet Web site shall include the name of the city in which the facility is located, but information that is proprietary and confidential, including, but not limited to, address information beyond the name of the city in which the facility is located, shall be redacted.

(n) An electrical corporation may deny a tariff request pursuant to this section if the electrical corporation makes any of the following findings:

(1) The electric generation facility does not meet the requirements of this section.

(2) The transmission or distribution grid that would serve as the point of interconnection is inadequate.

(3) The electric generation facility does not meet all applicable state and local laws and building standards, and utility interconnection requirements.

(4) The aggregate of all electric generating facilities on a distribution circuit would adversely impact utility operation and load restoration efforts of the distribution system.

(o) Upon receiving a notice of denial from an electrical corporation, the owner or operator of the electric generation facility denied a tariff pursuant to this section shall have the right to appeal that decision to the commission.

(p) In order to ensure the safety and reliability of electric generation facilities, the owner of an electric generation facility receiving a tariff pursuant to this section shall provide an inspection and maintenance report to the electrical corporation at least once every other year. The inspection and maintenance report shall be prepared at the owner's or operator's expense by a ~~California licensed~~ *California-licensed* contractor who is not the owner or operator of the electric generation facility. A ~~California licensed~~ *California-licensed* electrician shall perform the inspection of the electrical portion of the generation facility.

(q) The contract between the electric generation facility receiving the tariff and the electrical corporation shall contain

provisions that ensure that construction of the electric generating facility complies with all applicable state and local laws and building standards, and utility interconnection requirements.

(r) (1) All construction and installation of facilities of the electrical corporation, including at the point of the output meter or at the transmission or distribution grid, shall ~~only~~ be performed *only* by that electrical corporation.

(2) All interconnection facilities installed on the electrical corporation's side of the transfer point for electricity between the electrical corporation and the electrical conductors of the electric generation facility shall be owned, operated, and maintained only by the electrical corporation. The ownership, installation, operation, reading, and testing of revenue metering equipment for electric generating facilities shall only be performed by the electrical corporation.

SEC. 201. Section 777.1 of the Public Utilities Code is amended to read:

777.1. (a) If an electrical, gas, heat, or water corporation furnishes residential service to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structure in a labor camp, as defined in Section 17008 of the Health and Safety Code, and the owner, manager, or operator of the structure or park is listed by the corporation as the customer of record, the corporation shall make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the corporation shall post two copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination *of*, or *to* reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the corporation who can assist the residential

occupants in continuing service; and the address and telephone number of a *qualified* legal services project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association. The notice shall be in English and the languages listed in Section 1632 of the Civil Code.

(b) The corporation is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service and meets the requirements of law and the corporation's rules and tariffs. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the corporation, or if there is a physical means, legally available to the corporation, of selectively terminating service to those residential occupants who have not met the requirements of the corporation's rules and tariffs or for whom the representative of the residential occupants is not responsible, the corporation shall make service available to those residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) If prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the corporation, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the corporation is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the corporation pursuant to this section whose periodic payments, such as rental payments, include charges for residential electrical, gas, heat, or water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the corporation for those services during the preceding payment period.

(e) If a corporation furnishes residential service subject to subdivision (a), the corporation shall not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the corporation of a customer dispute or complaint.

(2) If the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other person or corporation or if the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, or water corporation demanding payment therefor.

(4) If a delinquent account relates to another property owned, managed, or operated by the customer.

(5) If a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) *of this section* shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the corporation, the corporation shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants made a good faith effort to have the service continued without interruption.

(i) The commission shall adopt rules and orders necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to residential occupants is not terminated due to nonpayment by the customer unless the corporation has made every reasonable effort to continue service to the residential occupants. The rules and orders shall include, but are not limited to, reasonable penalties for a violation of this section, guidelines for assistance to residents in the enforcement of this section, and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and boldface type, and comprehensive instructions to ensure full notice to the resident.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a ~~tenant's~~ *tenants'* association.

(*l*) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

SEC. 202. Section 851 of the Public Utilities Code is amended to read:

851. A public utility, other than a common carrier by railroad subject to Part ~~I~~ *A* of the Interstate Commerce Act ~~(49~~ *(49* U.S.C. Sec. 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars ($5,000,000), or for qualified transactions valued at five million dollars ($5,000,000) or less, filed an advice letter and obtained approval from the commission authorizing it to do so. If the advice letter is uncontested, approval may be given by the executive director or the director of the division of the commission having regulatory jurisdiction over the utility. The commission shall determine the types of transactions valued at five million dollars ($5,000,000) or less, that qualify for advice letter handling. For a qualified transaction valued at five million dollars ($5,000,000) or less, the commission may designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Absent protest or incomplete documentation, the commission shall approve or deny the advice letter within 120 days of its filing by the applicant public utility. The commission shall reject any advice letter that seeks to circumvent the five million ~~dollars~~ *dollar* ($5,000,000) threshold by dividing a single asset with a value of more than five million dollars ($5,000,000), into component parts, each valued at less than five million dollars ($5,000,000). Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the advice letter and approval from the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing

with Section 1001) of Chapter 5, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

This section does not prevent the sale, lease, encumbrance, or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property that is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee, or encumbrancer dealing with that property in good faith for value, provided that this section does not apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

SEC. 203. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to any subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or

hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the federal Americans with Disabilities Act of 1990 ~~(Public Law~~ *(P.L.* 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist or physician and surgeon, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow providers of the equipment and service specified in subdivisions (a), (b), and (c)~~,~~ to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2014. The commission shall require that the programs implemented under

this section be identified on subscribers' bills~~,~~ and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.

(f) The commission may direct any telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.

(g) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2014, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(h) The commission shall prepare and submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of ~~telecommunication~~ *telecommunications* services.

(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 ~~(Public Law~~ *(P.L.* 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including

discounted toll-call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(i) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

(j) The commission shall structure the programs required by this section so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

SEC. 204. Section 5411 of the Public Utilities Code is amended to read:

5411. Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by *a* fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) or by imprisonment in ~~the~~ *a* county jail for not more than three months, or *by* both *that fine and imprisonment*.

SEC. 205. Section 10009.1 of the Public Utilities Code is amended to read:

10009.1. (a) If a public utility furnishes light, heat, water, or power to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent

residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, and the owner, manager, or operator of the structure or park is listed by the public utility as the customer of record, the public utility shall make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the public utility shall post two copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants that they have the right to become utility customers, to whom the service will then be billed, without being required to pay the amount due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination *of*, or *to* reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the public utility who can assist the residential occupants in continuing service; and the address and telephone number of a *qualified* legal services project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association. The notice shall be in English and the languages listed in Section 1632 of the Civil Code.

(b) The public utility is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service, and meets the requirements of law and the public utility's rules. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the public utility, or if there is a physical means, legally available to the public utility, of selectively terminating service to those residential occupants who have not met the requirements of the public utility's rules or for whom the representative of the residential occupants is not responsible, the public utility shall make service available to the residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) If prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the public utility, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the public utility is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the public utility pursuant to this section whose periodic payments, such as rental payments, include charges for residential light, heat, water, or power, where these charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the public utility for those services during the preceding payment period.

(e) If a public utility furnishes residential service subject to subdivision (a), the public utility may not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the public utility of a customer dispute or complaint.

(2) If the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other public agency or when the obligation represented by the delinquent account or other indebtedness was incurred with any public agency other than the public utility.

(4) If a delinquent account relates to another property owned, managed, or operated by the customer.

(5) If a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) *of this section* shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the public utility, the public utility shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants make a good faith effort to have the service continued without interruption.

(i) The public utility shall adopt rules and regulations necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to residential occupants is not terminated due to nonpayment by the customer unless the public utility has made every reasonable effort to

continue service to the residential occupants. The rules and regulations shall include, but are not limited to, guidelines for assistance to actual users in the enforcement of this section and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and boldface type, and comprehensive instructions to ensure full notice to the actual user.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a ~~tenant's~~ *tenants'* association.

(*l*) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

SEC. 206. Section 99233.2 of the Public Utilities Code, as added by Section 2 of Chapter 530 of the Statutes of 2009, is amended to read:

99233.2. (a) Except as provided in subdivisions (b) and (c), there shall be allocated to the transportation planning agency, if it is statutorily created, such sums as it may approve, up to 3 percent of annual revenues, for the conduct of the transportation planning and programming process, unless a greater amount is approved by the director.

(b) (1) In those areas that have a county transportation commission created pursuant to Section 130050, up to 1 percent of annual revenues shall be allocated to the commission in Los Angeles County, and up to 3 percent of the annual revenues shall be allocated to the commissions in Orange, Riverside, and San Bernardino Counties for the transportation planning and programming process. Of the funds allocated to the commission in Riverside County, one-half shall be allocated for planning studies within the Western Riverside County and the Coachella Valley areas, as determined by the commission.

(2) In the area of the multicounty designated transportation planning agency, as defined in Section 130004, up to three-fourths of 1 percent of annual revenues shall be allocated by the appropriate

entities, proportionately, on or before each July 1, to the multicounty designated transportation planning agency for the transportation planning and programming process. No operator shall grant ~~and~~ *any* funds it receives under this chapter to the designated multicounty transportation planning agency for purposes of the agency carrying out its responsibilities under Division 12 (commencing with Section 130000).

(c) In Ventura County, up to 2 percent of the annual revenues shall be allocated to the Ventura County Transportation Commission for the transportation planning and programming process.

(d) This section shall become operative on July 1, 2011.

SEC. 207. Section 99312 of the Public Utilities Code is amended to read:

99312. Except as provided in Sections 99311 and 99311.5, the funds in the account shall be made available for the following purposes:

(a) Fifty percent for purposes of Section 99315.

(b) To the Controller, 25 percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314.

(c) To the Controller, 25 percent for allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313.

(d) For the 2007–08 fiscal year, notwithstanding any other provision of this section, or any other provision of law, the allocations made pursuant to this section shall be adjusted as follows:

(1) From the funds transferred to the account pursuant to paragraph (1) of subdivision (a) of Section 7102 of the Revenue and Taxation Code, fifty million dollars ($50,000,000) is hereby appropriated to the Controller and shall be allocated pursuant to subdivision (b); fifty million dollars ($50,000,000) is hereby appropriated to the Controller and shall be allocated pursuant to subdivision (c); and the remainder of revenue shall remain in the Public Transportation Account to fund other state public transportation priorities. The Controller shall make these allocations in four equal quarterly amounts of twelve million five hundred

thousand dollars ($12,500,000), as achievable by the receipt of the specified revenue.

(2) The amount appropriated in Item 2640-101-0046 of *Section 2.00 of* the Budget Act of 2006 *(Chapters 47 and 48 of the Statutes of 2006)* for state transit assistance pursuant to ~~subdivision~~ *subdivisions* (b) and (c) was greater than the amount of revenues received to support state transit assistance pursuant to Section 7102 of the Revenue and Taxation Code. Therefore, notwithstanding any other provision of law, the amount that would have otherwise been available for appropriation to state transit assistance in the 2007–08 fiscal year pursuant to paragraphs (2) and (3) of subdivision (a) of Section 7102 of the Revenue and Taxation Code, shall be reduced by the excess amount that was appropriated to state transit assistance in the Budget Act of 2006, and that excess amount, as determined by the Department of Finance, shall instead remain in the Public Transportation Account to fund other state public transportation priorities. The funding for state transit assistance as described in this paragraph is hereby appropriated to the Controller for allocation. The Controller shall attempt to spread this adjustment equally over four quarterly payments, as achievable by revenue estimates.

(e) For the 2008–09 fiscal year and thereafter, notwithstanding any other provision of this section or any other provision of law, and except as provided in subdivision (f), the funds transferred to the account pursuant to paragraph (1) of subdivision (a) of Section 7102 of the Revenue and Taxation Code shall be made available for the following purposes:

(1) For purposes of Section 99315, 33.34 percent, subject to appropriation by the Legislature.

(2) To the Controller, 33.33 percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314. These funds are hereby continuously appropriated for purposes of this paragraph.

(3) To the Controller, 33.33 percent for the allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313. These funds are hereby continuously appropriated for purposes of this paragraph.

(f) For the 2009–10 to 2012–13 fiscal years, inclusive, notwithstanding any other provision of this section or any other provision of law, the funds in the account subject to this section shall be made available only for purposes of Section 99315, subject to appropriation by the Legislature.

SEC. 208. Section 185036 of the Public Utilities Code is amended to read:

185036. Upon approval by the Legislature, by the enactment of a statute, or approval by the voters of a financial plan providing the necessary funding for the construction of a high-speed network, the authority may do any of the following:

(a) Enter into contracts with private or public entities for the design, construction, and operation of high-speed trains. The contracts may be separated into individual tasks or segments or may include all tasks and segments, including a design-build or design-build-operate contract.

(b) Acquire rights-of-way through purchase or eminent domain.

(c) Issue debt, secured by pledges of state funds, federal grants, or project revenues. The pledge of state funds shall be limited to those funds expressly authorized by statute or voter-approved initiatives.

(d) Enter into cooperative or joint development agreements with local governments or private entities.

(e) Set fares and schedules.

(f) Relocate highways and utilities.

SEC. 209. Section 69 of the Revenue and Taxation Code is amended to read:

69. (a) Notwithstanding any other law, pursuant to Section 2 of Article XIII A of the *California* Constitution, the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed within five years after the disaster, or five years in the case of the Northridge earthquake, as a replacement for the substantially damaged or destroyed property. At the time the base year value of the substantially damaged or destroyed property is transferred to the replacement property, the substantially damaged or destroyed property shall be reassessed at its full cash value; however, the substantially damaged or destroyed property shall retain its base year value notwithstanding the transfer authorized

by this section. If the owner or owners of substantially damaged or destroyed property receive property tax relief under this section, that property shall not be eligible for property tax relief under subdivision (c) of Section 70 in the event of its reconstruction.

(b) The replacement base year value of the replacement property acquired shall be determined in accordance with this section.

The assessor shall use the following procedure in determining the appropriate replacement base year value of comparable replacement property:

(1) If the full cash value of the comparable replacement property does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed, then the adjusted base year value of the property substantially damaged or destroyed shall be transferred to the comparable replacement property as its replacement base year value.

(2) If the full cash value of the replacement property exceeds 120 percent of the full cash value of the property substantially damaged or destroyed, then the amount of the full cash value over 120 percent of the full cash value of the property substantially damaged or destroyed shall be added to the adjusted base year value of the property substantially damaged or destroyed. The sum of these amounts shall become the replacement property's replacement base year value.

(3) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property substantially damaged or destroyed, then that lower value shall become the replacement property's base year value.

(4) The full cash value of the property substantially damaged or destroyed shall be the amount of its full cash value immediately prior to its substantial damage or destruction, as determined by the county assessor of the county in which the property is located.

(c) For purposes of this section:

(1) Property is substantially damaged or destroyed if the land or the improvements sustain physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces.

(A) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.

(B) Both the size and utility of property are interrelated and associated with value. Property is similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the property substantially damaged or destroyed and its full cash value does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed.

(i) A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the property substantially damaged or destroyed shall to the extent of the dissimilar use be considered not similar in utility.

(ii) A replacement property or portion thereof that satisfies the use requirement but has a full cash value that exceeds 120 percent of the full cash value of the property substantially damaged or destroyed shall be considered, to the extent of the excess, not similar in utility and size.

(C) To the extent that replacement property, or any portion thereof, is not similar in function, size, and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership when the replacement property is acquired or newly constructed.

(3) "Disaster" means a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity.

(d) (1) This section applies to any comparable replacement property acquired or newly constructed on or after July 1, 1985.

(2) The amendments made by Chapter 1053 of the Statutes of 1993 apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster occurring on or after October 20, 1991, and to the determination of base year values for the 1991–92 fiscal year and fiscal years thereafter.

(3) The amendments made by ~~the act adding this paragraph~~ *Chapter 317 of the Statutes of 2006* apply to any comparable

replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster occurring on or after July 1, 2003, and to the determination of base year values for the 2003–04 fiscal year and fiscal years thereafter.

(e) Only the owner or owners of the property substantially damaged or destroyed, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner or owners of substantially damaged or destroyed property obtaining title to replacement property. The acquisition of an ownership interest in a legal entity that, directly or indirectly, owns real property is not an acquisition of comparable property.

SEC. 210. Section 69.3 of the Revenue and Taxation Code is amended to read:

69.3. (a) (1) Notwithstanding any other law, pursuant to the authority of paragraph (3) of subdivision (e) of Section 2 of Article XIII A of the California Constitution, a county board of supervisors, after consultation with affected local agencies located within the boundaries of the county, may adopt an ordinance that authorizes the transfer, subject to the conditions and limitations of this section, of the base year value of real property that is located within another county in this state and has been substantially damaged or destroyed by a disaster to comparable replacement property, including land, of equal or lesser value that is located within the adopting county and has been acquired or newly constructed as a replacement for the damaged or destroyed property within three years after the damage or destruction of the original property.

(2) 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, determined as of the date immediately prior to the date that the original property was substantially damaged or destroyed. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the date of the substantial damage to, or destruction of, the original property and 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.

(b) For purposes of this section:

(1) "Affected local agency" means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues.

(2) "Claimant" means an owner or owners of real property claiming the property tax relief provided by this section.

(3) "Comparable replacement property" means a replacement property that has a full cash value of equal or lesser value as defined in paragraph (6).

(4) "Consultation" means a noticed hearing~~,~~ that is conducted by a county board of supervisors~~,~~ concerning the adoption of an ordinance described in subdivision (a) and with respect to which all affected local agencies within the boundaries of the county are provided with reasonable notice of the time and the place of the hearing and a reasonable opportunity to appear and participate.

(5) "Disaster" means a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity.

(6) "Equal or lesser value" means that the amount of the full cash value of the replacement property 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 damage or destruction 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 damage or destruction 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 damage or destruction 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 purchased or newly constructed" is the date of the purchase or the date of completion of new construction, whichever is later.

(7) "Full cash value of the original property" means its full cash value, as determined in accordance with Section 110, immediately prior to its substantial damage or destruction, as determined by the county assessor of the county in which the property is located.

(8) "Full cash value of the replacement property" means its full cash value, as determined in accordance with Section 110.1 as of the date upon which it was purchased or new construction was completed, that is applicable on and after that date.

(9) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated, that has been substantially damaged or destroyed by a disaster. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. For purposes of this paragraph, each unit of a multiunit dwelling shall be considered a separate original property.

(10) "Owner or owners" means an individual or individuals, but does not include any firm, partnership, association, corporation, company, *or* other legal entity or organization of any kind.

(11) "Replacement property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of the replacement property includes only that area of reasonable size that is used as the site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. For purposes of this paragraph, each unit of a multiunit dwelling shall be considered a separate replacement property. "Replacement property" does not include any property,

including land or improvements, if the claimant owned any portion of that property prior to the date of the disaster that damaged or destroyed the original property.

(12) "Substantially damaged or destroyed" means property where either the land or the improvements sustain physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature.

(c) At the time the base year value of the substantially damaged or destroyed property is transferred to the replacement property pursuant to an ordinance adopted under this section, the substantially damaged or destroyed property shall be reassessed at its full cash value. However, the substantially damaged or destroyed property shall retain its base year value notwithstanding that transfer. If the owner or owners of substantially damaged or destroyed property receive property tax relief under this section, that property shall not be eligible for property tax relief under subdivision (c) of Section 70 in the event of its reconstruction.

(d) Only the owner or owners of the property that has been substantially damaged or destroyed may receive property tax relief under an ordinance adopted pursuant to this section. Relief under an ordinance adopted pursuant to this section shall be granted to an owner or owners of a substantially damaged or destroyed property obtaining comparable replacement property. The acquisition of an ownership interest in a legal entity that, directly or indirectly, owns real property is not an acquisition of comparable replacement property for purposes of this section.

(e) A timely claim for relief under an ordinance adopted pursuant to this section, in that form as shall be prescribed by the board, shall be filed by the owner with the assessor of the county in which the replacement property is located. No relief under an ordinance adopted pursuant to this section shall be granted unless the claim is filed no later than January 1, 1996, or within three years after the replacement property is acquired or newly constructed, whichever is later.

(f) Any taxes that were levied on the replacement property prior to the filing of a 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 taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(g) This section shall apply to any comparable replacement property of equal or lesser value that is acquired or newly constructed as a replacement for property that has been substantially damaged or destroyed by a disaster occurring on or after October 20, 1991, and to the determination of base year values for the 1991–92 fiscal year and each fiscal year thereafter.

SEC. 211. Section 276 of the Revenue and Taxation Code is amended to read:

276. (a) Except as otherwise provided by subdivision (b), for property for which the disabled veterans' exemption described in Section 205.5 was available, but for which a timely claim was not filed, a partial exemption shall be applied in accordance with whichever of the following is applicable:

(1) Ninety percent of any tax, including any interest or penalty thereon, levied upon that portion of the assessed value of the property that would have been exempt under a timely and appropriate claim shall be canceled or refunded, provided that an appropriate claim for exemption is filed after 5 p.m. on February 15 of the calendar year in which the fiscal year begins but on or before the following December 10.

(2) If an appropriate claim for exemption is filed after the time period specified in paragraph (1), 85 percent of that portion of any tax, including any interest or penalty thereon, that was levied upon that portion of the assessed value of the property that would have been exempt under a timely and appropriate claim, shall be canceled or refunded. Cancellations made under this paragraph are subject to the provisions of Article 1 (commencing with Section 4985) of Chapter 4. Refunds issued under this paragraph are subject to the limitations periods on refunds as described in Article 1 (commencing with Section 5096) of Chapter 5.

(b) If a late-filed claim for the one-hundred-fifty-thousand-dollar ($150,000) exemption is filed in conjunction with a timely filed claim for the one-hundred-thousand-dollar ($100,000) exemption, the amount of any exemption allowed under the late-filed claim under subdivision (a) shall be determined on the basis of that portion of the exemption amount, otherwise available under

subdivision (a), that exceeds one hundred thousand dollars ($100,000)~~, as applicable~~.

(c) For those claims filed pursuant to subdivision (a) after November 15, the exemption under that subdivision may be applied to the second installment. If that exemption is so applied, the first installment is still delinquent on December 10, and is subject to delinquent penalties provided for in this division if that installment is not timely paid. A refund shall be made to the taxpayer upon a claim submitted to the auditor if the exemption is applied to the second installment and either of the following is true:

(1) Both installments are paid on or before December 10.

(2) The reduction in taxes resulting from the exemption exceeds the amount of taxes due on the second installment.

SEC. 212. Section 6018.6 of the Revenue and Taxation Code is amended to read:

6018.6. (a) Any person who ~~receives~~ *received* no more than 20 percent of his or her total gross receipts from the alteration of garments during the preceding calendar year is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, property used or furnished by that person in altering new or used clothing, provided *that* both of the following apply:

(1) That person operates a location or locations as a pickup and delivery point for garment cleaning, or provides spotting and pressing services on the premises but not garment cleaning, or operates a garment cleaning or dyeing plant on the premises.

(2) Seventy-five percent or more of that person's total gross receipts represent charges for garment cleaning or dyeing services.

(b) Sales tax shall not apply to the charges for alterations specified in subdivision (a). However, that person is a retailer of any other tangible personal property sold to consumers in the regular course of business and sales tax shall apply to the gross receipts from those sales.

(c) For the purpose of this section:

(1) "Cleaning" means wet cleaning and drycleaning.

(2) "Wet cleaning" means the process of cleaning a garment by immersion in water, or by applying manually or by any mechanical device, water, or any detergent and water, or by spraying or brushing the garment with water or water and any detergent, or water vapor, or steam, and includes self-service or coin-operated equipment in whole or in part.

(3) "Drycleaning" means the process of cleaning or renovating wearing apparel, feathers, furs, hats, fabrics, household items, or textiles by immersion and agitation, spraying, vaporization, or immersion only, in a volatile, commercially moisture-free solvent or by the use of a volatile or inflammable product, applied either manually or by means of a mechanical appliance and including self-service or coin-operated equipment in whole or in part.

(4) "Dyeing" means the process of coloring wearing apparel, feathers, furs, hats, fabrics, or textiles by the use of aniline dyes, mordants, or acids, with or without steam, excluding, however, the use of any dye or combination of dyes which is directly ~~soluable~~ *soluble* or dispersible in water and which does not require chemical alteration of its structure for application, where that dye or combination of dyes is applied to cotton, viscose rayon, or cuprammonium rayon other than wearing apparel.

(5) "Spotting" means the process of removing spots or stains or localized areas of soil from a garment, either before or after, and with or without drycleaning or wet cleaning, by brushing, spraying, or other means of manual or mechanical application, other than immersion, with water, detergents, and volatile or inflammable solvents, chemicals, or any, or all of them.

(6) "Pressing" means the process of restoring the garment to the original shape, dimensions, or contour thereof, or to those in which the same was received from the customer, or as directed by the customer, and the removal of wrinkles, stresses, bulges, and impressions, imprint marks and shine, from a garment by the application of pressure, heat, moisture, water vapor, or steam, or all of them, whether applied manually, or by any mechanical means.

SEC. 213. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited

liability ~~corporation~~ *company* shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the county in which it is located, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought

into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 214. Section 6363.4 of the Revenue and Taxation Code is amended to read:

6363.4. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, tangible personal property sold by a thrift store located on a military installation and operated by *a* designated entity that, in partnership with the United States Department of Defense, provides financial, educational, and other assistance to members of the Armed Forces of the United States, eligible family members, and survivors that are in need.~~:~~

(b) For purposes of this section, "designated entity" means a military welfare society described in Section 1033 of Chapter 53 of Part II of Subtitle A of Title 10 of the United States Code.

(c) This section shall remain in effect only until January 1, 2014.

SEC. 215. Section 7104 of the Revenue and Taxation Code is amended to read:

7104. (a) The Transportation Investment Fund (hereafter the fund) is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the ~~money~~ *moneys* in the fund ~~is~~ *are* continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(b) All of the following shall occur on a quarterly basis:

(1) The State Board of Equalization, in consultation with the Department of Finance, shall estimate the amount that is transferred to the General Fund under subdivision (b) of Section 7102 that is attributable to revenue collected for the sale, storage, use, or other consumption in this state of motor vehicle fuel, as defined in Section ~~7304~~ *7326*.

(2) The State Board of Equalization shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(3) Commencing with the 2003–04 fiscal year, the Controller shall transfer the amount estimated under paragraph (1) from the General Fund to the fund.

(c) For each quarter during the period commencing on July 1, 2003, and ending on June 30, 2008, the Controller shall make all of the following transfers and apportionments from the funds identified for transfer under paragraph (2) of subdivision (b) in the following order:

(1) To the Traffic Congestion Relief Fund created in the State Treasury by Section 14556.5 of the Government Code, the sum of one hundred sixty-nine million five hundred thousand dollars ($169,500,000), except that the transfer for the final quarter shall be ninety-three million four hundred thousand dollars ($93,400,000), for a total transfer of three billion three hundred thirteen million nine hundred thousand dollars ($3,313,900,000).

(2) To the Public Transportation Account, a trust fund in the State Transportation Fund, 20 percent of the amount remaining after the transfer required under paragraph (1). Funds transferred under this paragraph shall be made available as follows:

(A) To the Department of Transportation, 50 percent for purposes of subdivision (a) or (b) of Section 99315 of the Public Utilities Code, subject to appropriation by the Legislature.

(B) To the Controller, 25 percent for allocation pursuant to Section 99314 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99314 of the Public Utilities Code. For the 2007–08 fiscal year, these funds are continuously appropriated to the Controller for purposes of this subparagraph.

(C) To the Controller, 25 percent for allocation pursuant to Section 99313 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99313 of the Public Utilities Code. For the 2007–08 fiscal year, these funds are continuously appropriated to the Controller for purposes of this subparagraph.

(3) To the Department of Transportation for expenditure for programming for transportation capital improvement projects subject to all of the provisions governing the State Transportation Improvement Program, 40 percent of the amount remaining after the transfer required under paragraph (1), except that in the 2006–07 and 2007–08 fiscal years, the transfer shall be 80 percent

of the amount remaining after the transfer required under paragraph (1).

(4) To the Controller for apportionment to the counties, including a city and county, 20 percent of the amount remaining after the transfer required under paragraph (1), except that in the 2006–07 and 2007–08 fiscal years, no transfer may be made under this paragraph. Funds transferred under this paragraph shall be allocated in accordance with the following formulas:

(A) Seventy-five percent of the funds payable under this paragraph shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) Twenty-five percent of the funds payable under this paragraph shall be apportioned among the counties in the proportion that the number of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(5) To the Controller for apportionment to cities, including a city and county, 20 percent of the amount remaining after the transfer required under paragraph (1), except that in the 2006–07 and 2007–08 fiscal years, no transfer may be made under this paragraph. Funds transferred under this paragraph shall be apportioned among the cities in the proportion that the total population of the city bears to the total population of all the cities in the state.

(d) Funds received under paragraph (4) or (5) of subdivision (c) shall be deposited as follows in order to avoid the commingling of those funds with other local funds:

(1) In the case of a city, into the city account that is designated for the receipt of state funds allocated for transportation purposes.

(2) In the case of a county, into the county road fund.

(3) In the case of a city and county, into a local account that is designated for the receipt of state funds allocated for transportation purposes.

(e) Funds allocated to a city, county, or city and county under paragraph (4) or (5) of subdivision (c) shall be used only for street

and highway maintenance, rehabilitation, reconstruction, and storm damage repair. For purposes of this section, the following terms have the following meanings:

(1) "Maintenance" means either or both of the following:

(A) Patching.

(B) Overlay and sealing.

(2) "Reconstruction" includes any overlay, sealing, or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the geometric design criteria of the department for 3R (reconstruction, resurfacing, and rehabilitation) projects that are not on a freeway, but does not include widening for the purpose of increasing the traffic capacity of a street or highway.

(3) "Storm damage repair" is repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to winter storms and flooding, and construction of drainage improvements to mitigate future roadway flooding and damage problems, in those jurisdictions that have been declared disaster areas by the President of the United States, where the costs of those repairs are ineligible for emergency funding with Federal Emergency Relief (ER) funds or Federal Emergency Management Administration (FEMA) funds.

(f) (1) Cities and counties shall maintain their existing commitment of local funds for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair in order to remain eligible for the allocation of funds pursuant to paragraph (4) or (5) of subdivision (c).

(2) In order to receive any allocation pursuant to paragraph (4) or (5) of subdivision (c), the city or county shall annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 1996–97, 1997–98, and 1998–99 fiscal years, as reported to the Controller pursuant to Section 2151 of the Streets and Highways Code. For purposes of this paragraph, in calculating a city's or county's annual general fund expenditures and its average general fund expenditures for the 1996–97, 1997–98, and 1998–99 fiscal years, any unrestricted funds that the city or county may expend at its discretion, including vehicle in-lieu tax revenues and revenues from fines and forfeitures, expended for street and highway purposes shall be considered

expenditures from the general fund. One-time allocations that have been expended for street and highway purposes, but which may not be available on an ongoing basis, including revenue provided under the Teeter Plan Bond Law of 1994 (Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of the Government Code, may not be considered when calculating a city's or county's annual general fund expenditures.

(3) For any city incorporated after July 1, 1996, the Controller shall calculate an annual average of expenditure for the period between July 1, 1996, and December 31, 2000, *inclusive,* that the city was incorporated.

(4) For purposes of paragraph (2), the Controller may request fiscal data from cities and counties in addition to data provided pursuant to Section 2151, for the 1996–97, 1997–98, and 1998–99 fiscal years. Each city and county shall furnish the data to the Controller not later than 120 days after receiving the request. The Controller may withhold payment to cities and counties that do not comply with the request for information or that provide incomplete data.

(5) The Controller may perform audits to ensure compliance with paragraph (2) when deemed necessary. Any city or county that has not complied with paragraph (2) shall reimburse the state for the funds it received during that fiscal year. Any funds withheld or returned as a result of a failure to comply with paragraph (2) shall be reallocated to the other counties and cities whose expenditures are in compliance.

(6) If a city or county fails to comply with the requirements of paragraph (2) in a particular fiscal year, the city or county may expend during that fiscal year and the following fiscal year a total amount that is not less than the total amount required to be expended for those fiscal years for purposes of complying with paragraph (2).

(7) The allocation made under paragraph (4) or (5) of subdivision (c) shall be expended not later than the end of the fiscal year following the fiscal year in which the allocation was made, and any funds not expended within that period shall be returned to the Controller and shall be reallocated to the other cities and counties pursuant to the allocation formulas set forth in paragraph (4) or (5) of subdivision (c).

(g) The Los Angeles County Metropolitan Transportation Authority shall give first priority for using its share of the funds made available under subparagraphs (B) and (C) of paragraph (2) of subdivision (c) to providing the levels of bus service mandated under the consent decree entered into by the authority on October 29, 1996, in the case of Labor/Community Strategy Center, et al. v. Los Angeles County Metropolitan Transportation Authority.

(h) (1) For the purpose of allocating funds under paragraph (4) or (5) of subdivision (c) to counties, cities, and a city and county, the Controller shall use the most recent population estimates prepared by the Demographic Research Unit of the Department of Finance. For a city that incorporated after January 1, 1998, that does not appear on the most recent population estimates prepared by the Demographic Research Unit, the Controller shall use the population determined for that city under Section 11005.3 of the Revenue and Taxation Code.

(2) The amendments made to Section 11005.3 by the act adding this paragraph shall not apply to a population determination under paragraph (1).

(i) This section shall become inoperative on the date that all encumbrances incurred for the projects funded under paragraph (3) of subdivision (c) have been liquidated or on June 30, 2008, whichever date is later, and as of the January 1 immediately following that date is repealed.

SEC. 216. Section 7104.2 of the Revenue and Taxation Code is amended to read:

7104.2. (a) The Transportation Investment Fund (hereafter the fund) in the State Treasury is hereby continued in existence. All revenues transferred to the fund pursuant to Article XIX B of the California Constitution beginning with the 2008–09 fiscal year shall be available for expenditure as provided in this section. Notwithstanding Section 13340 of the Government Code or any other provision of law, moneys in the fund are continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(b) All of the following shall occur on a quarterly basis:

(1) The State Board of Equalization, in consultation with the Department of Finance, shall estimate the amount that is transferred to the General Fund under subdivision (b) of Section 7102 that is attributable to revenue collected for the sale, storage, use, or other

consumption in this state of motor vehicle fuel, as defined in Section ~~7304~~ *7326*.

(2) The State Board of Equalization shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(3) Commencing with the 2008–09 fiscal year, the Controller shall transfer the amount estimated under paragraph (1) from the General Fund to the fund.

(c) For each quarter, commencing with the 2008–09 fiscal year, the Controller shall make all of the following transfers and apportionments from the fund:

(1) To the Public Transportation Account, a trust fund in the State Transportation Fund, 20 percent of the revenues deposited in the fund. Funds transferred under this paragraph shall be made available as follows:

(A) Twenty-five percent for purposes of Section 99315 of the Public Utilities Code, subject to appropriation by the Legislature.

(B) Thirty-seven and one-half percent to the Controller, for allocation pursuant to Section 99314 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99314 of the Public Utilities Code. These funds are continuously appropriated to the Controller for purposes of this subparagraph.

(C) Thirty-seven and one-half percent to the Controller, for allocation pursuant to Section 99313 of the Public Utilities Code. Funds allocated under this subparagraph shall be subject to all of the provisions governing funds allocated under Section 99313 of the Public Utilities Code. These funds are continuously appropriated to the Controller for purposes of this subparagraph.

(D) Notwithstanding subparagraphs (A), (B), and (C), for the 2009–10 to 2012–13 fiscal years, inclusive, all funds transferred under this paragraph shall be made available only for purposes of Section 99315 of the Public Utilities Code, subject to appropriation by the Legislature.

(2) To the Department of Transportation for expenditure for transportation capital improvement projects subject to all of the rules governing the State Transportation Improvement Program, 40 percent of the revenues deposited in the fund.

(3) To the Controller for apportionment pursuant to ~~paragraphs~~ *subparagraphs* (A) and (B), 40 percent of the revenues deposited in the fund.

(A) Of the amount available under this paragraph, 50 percent shall be apportioned by the Controller to the counties, including a city and county, in accordance with the following formulas:

(i) Seventy-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(ii) Twenty-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(B) Of the amount available under this paragraph, 50 percent shall be apportioned by the Controller to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

(d) Funds received under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be deposited as follows in order to avoid the commingling of those funds with other local funds:

(1) In the case of a city, into the city account that is designated for the receipt of state funds allocated for transportation purposes.

(2) In the case of a county, into the county road fund.

(3) In the case of a city and county, into a local account that is designated for the receipt of state funds allocated for transportation purposes.

(e) Funds allocated to a city, county, or city and county under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be used only for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair. For purposes of this section, the following terms have the following meanings:

(1) “Maintenance” means either or both of the following:

(A) Patching.

(B) Overlay and sealing.

(2) “Reconstruction” includes any overlay, sealing, or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the

geometric design criteria of the department for 3R (reconstruction, resurfacing, and rehabilitation) projects that are not on a freeway, but does not include widening for the purpose of increasing the traffic capacity of a street or highway.

(3) "Storm damage repair" is repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to winter storms and flooding, and construction of drainage improvements to mitigate future roadway flooding and damage problems, in those jurisdictions that have been declared disaster areas by the President of the United States, where the costs of those repairs are ineligible for emergency funding with Federal Emergency Relief (ER) funds or Federal Emergency Management Administration (FEMA) funds.

(f) (1) Cities and counties shall maintain their existing commitment of local funds for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair in order to remain eligible for the allocation of funds pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (c).

(2) In order to receive any allocation pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (c), the city or county shall annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 1996–97, 1997–98, and 1998–99 fiscal years, as reported to the Controller pursuant to Section 2151 of the Streets and Highways Code. For purposes of this paragraph, in calculating a city's or county's annual general fund expenditures and its average general fund expenditures for the 1996–97, 1997–98, and 1998–99 fiscal years, any unrestricted funds that the city or county may expend at its discretion, including vehicle in-lieu tax revenues and revenues from fines and forfeitures, expended for street and highway purposes shall be considered expenditures from the general fund. One-time allocations that have been expended for street and highway purposes, but which may not be available on an ongoing basis, including revenue provided under the Teeter Plan Bond Law of 1994 (Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of the Government Code, may not be considered when calculating a city's or county's annual general fund expenditures.

(3) For any city incorporated after July 1, 1996, the Controller shall calculate an annual average of expenditure for the period between July 1, 1996, and December 31, 2000, *inclusive,* that the city was incorporated.

(4) For purposes of paragraph (2), the Controller may request fiscal data from cities and counties in addition to data provided pursuant to Section 2151, for the 1996–97, 1997–98, and 1998–99 fiscal years. Each city and county shall furnish the data to the Controller not later than 120 days after receiving the request. The Controller may withhold payment to cities and counties that do not comply with the request for information or that provide incomplete data.

(5) The Controller may perform audits to ensure compliance with paragraph (2) when deemed necessary. Any city or county that has not complied with paragraph (2) shall reimburse the state for the funds it received during that fiscal year. Any funds withheld or returned as a result of a failure to comply with paragraph (2) shall be reallocated to the other counties and cities whose expenditures are in compliance.

(6) If a city or county fails to comply with the requirements of paragraph (2) in a particular fiscal year, the city or county may expend during that fiscal year and the following fiscal year a total amount that is not less than the total amount required to be expended for those fiscal years for purposes of complying with paragraph (2).

(7) The allocation made under subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall be expended not later than the end of the fiscal year following the fiscal year in which the allocation was made, and any funds not expended within that period shall be returned to the Controller and shall be reallocated to the other cities and counties pursuant to the allocation formulas set forth in subparagraph (A) or (B) of paragraph (3) of subdivision (c).

(g) For the purpose of allocating funds under subparagraph (A) or (B) of paragraph (3) of subdivision (c) to counties, cities, and a city and county, the Controller shall use the most recent population estimates prepared by the Demographic Research Unit of the Department of Finance. For a city that incorporated after January 1, 2008, that does not appear on the most recent population estimates prepared by the Demographic Research Unit, the

Controller shall use the population determined for that city under Section 11005.3.

(h) (1) Notwithstanding any other law, the quarterly apportionments scheduled to be made in October 2009 and January 2010 pursuant to paragraph (3) of subdivision (c) shall be suspended and deferred until May 31, 2010.

(2) For the purpose of meeting the cash obligations associated with ongoing budgeted costs, a city or county may make use of any cash balance in its city or county road fund, including that resulting from the receipt of funds pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code (hereafter bond act)) for local street and road maintenance, during the period of this suspension, without the use of this cash being reflected as an expenditure of bond act funds, provided the cash is replaced once this suspension is repaid. Nothing in this paragraph shall change the fact that expenditures must be accrued and reflected from the appropriate funding sources for which the moneys were received and meet all requirements of those funding sources.

SEC. 217. Section 30461.6 of the Revenue and Taxation Code is amended to read:

30461.6. (a) Notwithstanding Section 30461, the board shall transmit the revenue derived from the increase in the cigarette tax rate of one mill ($0.001) per cigarette imposed by Section 30101 on and after January 1, 1994, to the Treasurer to be deposited in the State Treasury to the credit of the Breast Cancer Fund, which fund is hereby created. The Breast Cancer Fund shall consist of two accounts: the Breast Cancer Research Account and the Breast Cancer Control Account. The revenues deposited in the fund shall be divided equally between the two accounts.

(b) The moneys in the accounts within the Breast Cancer Fund shall, upon appropriation by the Legislature, be allocated as follows:

(1) The moneys in the Breast Cancer Research Account shall be allocated for research with respect to the cause, cure, treatment, earlier detection, and prevention of breast cancer as follows:

(A) Ten percent to the Cancer Surveillance Section of the State Department of Public Health for the collection of breast cancer-related data and the conduct of breast cancer-related

epidemiological research by the state cancer registry established pursuant to Section 103885 of the Health and Safety Code.

(B) Ninety percent to the Breast Cancer Research Program, that is hereby created at the University of California, for the awarding of grants and contracts to researchers for research with respect to the cause, cure, treatment, prevention, and earlier detection of breast cancer and with respect to the cultural barriers to accessing the health care system for early detection and treatment of breast cancer.

(2) The moneys in the Breast Cancer Control Account shall be allocated to the Breast Cancer Control Program, that is hereby created for the provision of early breast cancer detection services for uninsured and underinsured women. The Breast Cancer Control Program shall be established in the State Department of Public Health and shall be administered in coordination with the breast and cervical cancer control program established pursuant to Public Law 101-354.

(c) The early breast cancer detection services provided by the Breast Cancer Control Program shall include all of the following:

(1) Screening, including mammography, of women for breast cancer as an early detection health care measure.

(2) After screening, medical referral of screened women and services necessary for definitive diagnosis, including nonradiological techniques or biopsy.

(3) If a positive diagnosis is made, then assistance and advocacy shall be provided to help the person obtain necessary treatment.

(4) Outreach and health education activities to ensure that uninsured and underinsured women are aware of and appropriately utilize the services provided by the Breast Cancer Control Program.

(d) (1) Any entity funded by the Breast Cancer Control Program shall coordinate with other local providers of breast cancer screening, diagnostic, followup, education, and advocacy services to avoid duplication of effort. Any entity funded by the program shall comply with any applicable state and federal standards regarding mammography quality assurance.

(2) To the extent required or permitted by federal law, a provider of breast cancer screening or diagnostic services may employ digital mammography technology for the purposes of mammography screening and diagnostic procedures that are conducted prior to January 1, 2014, when film, otherwise known

as analog, mammography technology is unavailable. To the extent required or permitted by federal law and notwithstanding paragraph (3) of subdivision (a) of Section 14105.18 of the Welfare and Institutions Code, the payment rate for all mammography screening that is conducted prior to January 1, 2014, shall be limited to the Medi-Cal payment rate for film mammography screening.

(e) (1) The State Department of Public Health shall provide for breast cancer screening services at the level of funding budgeted from state and other resources during the fiscal year in which the Legislature has appropriated funds to the department for this purpose.

(2) Administrative costs of the State Department of Public Health shall not exceed 10 percent of the funds allocated to the Breast Cancer Control Program created pursuant to paragraph (2) of subdivision (b). Indirect costs of the entities funded by this program shall not exceed 12 percent. The department shall define "indirect costs" in accordance with applicable state and federal law.

(f) Any entity funded by the Breast Cancer Control Program shall collect data and maintain records that are determined by the State Department of Public Health to be necessary to facilitate the ~~state~~ department's ability to monitor and evaluate the effectiveness of the entities and the program. Commencing with the program's second year of operation, the State Department of Public Health shall submit an annual report to the Legislature and any other appropriate entity. The costs associated with this report shall be paid from the allocation made pursuant to paragraph (2) of subdivision (b). The report shall describe the activities and effectiveness of the program and shall include, but not be limited to, the following types of information regarding those served by the program:

(1) The number.

(2) The ethnic, geographic, and age breakdown.

(3) The stages of presentation.

(4) The diagnostic and treatment status.

(g) The Breast Cancer Control Program shall be conducted in consultation with the Breast Cancer Research Program created pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(h) In implementing the Breast Cancer Control Program, the State Department of Public Health may appoint and consult with

an advisory panel appointed by the *State* Public Health Officer and consisting of one ex officio, nonvoting member from the Breast Cancer Research Program, breast cancer researchers, and representatives from voluntary, nonprofit health organizations, health care professional organizations, breast cancer survivor groups, and breast cancer and health care-related advocacy groups. It is the intent of the Legislature that breast cancer-related survivors and advocates and health advocates for low-income women compose at least one-third of the advisory panel. It is also the intent of the Legislature that the State Department of Public Health collaborate closely with the panel.

(i) It is the intent of the Legislature in enacting the Breast Cancer Control Program to decrease cancer mortality rates attributable to breast cancer among uninsured and underinsured women, with special emphasis on low-income, Native American, and minority women. It is also the intent of the Legislature that the communities served by the Breast Cancer Control Program reflect the ethnic, racial, cultural, and geographic diversity of the state and that the Breast Cancer Control Program fund entities where uninsured and underinsured women are most likely to seek their health care.

(j) The State Department of Public Health or any entity funded by the Breast Cancer Control Program shall collect personal and medical information necessary to administer this program from any individual applying for services under the program. The information shall be confidential and shall not be disclosed other than for purposes directly connected with the administration of this program or except as otherwise provided by law or pursuant to prior written consent of the subject of the information.

The State Department of Public Health or any entity funded by the Breast Cancer Control Program may disclose the confidential information to medical personnel and fiscal intermediaries of the state to the extent necessary to administer this program, and to other state public health agencies or medical researchers when the confidential information is necessary to carry out the duties of those agencies or researchers in the investigation, control, or surveillance of breast cancer.

(k) The State Department of Public Health shall adopt regulations to implement this act in accordance with the *rulemaking provisions of the* Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title

2 of the Government Code). The initial adoption of implementing regulations shall be deemed an emergency and shall be considered as necessary for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Section 11346.1 *of the Government Code*. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(*l*) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 30461.6 of the Revenue and Taxation Code as added by ~~Assembly Bill 478 of the 1993–94 Regular Session~~ *Chapter 660 of the Statutes of 1993*.

(m) To implement the Breast Cancer Control Program, the State Department of Public Health may contract, to the extent permitted by Section 19130 of the Government Code, with public and private entities, or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary. However, the Medi-Cal program's fiscal intermediary shall only be utilized if services provided under the program are specifically identified and reimbursed in a manner that does not claim federal financial reimbursement. Any contracts with, and the utilization of, the Medi-Cal program's fiscal intermediary shall not be subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code. Contracts to implement the Breast Cancer Control Program entered into by the State Department of Public Health with entities other than the Medi-Cal program's fiscal intermediary shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

SEC. 218. Section 41007 of the Revenue and Taxation Code is amended to read:

41007. (a) "Service supplier" shall mean both of the following:

(1) ~~Any~~ *A* person supplying intrastate telephone communication services to ~~any~~ *a* service user in this state pursuant to California intrastate tariffs and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(2) ~~Any~~ *A* person supplying Voice over Internet Protocol (VoIP) service to ~~any~~ *a* service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(b) On and after January 1, 1988, "service supplier" also includes ~~any~~ *a* person supplying intrastate telephone ~~communications~~ *communication* services for whom the Public Utilities Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

SEC. 219. Section 41011 of the Revenue and Taxation Code is amended to read:

41011. (a) "Charges for services" means all charges billed by a service supplier to a service user for intrastate telephone ~~communications~~ *communication* services and shall mean local telephone service and include monthly service flat-rate charges for usage, message unit charges and shall mean toll charges, and include intrastate wide area telephone service charges and also means all charges billed by a service supplier to a service user for VoIP service.

(b) (1) "Charges for services" shall not include any tax imposed by the United States or by any charter city, charges for service paid by inserting coins in a public coin-operated telephone, and shall not apply to amounts billed to nonsubscribers for coin shortages. Where a coin-operated telephone service is furnished for a guarantee or other periodic amount, such amount is subject to the surcharge imposed by this part.

(2) "Charges for services" shall not include charges for intrastate toll calls where bills for such calls originate out of California.

(3) "Charges for services" shall not include charges for any nonrecurring, installation, service connection or one-time charge for service or directory advertising, and shall not include private communication service charges, charges for other than ~~communications~~ *communication* service, or any charge made by a hotel or motel for service rendered in placing calls for its guests regardless of how such hotel or motel charge is denominated or characterized by an applicable tariff of the Public Utilities Commission of this state.

(4) "Charges for services" shall not include charges for basic exchange line service for lifeline services.

SEC. 220. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. The Department of General Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's

~~911~~ *"911"* costs. The surcharge rate shall be determined by dividing the costs ~~(including~~, *including* incremental ~~costs)~~ *costs*, the Department of General Services estimates for the current fiscal year of ~~911~~ *"911"* plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone ~~communications~~ *communication* services and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall ~~such~~ *the* surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

SEC. 221. Section 41136 of the Revenue and Taxation Code is amended to read:

41136. Funds in the State Emergency Telephone Number Account shall, when appropriated by the Legislature, be spent solely for the following purposes:

(a) A minimum of one-half of 1 percent of the charges for intrastate telephone communications services and VoIP service to which the surcharge applies, as follows:

(1) To pay refunds authorized by this part.

(2) To pay the State Board of Equalization for the cost of the administration of this part.

(3) To pay the office of the State Chief Information Officer for its costs in administration of the "911" emergency telephone number system.

(4) To pay bills submitted to the office of the State Chief Information Officer by service suppliers or communications equipment companies for the installation of, and ongoing expenses for, the following communications services supplied to local agencies in connection with the "911" emergency phone number system:

(A) A basic system.

(B) A basic system with telephone central office identification.

(C) A system employing automatic call routing.

(D) Approved incremental costs.

(5) To pay claims of local agencies for approved incremental costs, not previously compensated for by another governmental agency.

(6) To pay claims of local agencies for incremental costs and amounts, not previously compensated for by another governmental agency, incurred prior to the effective date of this part, for the installation and ongoing expenses for the following communication services supplied in connection with the "911" emergency ~~phone~~ *telephone* number system:

(A) A basic system.

(B) A basic system with telephone central office identification.

(C) A system employing automatic call routing.

(D) Approved incremental costs. Incremental costs shall not be allowed unless the costs are concurred in by the office of the State Chief Information Officer.

(b) (1) For the purposes of paragraph (5) of subdivision (a), the term incremental costs shall include a maximum of one-quarter of 1 percent of the charges for intrastate telephone communications services and VoIP service to which the surcharge applies for a one-time payment to Primary Public Safety Answering Points for the cost necessary to recruit and train additional personnel necessary to accept wireless enhanced "911" calls from within their jurisdiction routed directly to their call centers.

(2) Funds allocated pursuant to this subdivision shall supplement, and not supplant, existing funding for these services.

(3) This subdivision shall remain in effect only until December 31, 2011.

SEC. 222. Section 149.9 of the Streets and Highways Code is amended to read:

149.9. (a) Pursuant to Section 149.7 and the memorandum of understanding between the Los Angeles County Metropolitan Transportation Authority (LACMTA), the United States Department of Transportation, and the department, as adopted on July 24, 2008, and any subsequent, mutually agreed upon changes to that memorandum, the LACMTA may operate a value-pricing and transit development demonstration program involving high-occupancy toll (HOT) lanes to be conducted, administered, developed, and operated on State Highway Routes 10 and 110 in Los Angeles County by the LACMTA.

(b) The LACMTA shall implement the program in cooperation with the department~~,~~ and the active participation of the Department of the California Highway Patrol, pursuant to a cooperative agreement that addresses all matters related to design, construction,

maintenance, and operation of state highway system facilities in connection with the value-pricing and transit program. With the consent of the department, the board of the LACMTA shall establish appropriate performance measures, such as speed or travel times, for the purpose of ensuring optimal use of the HOT lanes without adversely affecting other traffic on the state highway system.

(c) The LACMTA and the department may implement the demonstration program under the following conditions:

(1) The value-pricing program may be operated on State Highway Routes 10 and 110 in Los Angeles County on designated high-occupancy vehicle (HOV) lanes.

(2) (A) Single-occupant vehicles, or those vehicles that do not meet minimum occupancy requirements, may be authorized to enter and use the HOV lanes in the identified corridors, under conditions as determined by the LACMTA.

(B) The LACMTA may not change the vehicle occupancy requirement for access to the HOV lanes in the identified corridors during the demonstration period that is authorized under this section.

(3) As part of the demonstration program, each proposed HOT lane shall have nontolled alternative lanes available for public use in the same corridor as the proposed HOT lanes.

(4) The LACMTA shall implement a public outreach and communications plan in order to solicit public input into the development of the demonstration program.

(5) In implementing the program, the LACMTA shall identify the affected communities in the respective corridors and work with those communities to identify impacts and develop mitigation measures.

(6) The amount of the toll shall be established by the LACMTA, and collected and administered in a manner determined by the LACMTA. The LACMTA shall conduct a public hearing 30 days prior to setting or increasing the toll.

(7) The LACMTA shall assess the impacts of the program on commuters of low income and shall provide mitigation to those impacted commuters. Mitigation measures may include, but are not limited to, reduced toll charges and toll credits for transit users. Eligible commuters for reduced toll charges or toll credits for transit users shall meet the eligibility requirements for assistance

programs under Chapter 2 (commencing with Section 11200) or Chapter 3 (commencing with Section 12000) of Part 3 of, Part 5 (commencing with Section 17000) of, or Chapter 10 (commencing with Section 18900), Chapter 10.1 (commencing with Section 18930), or Chapter 10.3 (commencing with Section 18937) of Part 6 of, Division 9 of the Welfare and Institutions Code.

(8) ~~Toll paying~~ *Toll-paying* commuters shall have the option to purchase any necessary toll paying equipment, prepay tolls, and renew toll payments by cash or by using a credit card.

(9) The LACMTA may operate the demonstration program until January 15, 2013, during which time it may not issue bonds for the demonstration program.

(10) The LACMTA and the department shall report to the Legislature by December 31, 2012. The report shall include, but not be limited to, a summary of the demonstration program, a survey of its users, the impact on carpoolers, revenues generated, how transit service or alternative modes of transportation were impacted, any potential effect on traffic congestion in the HOV lane and in the neighboring lanes, the number of ~~toll paying~~ *toll-paying* vehicles that utilized the HOT lanes, any potential reductions in the greenhouse gas emissions that are attributable to congestion reduction resulting from the HOT lane demonstration project, and a description of the mitigation measures on the affected communities and commuters in this demonstration program.

(11) Pursuant to Section 149.7, the revenue generated from the program may be available to the LACMTA for the direct expenses related to the maintenance, administration, and operation, including collection and enforcement, of the demonstration program. Administrative expenses shall not exceed 3 percent of the revenues.

(12) All remaining revenue generated by the demonstration program shall be used in the corridor from which the revenue was generated exclusively for preconstruction, construction, and other related costs of high-occupancy vehicle facilities and the improvement of transit service in the corridor, including, but not limited to, support for transit operations pursuant to an expenditure plan adopted by the LACMTA.

(13) This section shall not prevent the department or any local agency from constructing facilities that compete with the HOT lane demonstration project, and the LACMTA shall not be entitled

to compensation for adverse effects on toll revenue due to those facilities.

SEC. 223. Section 30918 of the Streets and Highways Code is amended to read:

30918. (a) It is the intention of the Legislature to maintain tolls on all of the bridges specified in Section 30910 at rates sufficient to meet any obligation to the holders of bonds secured by the bridge toll revenues. The authority shall retain authority to set the toll schedule as may be necessary to meet those bond obligations. The authority shall provide at least 30 days' notice to the transportation policy committee of each house of the Legislature and shall hold a public hearing before adopting a toll schedule reflecting the increased toll rate.

(b) The authority shall increase the toll rates specified in the adopted toll schedule in order to meet its obligations and covenants under any bond resolution or indenture of the authority for any outstanding toll bridge revenue bonds issued by the authority and the requirements of any constituent instruments defining the rights of holders of related obligations of the authority entered into pursuant to Section 5922 of the Government Code and, notwithstanding Section 30887~~,~~ *or* subdivision (c) of Section 30916 *of this code*, or any other law, may increase the toll rates specified in the adopted toll schedule to provide funds for the planning, design, construction, operation, maintenance, repair, replacement, rehabilitation, and seismic retrofit of the state-owned toll bridges specified in Section 30910 *of this code*, to provide funding to meet the requirements of Sections 30884 and 30911 *of this code*, and to provide funding to meet the requirements of voter-approved regional measures pursuant to Sections 30914~~,~~ *and* 30921~~, and 30921.5~~ *of this code*.

(c) The authority's toll structure for the state-owned toll bridges specified in Section 30910 may vary from bridge to bridge and may include discounts for vehicles classified by the authority as high-occupancy vehicles, notwithstanding any other law.

(d) If the authority establishes high-occupancy vehicle lane fee discounts or access for vehicles classified by the authority as high-occupancy vehicles for any bridge, the authority shall collaborate with the department to reach agreement on how the occupancy requirements shall apply on each segment of highway that connects with that bridge.

(e) All tolls referred to in this section and Sections 30916, 31010, and 31011 may be treated by the authority as a single revenue source for accounting and administrative purposes and for the purposes of any bond indenture or resolution and any agreement entered into pursuant to Section 5922 of the Government Code.

(f) It is the intent of the Legislature that the authority should consider the needs and requirements of both its electronic and ~~cash paying~~ *cash-paying* customers when it designates toll payment options at the toll plazas for the toll bridges under its jurisdiction.

SEC. 224. Section 1611 of the Unemployment Insurance Code is amended to read:

1611. Moneys in the Employment Training Fund shall be expended only for the purposes of Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3, and for the costs of administering this article and Section 976.6, except those moneys may be used for any of the following:

(a) With the approval of the Legislature, the fund or contributions to it may be used to pay interest charged on federal loans to the Unemployment Fund.

(b) Commencing with allocations made to the Employment Training Panel in the 1992–93 fiscal year, any moneys allocated to the panel in a fiscal year that are not encumbered by the panel in that fiscal year~~,~~ shall revert to the Unemployment Insurance Fund.

(c) It is the intent of the Legislature that the panel shall closely monitor program performance and expenditures for employment training programs administered by the panel, and that the panel shall expeditiously disencumber funds that are not needed for employment training program completion. Commencing with the 1992–93 fiscal year, those moneys that are disencumbered during the fiscal year that are not reencumbered during the same fiscal year shall revert to the Unemployment Insurance Fund.

(d) Notwithstanding any other law, the Controller may use the moneys in the Employment Training Fund for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. However, interest shall be paid on all moneys loaned to the General Fund from the Employment Training Fund. Interest payable shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund

from which loaned. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the Employment Training Fund was created.

SEC. 225. Section 10214.6 of the Unemployment Insurance Code is amended to read:

10214.6. (a) The panel shall establish the Partnership for Workforce Recovery Training (PWRT) for the purposes of supporting and implementing the workforce development goals set forth in the federal American Recovery and Reinvestment Act of 2009 (ARRA) ~~(Public Law~~ *(P.L.* 111-5). The panel shall develop and publish guidelines for ~~implementing~~ *implementation* of the PWRT, consistent with, and including adequate fiscal and accounting controls, as prescribed in subdivision (g) of Section 10205.

(b) The panel may allocate any funds it receives pursuant to the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.) and the ARRA to support the activities of the PWRT. Any funds received by the panel pursuant to this section shall be deposited into a separate account established by the department in the State Treasury, and used for the purposes of this section.

(c) The panel may adopt any regulations necessary to implement this section, but any regulations so adopted are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The panel may solicit proposals and enter into contracts or other agreements to secure funding for the purposes of this section, but those proposals, contracts, and agreements shall be exempt from any competitive bidding requirements otherwise prescribed in statute.

SEC. 226. Section 4465 of the Vehicle Code is amended to read:

4465. (a) A legal owner of record of a vehicle may request, and the department shall furnish, information regarding the current registration status of the vehicle, including the license plate number and address of the registered owner of the vehicle. The department may charge a fee to pay for the cost of furnishing this information.

(b) (1) By January 1, 2010, the department shall be in full compliance with the federal Anti Car Theft Act of 1992 ~~(Public Law~~ *(P.L.* 102-519) and the United States Department of Justice (DOJ) rules governing the federal National Motor Vehicle Title

Information System (NMVTIS) (49 U.S.C. Sec. 30501 et seq.), to the extent practicable.

(2) Notwithstanding paragraph (1), by January 1, 2010, the department shall eliminate any restrictions to consumer access to titling, branding, and theft information provided by the department to NMVTIS, to ensure that prospective purchasers have instant and reliable access to California's data.

SEC. 227. Section 4466 of the Vehicle Code 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 or photocopy of any of those documents, if the facsimile or photocopy 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 pursuant to 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 any of the following ~~apply~~ *applies*:

(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, subdivision (a) does 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 or entity 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.

SEC. 228. Section 11709.4 of the Vehicle Code is amended to read:

11709.4. (a) When a dealer purchases or obtains a vehicle in trade in a retail sale or lease transaction and the vehicle is subject to a prior credit or lease balance, all of the following apply:

(1) If the dealer agreed to pay a specified amount on the prior credit or lease balance owing on the vehicle purchased or obtained in trade, and the agreement to pay the specified amount is contained in a written agreement documenting the transaction, the dealer shall tender the agreed upon amount as provided in the written agreement to the lessor registered in accordance with Section 4453.5, or to the legal owner reflected on the ownership certificate, or to the designee of that lessor or legal owner of the vehicle purchased or obtained in trade within 21 calendar days of purchasing or obtaining the vehicle in trade.

(2) If the dealer did not set forth an agreement regarding payment of a prior credit or lease balance owed on the vehicle purchased or obtained in trade, in a written agreement documenting

the transaction, the dealer shall tender to the lessor registered in accordance with Section 4453.5, or to the legal owner reflected on the ownership certificate, or to the designee of that lessor or legal owner of the vehicle purchased or obtained in trade, an amount necessary to discharge the prior credit or lease balance owing on the vehicle purchased or obtained in trade within 21 calendar days of purchasing or obtaining the vehicle in trade.

(3) The time period specified in ~~paragraphs~~ *paragraph* (1) or (2) may be shortened if the dealer and consumer agree, in writing, to a shorter time period.

(4) A dealer shall not sell, consign for sale, or transfer any ownership interest in the vehicle purchased or obtained in trade until an amount necessary to discharge the prior credit or lease balance owing on the vehicle has been tendered to the lessor registered in accordance with Section 4453.5, or to the legal owner reflected on the ownership certificate, or to the designee of that lessor or legal owner of the vehicle purchased or obtained in trade.

(b) A dealer does not violate this section if the dealer reasonably and in good faith gives notice of rescission of the contract promptly, but no later than 21 days after the date on which the vehicle was purchased or obtained in trade, and the contract is thereafter rescinded on any of the grounds in Section 1689 of the Civil Code.

SEC. 229. Section 13386 of the Vehicle Code is amended to read:

13386. (a) (1) The Department of Motor Vehicles shall certify or cause to be certified ignition interlock devices required by Article 5 (commencing with Section 23575) of Chapter 2 of Division 11.5 and publish a list of approved devices.

(2) (A) The Department of Motor Vehicles shall ensure that ignition interlock devices that have been certified according to the requirements of this section continue to meet certification requirements. The department may periodically require manufacturers to indicate in writing whether the devices continue to meet certification requirements.

(B) The department may use denial of certification, suspension or revocation of certification, or decertification of an ignition interlock device in another state as an indication that the certification requirements are not met, if either of the following apply:

(i) The denial of certification, suspension or revocation of certification, or decertification in another state constitutes a violation by the manufacturer of Article 2.55 (commencing with Section 125.00) of Chapter 1 of Division 1 of ~~the~~ Title 13 of the California Code of Regulations.

(ii) The denial of certification for an ignition interlock device in another state was due to a failure of an ignition interlock device to meet the standards adopted by the regulation set forth in clause (i), specifically Sections 1 and 2 of the model specification for breath alcohol ignition interlock devices, as published by notice in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, on pages 11774 to 11787, inclusive.

(C) Failure to continue to meet certification requirements shall result in suspension or revocation of certification of ignition interlock devices.

(b) (1) A manufacturer shall not furnish an installer, service center, technician, or consumer with technology or information that allows a device to be used in a manner that is contrary to the purpose for which it is certified.

(2) Upon a violation of paragraph (1), the department shall suspend or revoke the certification of the ignition interlock device that is the subject of that violation.

(c) An installer, service center, or technician shall not tamper with, change, or alter the functionality of the device from its certified criteria.

(d) The department shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of ignition interlock devices. If the certification of a device is suspended or revoked, the manufacturer of the device shall be responsible for, and shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(e) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(f) All manufacturers of ignition interlock devices that meet the requirements of subdivision (e) and are certified in a manner

approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out this section.

(g) A manufacturer and a manufacturer's agent certified by the department to provide ignition interlock devices shall provide each year to the department information on the number of false positives and the time to reset the device. The department shall use this information in evaluating the continued certification of an ignition interlock device.

(h) The department shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An "Option to Install," to be sent by the Department of Motor Vehicles to repeat offenders along with the mandatory order of suspension or revocation. This shall include the alternatives available for early license reinstatement with the installation of an ignition interlock device and shall be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section.

(2) A "Verification of Installation" to be returned to the department by the reinstating offender upon application for reinstatement. Copies shall be provided for the manufacturer or the manufacturer's agent.

(3) A "Notice of Noncompliance" and procedures to ensure continued use of the ignition interlock device during the restriction period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

(i) Every manufacturer and manufacturer's agent certified by the department to provide ignition interlock devices shall adopt fee schedules that provide for the payment of the costs of the device by applicants in amounts commensurate with the applicant's ability to pay.

SEC. 230. Section 21455.5 of the Vehicle Code is amended to read:

21455.5. (a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated enforcement system if the governmental agency utilizing the system meets all of the following requirements:

(1) Identifies the system by signs that clearly indicate the system's presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.

(2) If it locates the system at an intersection, and ensures that the system meets the criteria specified in Section 21455.7.

(b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

(c) Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system. As used in this subdivision, "operate" includes all of the following activities:

(1) Developing uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establishing procedures to ensure compliance with those guidelines.

(2) Performing administrative functions and day-to-day functions, including, but not limited to, all of the following:

(A) Establishing guidelines for selection of location.

(B) Ensuring that the equipment is regularly inspected.

(C) Certifying that the equipment is properly installed and calibrated, and is operating properly.

(D) Regularly inspecting and maintaining warning signs placed under paragraph (1) of subdivision (a).

(E) Overseeing the establishment or change of signal phases and the timing thereof.

(F) Maintaining controls necessary to assure that only those citations that have been reviewed and approved by law enforcement are delivered to violators.

(d) The activities listed in subdivision (c) that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system. However, the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), and (F) of paragraph (2) of, subdivision (c) may not be contracted out to the manufacturer or supplier of the automated enforcement system.

(e) (1) Notwithstanding Section 6253 of the Government Code, or any other provision of law, photographic records made by an automated enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies and only for the purposes of this article.

(2) Confidential information obtained from the Department of Motor Vehicles for the administration or enforcement of this article shall be held confidential, and may not be used for any other purpose.

(3) Except for court records described in Section 68152 of the Government Code, the confidential records and information described in paragraphs (1) and (2) may be retained for up to six months from the date the information was first obtained, or until final disposition of the citation, whichever date is later, after which time the information shall be destroyed in a manner that will preserve the confidentiality of any person included in the record or information.

(f) Notwithstanding subdivision ~~(d)~~ *(e)*, the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

(g) (1) A contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the equipment authorized under this section.

(2) Paragraph (1) does not apply to a contract that was entered into by a governmental agency and a manufacturer or supplier of automated enforcement equipment before January 1, 2004, unless

that contract is renewed, extended, or amended on or after January 1, 2004.

SEC. 231. Section 27602 of the Vehicle Code is amended to read:

27602. (a) A person shall not drive a motor vehicle if a television receiver, a video monitor, or a television or video screen, or any other, similar means of visually displaying a television broadcast or video signal that produces entertainment or business applications, is operating and is located in the motor vehicle at a point forward of the back of the driver's seat, or is operating and the monitor, screen, or display is visible to the driver while driving the motor vehicle.

(b) Subdivision (a) does not apply to the following equipment when installed in a vehicle:

(1) A vehicle information display.

(2) A global positioning display.

(3) A mapping display.

(4) A visual display used to enhance or supplement the driver's view forward, behind, or to the sides of a motor vehicle for the purpose of maneuvering the vehicle.

(5) A television receiver, video monitor, television or video screen, or any other similar means of visually displaying a television broadcast or video signal, if that equipment satisfies one of the following requirements:

(A) The equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display as described in paragraphs (1) to (4), inclusive.

(B) The equipment is designed, operated, and configured in a manner that prevents the driver of the motor vehicle from viewing the television broadcast or video signal while operating the vehicle in a safe and reasonable manner.

(6) A mobile digital terminal that is fitted with an opaque covering that does not allow the driver to view any part of the display while driving, even though the terminal may be operating, installed in a vehicle that is owned or operated by any of the following:

(A) An electrical corporation, as defined in Section 218 of the Public Utilities Code.

(B) A gas corporation, as defined in Section 222 of the Public Utilities Code.

(C) A sewer system corporation, as defined in Section 230.6 of the Public Utilities Code.

(D) A telephone corporation, as defined in Section 234 of the Public Utilities Code.

(E) A water corporation, as defined in Section 241 of the Public Utilities Code.

(F) A local publicly owned electric utility, as defined in Section ~~9604~~ *224.3* of the Public Utilities Code.

(G) A city, joint powers agency, or special district, if that local entity uses the vehicle solely in the provision of sewer service, gas service, water service, or wastewater service.

(c) Subdivision (a) does not apply to a mobile digital terminal installed in an authorized emergency vehicle or to a motor vehicle providing emergency road service or roadside assistance.

(d) Subdivision (a) does not apply to a mobile digital terminal installed in a vehicle when the vehicle is deployed in an emergency to respond to an interruption or impending interruption of electrical, natural gas, telephone, sewer, water, or wastewater service, and the vehicle is owned or operated by any of the following:

(1) An electrical corporation, as defined in Section 218 of the Public Utilities Code.

(2) A gas corporation, as defined in Section 222 of the Public Utilities Code.

(3) A sewer system corporation, as defined in Section 230.6 of the Public Utilities Code.

(4) A telephone corporation, as defined in Section 234 of the Public Utilities Code.

(5) A water corporation, as defined in Section 241 of the Public Utilities Code.

(6) A local publicly owned electric utility, as defined in Section ~~9604~~ *224.3* of the Public Utilities Code.

(7) A city, joint powers agency, or special district, if that local entity uses the vehicle solely in the provision of sewer service, gas service, water service, or wastewater service.

SEC. 232. Section 40002 of the Vehicle Code is amended to read:

40002. (a) (1) ~~When~~ *If* there is a violation of Section 40001, an owner or any other person subject to Section 40001, who was not driving the vehicle involved in the violation, may be mailed a written notice to appear. An exact and legible duplicate copy of

that notice when filed with the court, in lieu of a verified complaint, is a complaint to which the defendant may plead "guilty."

(2) If, however, the defendant fails to appear in court or does not deposit lawful bail, or pleads other than "guilty" of the offense charged, a verified complaint shall be filed which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by the defendant and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(3) A verified complaint pursuant to paragraph (2) shall include a paragraph that informs the person that unless he or she appears in the court designated in the complaint within 21 days after being given the complaint and answers the charge, renewal of registration of the vehicle involved in the offense may be precluded by the department, or a warrant of arrest may be issued against him or her.

(b) (1) If a person mailed a notice to appear pursuant to paragraph (1) of subdivision (a) fails to appear in court or deposit bail, a warrant of arrest shall not be issued based on the notice to appear, even if that notice is verified. An arrest warrant may ~~only~~ be issued *only* after a verified complaint pursuant to paragraph (2) of subdivision (a) is given the person and the person fails to appear in court to answer that complaint.

(2) If a person mailed a notice to appear pursuant to paragraph (1) of subdivision (a) fails to appear in court or deposit bail, the court may give by mail to the person a notice of noncompliance. A notice of noncompliance shall include a paragraph that informs the person that unless he or she appears in the court designated in the notice to appear within 21 days after being given by mail the notice of noncompliance and answers the charge on the notice to appear, or pays the applicable fine and penalties if an appearance is not required, renewal of registration of the vehicle involved in the offense may be precluded by the department.

(c) A verified complaint filed pursuant to this section shall conform to Chapter 2 (commencing with Section 948) of Title 5 of Part 2 of the Penal Code.

(d) (1) The giving by mail of a notice to appear pursuant to paragraph (1) of subdivision (a) or a notice of noncompliance

pursuant to paragraph (2) of subdivision (b) shall be done in a manner prescribed by Section 22.

(2) The verified complaint pursuant to paragraph (2) of subdivision (a) shall be given in a manner prescribed by Section 22.

SEC. 233. Section 42001.13 of the Vehicle Code is amended to read:

42001.13. (a) A person who commits a violation of Section 22507.8 is subject to either a civil notice of parking violation pursuant to Article 3 (commencing with Section 40200) *of Chapter 1 of Division 17* or a criminal notice to appear.

(b) If a notice to appear is issued and upon conviction of an infraction for a violation of Section ~~25507.8~~ *22507.8*, a person shall be punished as follows:

(1) A fine of not less than two hundred fifty dollars ($250) and not more than five hundred dollars ($500) for the first offense.

(2) A fine of not less than five hundred dollars ($500) and not more than seven hundred fifty dollars ($750) for the second offense.

(3) A fine of not less than seven hundred fifty dollars ($750) and not more than one thousand dollars ($1,000) for three or more offenses.

(c) The court may suspend the imposition of the fine if the person convicted possessed at the time of the offense, but failed to display, a valid special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59.

(d) A fine imposed under this section may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

SEC. 234. Section 10608.24 of the Water Code is amended to read:

10608.24. (a) Each urban retail water supplier shall meet its interim urban water use target by December 31, 2015.

(b) Each urban retail water supplier shall meet its urban water use target by December 31, 2020.

(c) An urban retail water supplier's compliance daily per capita water use shall be the measure of progress toward achievement of its urban water use target.

(d) (1) When determining compliance daily per capita water use, an urban retail water supplier may consider the following factors:

(A) Differences in evapotranspiration and rainfall in the baseline period compared to the compliance reporting period.

(B) Substantial changes to commercial or industrial water use resulting from increased business output and economic development that have occurred during the reporting period.

(C) Substantial changes to institutional water use resulting from fire suppression services or other extraordinary events, or from new or expanded operations, that have occurred during the reporting period.

(2) If the urban retail water supplier elects to adjust its estimate of compliance daily per capita water use due to one or more of the factors described in paragraph (1), it shall provide the basis for, and data supporting, the adjustment in the report required by Section 10608.40.

(e) When developing the urban water use target pursuant to Section 10608.20, an urban retail water supplier that has a substantial percentage of industrial water use in its service area, may exclude process water from the calculation of gross water use to avoid a disproportionate burden on another customer sector.

(f) (1) An urban retail water supplier that includes agricultural water use in an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) may include the agricultural water use in determining gross water use. An urban retail water supplier that includes agricultural water use in determining gross water use and develops its urban water use target pursuant to paragraph (2) of subdivision (b) of Section 10608.20 shall use a water efficient standard for agricultural irrigation of 100 percent of reference evapotranspiration multiplied by the crop coefficient for irrigated acres.

(2) An urban retail water supplier, that is also an agricultural water supplier, is not subject to the requirements of Chapter 4 (commencing with Section 10608.48), if the agricultural water use is incorporated into its urban water use target pursuant to paragraph (1).

SEC. 235. Section 10608.44 of the Water Code is amended to read:

10608.44. Each state agency shall reduce water use ~~on~~ *at* facilities it operates to support urban retail water suppliers in meeting the target identified in Section 10608.16.

SEC. 236. Section 10853 of the Water Code is amended to read:

10853. ~~No~~ *An* agricultural water supplier that provides water to less than 25,000 irrigated acres, excluding recycled water, shall *not* be required to implement the requirements of this part or Part 2.55 (commencing with Section 10608) unless sufficient funding has specifically been provided to that water supplier for these purposes.

SEC. 237. Section 10933 of the Water Code is amended to read:

10933. (a) On or before January 1, 2012, the department shall commence to identify the extent of monitoring of groundwater elevations that is being undertaken within each basin and subbasin.

(b) The department shall prioritize groundwater basins and subbasins for the purpose of implementing this section. In prioritizing the basins and subbasins, the department shall, to the extent data are available, consider all of the following:

(1) The population overlying the basin or subbasin.

(2) The rate of current and projected growth of the population overlying the basin or subbasin.

(3) The number of public supply wells that draw from the basin or subbasin.

(4) The total number of wells that draw from the basin or subbasin.

(5) The irrigated acreage overlying the basin or subbasin.

(6) The degree to which persons overlying the basin or subbasin rely on groundwater as their primary source of water.

(7) Any documented impacts on the groundwater within the basin or subbasin, including overdraft, subsidence, saline intrusion, and other water quality degradation.

(8) Any other information determined to be relevant by the department.

(c) If the department determines that all or part of a basin or subbasin is not being monitored pursuant to this part, the department shall do all of the following:

(1) Attempt to contact all well owners within the area not being monitored.

(2) Determine if there is an interest in establishing any of the following:

(A) A groundwater management plan pursuant to Part 2.75 (commencing with Section 10750).

(B) An integrated regional water management plan pursuant to Part 2.2 (commencing with Section 10530) that includes a groundwater management component that complies with the requirements of Section 10753.7.

(C) A voluntary groundwater monitoring association pursuant to Section 10935.

(d) If the department determines that there is sufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), or if the county agrees to perform the groundwater monitoring functions in accordance with this part, the department shall work cooperatively with the interested parties to comply with the requirements of this part within two years.

(e) If the department determines, with regard to a basin or subbasin, that there is insufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), and if the county decides not to perform the groundwater monitoring and reporting functions of this part, the department shall do all of the following:

(1) Identify any existing monitoring wells that overlie the basin or subbasin that are owned or operated by the department or any other state or federal agency.

(2) Determine whether the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations.

(3) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations, the department shall not perform groundwater monitoring functions pursuant to Section ~~10934~~ *10933.5*.

(4) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the State Mining and Geology Board concurs with that determination, the department shall perform groundwater monitoring functions pursuant to Section ~~10934~~ *10933.5*.

SEC. 238. Section 12645 of the Water Code is amended to read:

12645. The Legislature finds and declares all of the following:

(a) In 1911, the Legislature adopted a flood control plan for the Sacramento Valley, as proposed by the federal California Debris Commission, and created the Reclamation Board to regulate levees and other encroachments, and to review and approve flood control plans for the Sacramento River and its tributaries. The state's adoption of a ~~valley-wide~~ *valleywide* flood management plan was intended to create a unified plan of flood control and to reclaim lands from overflow. Six years later, California gained ~~Congressional~~ *congressional* authorization for the United States Army Corps of Engineers (Corps) to collaborate with the state in building and maintaining the Sacramento River Flood Control Project. The federal government transferred completed portions of the Sacramento River Flood Control Project to the state as portions were completed, and the state, in turn, passed responsibility for operation and maintenance to local districts organized to provide flood control within their boundaries.

(b) The state and federal governments have built or rebuilt levees, weirs, and bypasses to increase conveyance of flood waters downstream. The Sacramento River Flood Control Project and the federal-state flood control project in the San Joaquin Valley include approximately 1,600 miles of levees and other facilities to reduce central valley flood risk, now defined as the State Plan of Flood Control in subdivision (j) of Section 5096.805 of the Public Resources Code. The Corps often constructed federal "project levees" in both the Sacramento and San Joaquin River watersheds by modifying existing levees. The federal government transferred completed portions of the Sacramento River Flood Control Project to the state, as portions were completed, which in turn passed responsibility for operation and maintenance to local reclamation districts.

(c) In 2003, a state Court of Appeal in Paterno v. State of California (2003) 113 Cal.App.4th 998 (Paterno), held the state liable, in a claim for inverse condemnation, for failure of a levee that was operated and maintained by a local levee maintenance district. In settlement of that litigation, the state's liability was substantial because homes and a shopping center were built behind the levee and suffered from the resulting flood.

(d) The Legislature has authorized funding for numerous flood control projects throughout the Sacramento and San Joaquin River watersheds. These statutory authorizations included varying provisions regarding responsibility and liability for operation and maintenance of the flood control facilities, and may or may not have incorporated the specified facilities into the federal-state Sacramento River or San Joaquin River flood control projects. After the court ruling in Paterno, the status of each flood facility became critically important to determining liability, and legal ambiguities led to questions about whether particular facilities were incorporated into a federal-state flood control project. In some cases, despite a location between two project levees, certain levees remain outside the jurisdiction of a federal-state flood control project, with local agencies retaining liability.

(e) In 2006, California voters approved the Disaster Preparedness and Flood Prevention Bond Act of 2006, which authorized the issuance of general obligation bonds in the amount of $4.9 billion for flood protection and defined the Sacramento River and San Joaquin River federal-state flood control projects as the "State Plan of Flood Control." The following year, the Legislature passed a package of bills to reform state flood protection policy in the central valley. These laws required the Department of Water Resources to develop, and the Central Valley Flood Protection Board to adopt, a Central Valley Flood Protection Plan, which is broader than the State Plan of Flood Control, affecting the entire watersheds of the Sacramento and San Joaquin Valley. These laws included provisions intended to limit state liability to facilities identified in the State Plan of Flood Control. These laws did not specifically address the facilities described in this article.

SEC. 239. Section 12647 of the Water Code is amended to read:

12647. (a) The state shall not have responsibility or liability for the construction, operation, and maintenance of central valley flood control facilities identified in this article unless all of the following ~~applies~~ *apply*:

(1) The department identifies the facility as part of the State Plan of Flood Control.

(2) The state has expressly accepted the transfer of liability for the facility from the federal government.

(3) The board incorporates the facility into the State Plan of Flood Control pursuant to Section 9611.

(b) Unless otherwise specifically provided, nothing in this article shall be construed to expand the responsibility of the state for the operation or maintenance of any flood management facility outside the scope of the State Plan of Flood Control, except as specifically determined by the board pursuant to Section 9611.

(c) Use of the phrase "adopted and authorized" in this article does not, by itself, reflect incorporation of the specified facility into the State Plan of Flood Control or assumption of liability by the state, unless one of the conditions described in subdivision (a) applies to the facility.

(d) Nothing in this section abrogates or modifies any duty, responsibility, or liability of any federal, state, or local agency, including, but not limited to, those duties, responsibilities, and liabilities set forth in Sections 8370, 12642, and 12828.

SEC. 240. Section 30779 of the Water Code is amended to read:

30779. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

General (or Special) Water District Election, ____
County Water District
(Inserting date thereof).

Instructions to Voters: To vote, stamp or write a cross (+) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear, or deface this ballot, return it to the inspector of ~~election~~ *elections* and obtain another.

SEC. 241. Section 4691 of the Welfare and Institutions Code is amended to read:

4691. (a) The Legislature reaffirms its intent that community-based day programs be planned and provided as part of a continuum of services to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. The Legislature further intends that standards be developed to ensure high-quality services, and that equitable ratesetting procedures based upon those standards be established, maintained, and revised, as necessary.

The Legislature intends that ratesetting procedures be developed for all community-based day programs, which include adult development centers, activity centers, infant day programs, behavior management programs, social recreational programs, and independent living programs.

(b) For the purpose of ensuring that regional centers may secure ~~high quality~~ *high-quality* services for persons with developmental disabilities, the State Department of Developmental Services shall promulgate regulations establishing program standards and an equitable process for setting rates of state payment for community-based day programs. These regulations shall include, but are not limited to, all of the following:

(1) The standards and requirements related to the operation of the program including, but not limited to, staff qualifications, staff-to-client ratios, client entrance and exit criteria, program design, program evaluation, program and client records and documentation, client placement, and personnel requirements and functions.

(2) The allowable cost components of the program including salary and wages, staff benefits, operating expenses, and management organization costs where two or more programs are operated by a separate and distinct corporation or entity.

(3) The rate determination processes for establishing rates, based on the allowable costs of the allowable cost components. Different rate determination processes may be developed for establishing rates for new and existing programs, and for the initial and subsequent years of implementation of the regulations. The processes shall include, but are not limited to, all of the following:

(A) The procedure for identification and grouping of programs by type of day program and approved staff-to-client ratio.

(B) The requirements for an identification of the program, cost, and other information, if any, which the program is required to submit to the department or the regional center, the consequences, if any, for failure to do so, and the timeframes and format for submission and review.

(C) The ratesetting methodology.

(D) A procedure for adjusting rates as a result of anticipated and unanticipated program changes and fiscal audits of the program and a procedure for appealing rates, including the timeframes for

the program to request an adjustment or appeal, and for the department to respond.

(E) A procedure for increasing established rates and the allowable range of rates due to cost-of-living adjustments.

(F) A procedure for increasing established rates as a result of Budget Act appropriations made pursuant to the ratesetting methodology established pursuant to Section 4691.5 and subdivision (c) of this section.

The department shall develop these regulations in consultation with representatives from organizations representing the developmental services system as determined by the department. The State Council on Developmental Disabilities, and other organizations representing regional centers, providers, and clients shall have an opportunity to review and comment upon the proposed regulations prior to their promulgation. The department shall promulgate these regulations for all community-based day programs by July 1, 1990.

(c) Upon the promulgation of regulations pursuant to subdivision (b), and pursuant to Section 4691.5, and by September 1 of each year thereafter, the department shall establish rates pursuant to the regulations. Rate increases during the 1990–91 and 1991–92 fiscal years shall be limited to those specified in subdivision (b). For the 1992–93 fiscal year and all succeeding fiscal years, any increases proposed during those years in the rates of reimbursement established pursuant to the regulations, except for rate increases due to rate appeals and rate adjustments based on unanticipated program changes, shall be subject to the appropriation of sufficient funds in the Budget Act, for those purposes, to fully provide the proposed increase to all eligible programs for the entire fiscal year. If the funds appropriated in the Budget Act are not sufficient to fully provide for the proposed increase in the rates of reimbursement for all eligible programs for the entire fiscal year, the proposed increase shall be limited to the level of funds appropriated. The increases proposed in the rates of reimbursement shall be reduced equitably among all eligible providers in accordance with funds appropriated and the eligible programs shall be reimbursed at the reduced amount for the entire fiscal year.

(d) Using the reported costs of day programs reimbursed at a permanent rate and the standards and ratesetting processes

promulgated pursuant to subdivision (b) as a basis, the department shall report to the Legislature as follows:

(1) By April 15, 1993, and every odd year thereafter, the difference between permanent rates for existing programs and the rates of those programs based upon their allowable costs and client attendance, submitted pursuant to the regulations specified in subdivision (b). In reporting the difference, the department shall also identify the amount of the difference associated with programs whose rates are above the allowable range of rates, which is available for increasing the rates of programs whose rates are below the allowable range, to within the allowable range, and any other pertinent cost or rate information which the department deems necessary.

(2) By April 15, 1994, and every even year thereafter, the level of funding, if any, which was not appropriated to reimburse providers at the proposed rates reported the prior fiscal year pursuant to paragraph (1), and any other pertinent cost or rate information which the department deems necessary.

(3) The April 15, 1996, report pursuant to paragraph (2) shall be prepared jointly by the department and organizations representing community-based day program providers, as determined by the department. That report shall also include a review of the ratesetting process and recommendations, if any, for its modification.

(e) Rates established by the department pursuant to subdivision (b) are exempt from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The department shall ensure that the regional centers monitor compliance with program standards.

SEC. 242. Section 4860 of the Welfare and Institutions Code is amended to read:

4860. (a) (1) The hourly rate for supported employment services provided to consumers receiving individualized services shall be thirty dollars and eighty-two cents ($30.82).

(2) Job coach hours spent in travel to consumer worksites may be reimbursable for individualized services only when the job coach travels from the vendor's headquarters to the consumer's worksite or from one consumer's worksite to another, and only when the travel is one way.

(b) The hourly rate for group services shall be thirty dollars and eighty-two cents ($30.82), regardless of the number of consumers served in the group. Consumers in a group shall be scheduled to start and end work at the same time, unless an exception that takes into consideration the consumer's compensated work schedule is approved in advance by the regional center. The department, in consultation with stakeholders, shall adopt regulations to define the appropriate grounds for granting these exceptions. When the number of consumers in a supported employment placement group drops to fewer than the minimum required in subdivision (r) of Section 4851, the regional center may terminate funding for the group services in that group, unless, within 90 days, the program provider adds one or more regional centers, or Department of Rehabilitation-funded supported employment consumers to the group.

(c) Job coaching hours for group services shall be allocated on a prorated basis between a regional center and the Department of Rehabilitation when regional center and Department of Rehabilitation consumers are served in the same group.

(d) When Section 4855 applies, fees shall be authorized for the following:

(1) A three-hundred-sixty-dollar ($360) fee shall be paid to the program provider upon intake of a consumer into a supported employment program. No fee shall be paid if that consumer completed a supported employment intake process with that same supported employment program within the previous 12 months.

(2) A seven-hundred-twenty-dollar ($720) fee shall be paid upon placement of a consumer in an integrated job, except that no fee shall be paid if that consumer is placed with another consumer or consumers assigned to the same job coach during the same hours of employment.

(3) A seven-hundred-twenty-dollar ($720) fee shall be paid after a 90-day retention of a consumer in a job, except that no fee shall be paid if that consumer has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment.

(e) Notwithstanding paragraph (4) of subdivision (a) of Section 4648, the regional center shall pay the supported employment program rates established by this section.

SEC. 243. Section 5806 of the Welfare and Institutions Code is amended to read:

5806. The State Department of Mental Health shall establish service standards that ensure that members of the target population are identified, and services provided to assist them to live independently, work, and reach their potential as productive citizens. The department shall provide annual oversight of grants issued pursuant to this part for compliance with these standards. These standards shall include, but are not limited to, all of the following:

(a) A service planning and delivery process that is target population based and includes the following:

(1) Determination of the numbers of clients to be served and the programs and services that will be provided to meet their needs. The local director of mental health shall consult with the sheriff, the police chief, the probation officer, the mental health board, contract agencies, and family, client, ethnic, and citizen constituency groups as determined by the director.

(2) Plans for services, including outreach to families whose severely mentally ill adult is living with them, design of mental health services, coordination and access to medications, psychiatric and psychological services, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans' services. Plans *also* shall ~~also~~ contain evaluation strategies, that shall consider cultural, linguistic, gender, age, and special needs of minorities in the target populations. Provision shall be made for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services due to limited-English-speaking ability and cultural differences. Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an untreated severe mental illness who would be likely to become homeless if the illness continued to be untreated for a substantial period of time. Outreach to adults may include adults voluntarily or involuntarily hospitalized as a result of a severe mental illness.

(3) ~~Provisions~~ *Provision* for services to meet the needs of target population clients who are physically disabled.

(4) Provision for services to meet the special needs of older adults.

(5) Provision for family support and consultation services, parenting support and consultation services, and peer support or self-help group support, where appropriate for the individual.

(6) Provision for services to be client-directed and that employ psychosocial rehabilitation and recovery principles.

(7) Provision for psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning.

(8) Provision for services specifically directed to seriously mentally ill young adults 25 years of age or younger who are homeless or at significant risk of becoming homeless. These provisions may include continuation of services that *still* would ~~still~~ be received through other funds had eligibility not been terminated due to age.

(9) Services reflecting special needs of women from diverse cultural backgrounds, including supportive housing that accepts children, personal services coordinator therapeutic treatment, and substance treatment programs that address ~~gender specific~~ *gender-specific* trauma and abuse in the lives of persons with mental illness, and vocational rehabilitation programs that offer job training programs free of gender bias and sensitive to the needs of women.

(10) Provision for housing for clients that is immediate, transitional, permanent, or all of these.

(11) Provision for clients who have been suffering from an untreated severe mental illness for less than one year, and who do not require the full range of services but are at risk of becoming homeless unless a comprehensive individual and family support services plan is implemented. These clients shall be served in a manner that is designed to meet their needs.

(12) Provision for services for veterans.

(b) ~~Each~~ *A* client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and followthrough of services, and necessary advocacy to ensure ~~each~~ *that the* client receives those services ~~which~~ *that* are agreed to in the personal services

plan. ~~Each~~ *A* client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate.

(c) The individual personal services plan shall ensure that members of the target population involved in the system of care receive ~~age~~ *age-appropriate*, ~~gender~~ *gender-appropriate*, and culturally appropriate services or appropriate services based on any characteristic listed or defined in Section 11135 of the Government Code, to the extent feasible, that are designed to enable recipients to:

(1) Live in the most independent, least restrictive housing feasible in the local community, and for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate.

(2) Engage in the highest level of work or productive activity appropriate to their abilities and experience.

(3) Create and maintain a support system consisting of friends, family, and participation in community activities.

(4) Access an appropriate level of academic education or vocational training.

(5) Obtain an adequate income.

(6) Self-manage their illness and exert as much control as possible over both the day-to-day and long-term decisions ~~which~~ *that* affect their lives.

(7) Access necessary physical health care and maintain the best possible physical health.

(8) Reduce or eliminate serious antisocial or criminal behavior and thereby reduce or eliminate their contact with the criminal justice system.

(9) Reduce or eliminate the distress caused by the symptoms of mental illness.

(10) Have freedom from dangerous addictive substances.

(d) The individual personal services plan shall describe the service array that meets the requirements of subdivision (c), and to the extent applicable to the individual, the requirements of subdivision (a).

SEC. 244. Section 14083 of the Welfare and Institutions Code is amended to read:

14083. The factors to be considered by the negotiator in negotiating contracts under this article, or in drawing specifications for competitive bidding, include, but are not limited to, all of the following:

(a) Beneficiary access.

(b) Utilization controls.

(c) Ability to render quality services efficiently and economically.

(d) Demonstrated ability to provide or arrange needed specialized services.

(e) Protection against fraud and abuse.

(f) Any other factor which would reduce costs, promote access, or enhance the quality of care.

(g) The capacity to provide a given tertiary service, such as specialized children's services, on a regional basis.

(h) Recognition of the variations in severity of illness and complexity of care.

(i) Existing labor-management collective bargaining agreements.

(j) The situation of county hospitals and university medical centers contracting with counties for provision of health care to indigent persons entitled to care under Section 17000, which are burdened to a greater extent than private hospitals with bad debts, indirect costs, medical education programs, and capital needs.

(k) The special circumstances of hospitals serving a disproportionate number of Medi-Cal beneficiaries and patients who are not covered by other third-party payers, including the costs associated with assuring an adequate supply of registered nurses.

(*l*) The costs of providing complex emergency services, including the costs of meeting and maintaining state and local requirements for trauma center designation.

(m) The hospital does any of the following:

(1) Provides additional obstetrical beds.

(2) Contracts with one or more comprehensive perinatal providers.

(3) Permits certified nurse midwives, subject to hospital rules, and consistent with existing laws and regulations, to admit patients to the health facility.

(4) Expands overall obstetrical services in the hospital.

(n) The special circumstances of hospitals whose Medi-Cal inpatient utilization rate exceeds the mean Medicaid inpatient utilization rate by at least one-half of one standard deviation.

(o) The ability and capacity of the contracting hospital in a closed health facility planning area to provide health care services to beneficiaries who are in ~~life threatening~~ *life-threatening* or emergency situations, but have been sufficiently stabilized at another noncontracting facility in order to facilitate transportation to the contracting hospital.

(p) The ability of the contracting hospital to provide a secure environment for the provision of health care services. In this regard, the negotiator shall consider additional security measures that the contracting hospital may have taken to provide a secure environment, including, but not limited to, the use of detection equipment or procedures to detect lethal weapons, the appropriate use of surveillance cameras, limiting access of unauthorized personnel to the emergency department, installation of bullet proof glass as appropriate in designated areas, the use of emergency "panic" buttons to alert local law enforcement agencies, and assigning full-time security personnel to the emergency department.

SEC. 245. Section 14085.57 of the Welfare and Institutions Code is amended to read:

14085.57. (a) A designated public hospital, as defined in subdivision (d) of Section 14166.1, that is contracting to provide services under this article, and that has or would have fulfilled the criteria set forth in Section 14105.98 or subparagraph (B) of paragraph (1) of subdivision (c) of Section 14166.3 for the three most recent years prior to submitting final plans for an eligible project in accordance with paragraph (3) of subdivision (b), may receive supplemental reimbursement to the extent provided for in Section 14085.5, subject to subdivision (c), in addition to the rate of payment provided for in the contract entered into under this article.

(b) (1) A hospital qualifying pursuant to subdivision (a) that elects to receive reimbursement under this section shall submit documentation to the department regarding debt service on general obligation bonds or revenue bonds used for financing the construction, renovation, or replacement of hospital facilities, including buildings and fixed equipment.

(2) A hospital qualifying pursuant to subdivision (a) shall remain open for the life of the supplemental reimbursements provided for pursuant to this section.

(3) (A) Eligible projects shall include those new capital projects funded by new debt for which final plans have been submitted to the Office of Statewide Health Planning and Development after January 1, 2007, and prior to December 31, 2011.

(B) Eligible projects that may receive supplemental reimbursement pursuant to subdivision (a) are limited to projects related to meeting seismic safety deadlines.

(c) No expenditure of state funds, either from the General Fund or any special fund, shall be made for the nonfederal share of the supplemental reimbursement provided for in this section. The department shall, for designated public hospitals that meet the criteria in subdivision (a), claim federal expenditures through the use of certified public expenditures or intergovernmental transfers, as necessary and appropriate.

(d) The department shall promptly seek any necessary, and all available, federal approvals for the implementation of this section. This section shall be implemented only to the extent that federal approval and federal financial participation are available.

SEC. 246. Section 14105.3 of the Welfare and Institutions Code is amended to read:

14105.3. (a) The department is considered to be the purchaser, but not the dispenser or distributor, of prescribed drugs under the Medi-Cal program for the purpose of enabling the department to obtain from manufacturers of prescribed drugs the most favorable price for those drugs furnished by one or more manufacturers, based upon the large quantity of the drugs purchased under the Medi-Cal program, and to enable the department, notwithstanding any other provision of state law, to obtain from the manufacturers discounts, rebates, or refunds based on the quantities purchased under the program, insofar as may be permissible under federal law. Nothing in this section shall interfere with usual and customary distribution practices in the drug industry.

(b) The department may enter into exclusive or nonexclusive contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of appliances, durable medical equipment, medical supplies, and other product-type health care services and with laboratories for clinical laboratory services for

the purpose of obtaining the most favorable prices to the state and to assure adequate quality of the product or service. Except as provided in subdivision (f), this subdivision shall not apply to prescribed drugs dispensed by pharmacies licensed pursuant to Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code.

(c) Notwithstanding subdivision (b), the department may not enter into a contract with a clinical laboratory unless the clinical laboratory operates in conformity with Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code and the regulations adopted thereunder, and Section 263a of Title 42 of the United States Code and the regulations adopted thereunder.

(d) The department shall contract with manufacturers of single-source drugs on a negotiated basis, and with manufacturers of multisource drugs on a bid or negotiated basis.

(e) In order to ensure and improve access by Medi-Cal beneficiaries to both hearing aid appliances and provider services, and to ensure that the state obtains the most favorable prices, the department, by June 30, 2008, shall enter into exclusive or nonexclusive contracts, on a bid or negotiated basis, for purchasing hearing aid appliances.

(f) In order to provide specialized care in the distribution of specialized drugs, as identified by the department and that include, but are not limited to, blood factors and immunizations, the department may enter into contracts with providers licensed to dispense dangerous drugs or devices pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code, for programs that qualify for federal funding pursuant to the medicaid state plan, or waivers and the programs authorized by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of, and Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of, Division 106 of the Health and Safety Code, in accordance with this subdivision.

(1) The department shall, for purposes of ensuring proper patient care, consult current standards of practice when executing a provider contract.

(2) The department shall, for purposes of ensuring quality of care to people with unique conditions requiring specialty drugs, contract with a nonexclusive number of providers that meets the

needs of the affected population, covers all geographic regions in California, and reflects the distribution of the specialty drug in the community. The department may use a single provider in the event the product manufacturer designates a sole-source delivery mechanism. The department shall consult with interested parties and appropriate stakeholders in implementing this section with respect to all of the following:

(A) Notifying stakeholder representatives of the potential inclusion or exclusion of drugs in the specialty pharmacy program.

(B) Allowing for written input regarding the potential inclusion or exclusion of drugs into the specialty pharmacy program.

(C) Scheduling at least one public meeting regarding the potential inclusion or exclusion of drugs into the specialty pharmacy program.

(D) Obtaining a recommendation from the Medi-Cal Drug Utilization Review Advisory Committee, established pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8), on the inclusion or exclusion of drugs into the specialty pharmacy program distribution based on clinical best practices related to each drug considered.

(3) For purposes of this subdivision, the definition of "blood factors" has the same meaning as that term is defined in Section 14105.86.

(4) The department shall make every reasonable effort to ensure all medically necessary clotting factor therapies are available for the treatment of people with bleeding disorders.

(5) The department shall generate an annual report, published publicly six months after the end of the first and second years after implementation, which shall include, but not be limited to, all of the following information:

(A) The number and geographic distribution of participating providers.

(B) The number and geographic distribution of beneficiaries receiving specialty drugs, including on a per-provider basis.

(C) A summary of problems and complaints received regarding the specialty pharmacy program.

(D) An evaluation of hospital and emergency services before and after implementation for the targeted patient population.

(E) Results of patient satisfaction surveys.

(F) The cost-effectiveness of the program.

(6) This subdivision shall become inoperative three years after the date of implementation, as provided pursuant to a notice to the public issued by the department, or until July 1, 2013, whichever is earlier.

(g) The department may contract with an intermediary to establish provider contracts pursuant to this section for programs that qualify for federal funding pursuant to the ~~medicaid~~ *Medicaid* state plan or waivers and the programs authorized by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of, and Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of, Division 106 of the Health and Safety Code.

(h) In carrying out contracting activity for this or any section associated with the Medi-Cal list of contract drugs, notwithstanding Section 19130 of the Government Code, the department may contract, either directly or through the fiscal intermediary, for pharmacy consultant staff necessary to accomplish the contracting process or treatment authorization request reviews. The fiscal intermediary contract, including any contract amendment, system change pursuant to a change order, and project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and any policies, procedures, or regulations authorized by these provisions.

(i) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Therefore, contracts under this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(j) For purposes of implementing the contracting provisions specified in this section, the department shall do all of the following:

(1) Ensure adequate access for Medi-Cal patients to quality laboratory testing services in the geographic regions of the state where contracting occurs.

(2) Consult with the statewide association of clinical laboratories and other appropriate stakeholders on the implementation of the contracting provisions specified in this section to ensure maximum access for Medi-Cal patients consistent with the savings targets projected by the 2002–03 ~~Budget Conference Committee~~ *budget*

conference committee for clinical laboratory services provided under the Medi-Cal program.

(3) Consider which types of laboratories are appropriate for implementing the contracting provisions specified in this section, including independent laboratories, outreach laboratory programs of hospital-based laboratories, clinic laboratories, physician office laboratories, and group practice laboratories.

SEC. 247. Section 14132.725 of the Welfare and Institutions Code is amended to read:

14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, "teleophthalmology and teledermatology by store and forward" means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician or optometrist, and shall receive an interactive communication with the distant specialist physician or optometrist, upon request. If requested, communication with the distant specialist physician or optometrist may occur either at the time of the consultation, or within 30 days of the patient's notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

the department may implement, interpret, and make specific this section by means of ~~all county~~ *all-county* letters, provider bulletins, and similar instructions.

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

(e) The health care provider shall comply with the informed consent provisions of subdivisions (c) to (g), inclusive, of, and subdivisions (i) and (j) of, Section 2290.5 of the Business and Professions Code when a patient receives teleophthalmology or teledermatology by store and forward.

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

SEC. 248. Section 14154 of the Welfare and Institutions Code is amended to read:

14154. (a) The department shall establish and maintain a plan whereby costs for county administration of the determination of eligibility for benefits under this chapter will be effectively controlled within the amounts annually appropriated for that administration. The plan, to be known as the County Administrative Cost Control Plan, shall establish standards and performance criteria, including workload, productivity, and support services standards, to which counties shall adhere. The plan shall include standards for controlling eligibility determination costs that are incurred by performing eligibility determinations at county hospitals, or that are incurred due to the outstationing of any other eligibility function. Except as provided in Section 14154.15, reimbursement to a county for outstationed eligibility functions shall be based solely on productivity standards applied to that county's welfare department office. The plan shall be part of a single state plan, jointly developed by the department and the State Department of Social Services, in conjunction with the counties, for administrative cost control for the California Work Opportunity and Responsibility to Kids (CalWORKs), Food Stamp, and Medical Assistance (Medi-Cal) programs. Allocations shall be made to each county and shall be limited by and determined based upon the County Administrative Cost Control Plan. In administering the plan to control county administrative costs, the department

shall not allocate state funds to cover county cost overruns that result from county failure to meet requirements of the plan. The department and the State Department of Social Services shall budget, administer, and allocate state funds for county administration in a uniform and consistent manner.

(b) Nothing in this section, Section 15204.5, or Section 18906 shall be construed so as to limit the administrative or budgetary responsibilities of the department in a manner that would violate Section 14100.1, and thereby jeopardize federal financial participation under the Medi-Cal program.

(c) (1) The Legislature finds and declares that in order for counties to do the work that is expected of them, it is necessary that they receive adequate funding, including adjustments for reasonable annual cost-of-doing-business increases. The Legislature further finds and declares that linking appropriate funding for county Medi-Cal administrative operations, including annual cost-of-doing-business adjustments, with performance standards will give counties the incentive to meet the performance standards and enable them to continue to do the work they do on behalf of the state. It is therefore the Legislature's intent to provide appropriate funding to the counties for the effective administration of the Medi-Cal program at the local level to ensure that counties can reasonably meet the purposes of the performance measures as contained in this section.

(2) It is the intent of the Legislature to not appropriate funds for the cost-of-doing-business adjustment for the 2008–09 and 2009–10 fiscal years.

(d) The department is responsible for the Medi-Cal program in accordance with state and federal law. A county shall determine Medi-Cal eligibility in accordance with state and federal law. If in the course of its duties the department becomes aware of accuracy problems in any county, the department shall, within available resources, provide training and technical assistance as appropriate. Nothing in this section shall be interpreted to eliminate any remedy otherwise available to the department to enforce accurate county administration of the program. In administering the Medi-Cal eligibility process, each county shall meet the following performance standards each fiscal year:

(1) Complete eligibility determinations as follows:

(A) Ninety percent of the general applications without applicant errors and are complete shall be completed within 45 days.

(B) Ninety percent of the applications for Medi-Cal based on disability shall be completed within 90 days, excluding delays by the state.

(2) (A) The department shall establish ~~best-practice~~ *best practice* guidelines for expedited enrollment of newborns into the Medi-Cal program, preferably with the goal of enrolling newborns within 10 days after the county is informed of the birth. The department, in consultation with counties and other stakeholders, shall work to develop a process for expediting enrollment for all newborns, including those born to mothers receiving CalWORKs assistance.

(B) Upon the development and implementation of the ~~best-practice~~ *best practice* guidelines and expedited processes, the department and the counties may develop an expedited enrollment timeframe for newborns that is separate from the standards for all other applications, to the extent that the timeframe is consistent with these guidelines and processes.

(C) Notwithstanding the rulemaking procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of all-county letters or similar instructions, without further regulatory action.

(3) Perform timely annual redeterminations, as follows:

(A) Ninety percent of the annual redetermination forms shall be mailed to the recipient by the anniversary date.

(B) Ninety percent of the annual redeterminations shall be completed within 60 days of the recipient's annual redetermination date for those redeterminations based on forms that are complete and have been returned to the county by the recipient in a timely manner.

(C) Ninety percent of those annual redeterminations where the redetermination form has not been returned to the county by the recipient shall be completed by sending a notice of action to the recipient within 45 days after the date the form was due to the county.

(D) When a child is determined by the county to change from no share of cost to a share of cost and the child meets the eligibility criteria for the Healthy Families Program established under Section

12693.98 of the Insurance Code, the child shall be placed in the Medi-Cal-to-Healthy Families Bridge Benefits Program, and these cases shall be processed as follows:

(i) Ninety percent of the families of these children shall be sent a notice informing them of the Healthy Families Program within five working days from the determination of a share of cost.

(ii) Ninety percent of all annual redetermination forms for these children shall be sent to the Healthy Families Program within five working days from the determination of a share of cost if the parent has given consent to send this information to the Healthy Families Program.

(iii) Ninety percent of the families of these children placed in the Medi-Cal-to-Healthy Families Bridge Benefits Program who have not consented to sending the child's annual redetermination form to the Healthy Families Program shall be sent a request, within five working days of the determination of a share of cost, to consent to send the information to the Healthy Families Program.

(E) Subparagraph (D) shall not be implemented until 60 days after the Medi-Cal and Joint Medi-Cal and Healthy Families applications and the Medi-Cal redetermination forms are revised to allow the parent of a child to consent to forward the child's information to the Healthy Families Program.

(e) The department shall develop procedures in collaboration with the counties and stakeholder groups for determining county review cycles, sampling methodology and procedures, and data reporting.

(f) On January 1 of each year, each applicable county, as determined by the department, shall report to the department on the county's results in meeting the performance standards specified in this section. The report shall be subject to verification by the department. County reports shall be provided to the public upon written request.

(g) If the department finds that a county is not in compliance with one or more of the standards set forth in this section, the county shall, within 60 days, submit a corrective action plan to the department for approval. The corrective action plan shall, at a minimum, include steps that the county shall take to improve its performance on the standard of standards with which the county is out of compliance. The plan shall establish interim benchmarks

for improvement that shall be expected to be met by the county in order to avoid a sanction.

(h) (1) If a county does not meet the performance standards for completing eligibility determinations and redeterminations as specified in this section, the department may, at its sole discretion, reduce the allocation of funds to that county in the following year by 2 percent. Any funds so reduced may be restored by the department if, in the determination of the department, sufficient improvement has been made by the county in meeting the performance standards during the year for which the funds were reduced. If the county continues not to meet the performance standards, the department may reduce the allocation by an additional 2 percent for each year thereafter in which sufficient improvement has not been made to meet the performance standards.

(2) No reduction of the allocation of funds to a county shall be imposed pursuant to this subdivision for failure to meet performance standards during any period of time in which the cost-of-doing-business increase is suspended.

(i) The department shall develop procedures, in collaboration with the counties and stakeholders, for developing instructions for the performance standards established under subparagraph (D) of paragraph (3) of subdivision ~~(c)~~ *(d)*, no later than September 1, 2005.

(j) No later than September 1, 2005, the department shall issue a revised annual redetermination form to allow a parent to indicate parental consent to forward the annual redetermination form to the Healthy Families Program if the child is determined to have a share of cost.

(k) The department, in coordination with the Managed Risk Medical Insurance Board, shall streamline the method of providing the Healthy Families Program with information necessary to determine Healthy Families eligibility for a child who is receiving services under the Medi-Cal-to-Healthy Families Bridge Benefits Program.

SEC. 249. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) “Public entity” means a county, a city, a city and county, the State of California, the University of California, a local health

care district, a local health authority, or any other political subdivision of the state.

(2) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 with respect to that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, with respect to a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means an amount of intergovernmental transfer of funds that this section requires for a particular transferor entity with respect to a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state~~,~~ that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

(12) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular transfer year, including all Medi-Cal acute inpatient

covered days of care for hospitals that are paid on a different basis than per diem payments.

(13) "Medi-Cal acute inpatient hospital day" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(14) "OBRA 1993 payment limitation" means the hospital-specific limitation on the total annual amount of payment adjustments to each eligible hospital under the payment adjustment program that can be made with federal financial participation under Section 1396r-4(g) of Title 42 of the United States Code as implemented pursuant to the Medi-Cal State Plan.

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to applicable provisions of this section or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Transfers to the Health Care Deposit Fund as follows:

(A) In the amount of two hundred thirty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($239,757,690) for the 1994–95 and 1995–96 fiscal years.

(B) In the amount of two hundred twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($229,757,690) for the 1996–97 fiscal year.

(C) In the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690) for the 1997–98 fiscal year.

(D) In the amount of one hundred fourteen million seven hundred fifty-seven thousand six hundred ninety dollars ($114,757,690) for the 1998–99 fiscal year.

(E) (i) In the amount of eighty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($84,757,690) for the 1999–2000 fiscal year.

(ii) It is the intent of the Legislature that the economic benefit of any reduction in the amount transferred, or to be transferred, to the Health Care Deposit Fund pursuant to this subdivision for the 1999–2000 fiscal year, as compared to the amount so transferred for the 1998–99 fiscal year, be allocated equally between public and nonpublic disproportionate share hospitals. To implement the reduction in clause (i) the department shall, by June 30, 2000, adjust the calculations in Section 14105.98 in order to allocate the funds in accordance with this clause.

(F) In the amount of twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($29,757,690) for the 2000–01 fiscal year and the 2001–02 fiscal year.

(G) In the amount of eighty-five million dollars ($85,000,000) for the 2002–03 fiscal year and each fiscal year thereafter.

(H) The transfers from the fund shall be made in six equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-0001 of *Section 2.00 of* the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in October of each transfer year, and all other installments shall accrue monthly thereafter from November through March.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate

share list for the 1991–92 fiscal year issued by the department pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year.

The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year.

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts.

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year to determine the eligible hospitals.

(B) The payment adjustment amounts calculated under Section 14105.98 for the particular transfer year. These amounts shall take into account any projected or actual increases or decreases in the size of the payment adjustment program as are required under Section 14105.98 for the particular year in question, including any decreases resulting from the application of the OBRA 1993 payment limitation. The department may issue interim, revised, and supplemental transfer requests as necessary and appropriate to address changes in payment adjustment levels that occur under Section 14105.98. All transfer requests, or adjustments thereto, issued to transferor entities by the department shall meet the requirements set forth in subdivision (i).

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

(E) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be calculated to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98, exclusive of the amounts described in paragraph (2) of this subdivision, and to satisfy the requirements of paragraph (2) of subdivision (d), for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742.

(F) The following provisions shall apply for certain transfer amounts relating to nonsupplemental payments under Section 14105.98:

(i) For the 1998–99 transfer year, transfer amounts shall be determined as though the payment adjustment amounts arising

pursuant to subdivision (ag) of Section 14105.98 were increased by the amounts paid or payable pursuant to subdivision (af) of Section 14105.98.

(ii) Any transfer amounts paid by a transferor entity pursuant to subparagraph (C) of paragraph (2) shall serve as credit for the particular transferor entity against an equal amount of its transfer obligation for the 1998–99 transfer year.

(iii) For the 1999–2000 transfer year, transfer amounts shall be determined as though the amount to be transferred to the Health Care Deposit Fund, as referred to in paragraph (2) of subdivision (d), were reduced by 28 percent.

(2) (A) Except as provided in subparagraphs (B), (C), and (D), for the 1993–94 transfer year and subsequent transfer years, transfer amounts shall be increased for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental payment adjustment amounts of all types that arise under Section 14105.98. These increases shall be paid only by those transferor entities that are licensees of hospitals that are projected to receive some or all of the particular supplemental payments, and the increases shall be paid by the transferor entities on a pro rata basis in connection with the particular supplemental payments. For purposes of this paragraph, supplemental payment adjustment amounts shall be deemed to arise for the particular transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(B) For the 1995–96 transfer year, the nonfederal share of the secondary supplemental payment adjustments described in paragraph (9) of subdivision (y) of Section ~~14105.96~~ *14105.98* shall be funded as follows:

(i) Ninety-nine percent of the nonfederal share shall be funded by a transfer from the University of California.

(ii) One percent of the nonfederal share shall be funded by transfers from those public entities that are the licensees of the hospitals included in the “other public hospitals” group referred to in clauses (ii) and (iii) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98. The transfer responsibilities for this 1 percent shall be allocated to the particular public entities

on a pro rata basis, based on a formula or formulae customarily used by the department for allocating transfer amounts under this section. The formula or formulae shall take into account, through reallocation of transfer amounts as appropriate, the situation of hospitals whose secondary supplemental payment adjustments are restricted due to the application of the limitation set forth in clause (v) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98.

(iii) All transfer amounts under this subparagraph shall be paid by the particular transferor entities within 30 days after the department notifies the transferor entity in writing of the transfer amount to be paid.

(C) For the 1997–98 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustments described in subdivision (af) of Section 14105.98 shall be funded by a transfer from the County of Los Angeles.

(D) (i) For the 1998–99 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustment amounts arising under subdivision (ah) of Section 14105.98 shall be increased as set forth in clause (ii).

(ii) The transfer amounts otherwise calculated to fund the supplemental payment adjustments referred to in clause (i) shall be increased on a pro rata basis by an amount equal to 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d).

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts as soon as reasonably feasible regarding any particular transfer year. Written notices of transfer amounts shall be issued by the department as soon as possible with respect to each transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to accomplish these tasks. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In

addition, the Office of Statewide Health Planning and Development shall provide to the department, not later than March 1 of each year, the data specified by the department, as the data existed on the statewide database file as of February 1 of each year, from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to former Section 443.31 of, or Section 128735 of, the Health and Safety Code, for hospital fiscal years that ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to former Section 439.2 of, or Section 127285 of, the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to former subdivision (g) of Section 443.31 of, or Section 128735 of, the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) Transfer amounts calculated by the department may be increased or decreased by a percentage amount consistent with the Medi-Cal state plan.

(5) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(6) Notwithstanding any other law, except for subparagraph (D) of paragraph (2), the total amount of transfers required from the transferor entities for any particular transfer year shall not exceed the sum of the following:

(A) The amount needed to fund the nonfederal share of all payment adjustment amounts applicable to the particular payment adjustment year as calculated under Section 14105.98. Included in the calculations for this purpose shall be any decreases in the program as a whole, and for individual hospitals, that arise due to the provisions of Section 1396r-4(f) or (g) of Title 42 of the United States Code.

(B) The amount needed to fund the transfers to the Health Care Deposit Fund, as referred to in subdivision (d).

(7) (A) Except as provided in subparagraphs (B) and (C) and in paragraph (2) of subdivision (j), and except for a prudent reserve not to exceed two million dollars ($2,000,000) in the Medi-Cal Inpatient Payment Adjustment Fund, any amounts in the fund, including interest that accrues with respect to the amounts in the fund, that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the transferor entities for the particular transfer year within 120 days after the department determines that the funds are not needed for an expenditure in connection with the particular transfer year.

(B) The department shall determine the interest amounts that have accrued in the fund from its inception through June 30, 1995, and, no later than January 1, 1996, shall distribute these interest amounts to transferor entities:

(C) With respect to those particular amounts in the fund resulting solely from the provisions of subparagraph (D) of paragraph (2), the department shall determine by September 30, 1999, whether these particular amounts exceed 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d). Any excess amount so determined shall be returned to the particular transferor entities on a pro rata basis no later than October 31, 1999.

(D) Regarding any funds returned to a transferor entity under subparagraph (A) or (C), or interest amounts distributed to a transferor entity under subparagraph (B), the department shall provide to the transferor entity a written statement that explains the basis for the particular return or distribution of funds and contains the general calculations used by the department in determining the amount of the particular return or distribution of funds.

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments.

(2) (A) Except as provided in subparagraphs (B) and (C), for the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the

Controller, for deposit in the fund, in eight equal installments. However, for the 1997–98 and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in the form of periodic installments according to a timetable established by the department. The timetable shall be structured to effectuate, on a reasonable basis, the prompt distribution of all nonsupplemental payment adjustments under Section 14105.98, and transfers to the Health Care Deposit Fund under subdivision (d).

(B) For the 1994–95 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(C) For the 1995–96 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(D) Except as otherwise specifically provided, subparagraphs (A) to (C), inclusive, shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(E) All requests for transfer payments, or adjustments thereto, issued by the department shall be in writing and shall include (i) an explanation of the basis for the particular transfer request or transfer activity, (ii) a summary description of program funding status for the particular transfer year, and (iii) the general calculations used by the department in connection with the particular transfer request or transfer activity.

(3) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with the health care provider, shall be channeled through a transferor entity or any other public entity to the fund, unless the donated funds will qualify under federal rules as a valid component of the nonfederal share of the Medi-Cal program and will be matched by federal funds.

The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) (1) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(2) Where a withhold or a recoupment occurs pursuant to the provisions of paragraph (2) of subdivision (r) of Section 14105.98, the nonfederal portion of the amount in question shall remain in the fund, or shall be redeposited in the fund by the department, as applicable. The department shall then proceed as follows:

(A) If the withhold or recoupment was imposed with respect to a hospital whose licensee was a transferor entity for the particular state fiscal year to which the withhold or recoupment related, the nonfederal portion of the amount withheld or recouped shall serve as a credit for the particular transferor entity against an equal amount of transfer obligations under this section, to be applied whenever the transfer obligations next arise. Should no such transfer obligation arise within 180 days, the department shall return the funds in question to the particular transferor entity within 30 days thereafter.

(B) For other situations, the withheld or recouped nonfederal portion shall be subject to paragraph (7) of subdivision (h).

(k) All transfer amounts received by the Controller or amounts offset by the Controller shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service

obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) Except as otherwise permitted by state and federal law, no transfer amount submitted to the Controller under this section, and no offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer years prior to the 1993–94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health *Care* Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity~~,~~ and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in

accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the ~~medicaid~~ *Medicaid* program.

(q) (1) Any local initiative entity that has performed unanticipated additional work for the purposes identified in subparagraph (B) of paragraph (2) of subdivision (p) resulting in additional costs attributable to the development of its local initiative health delivery system, may file a claim for reimbursement with the department for the additional costs incurred due to delays in start dates through the 1996–97 fiscal year. The claim shall be filed by the local initiative entity not later than 90 days after the effective date of the act adding this subdivision, and shall not seek extra compensation for any sum that is or could have been asserted pursuant to the contract disputes and appeals resolution provisions of the local initiative entity's respective two-plan model contract. All claims for unanticipated additional incurred costs shall be submitted with adequate supporting documentation including, but not limited to, all of the following:

(A) Invoices, receipts, job descriptions, payroll records, work plans, and other materials that identify the unanticipated additional claimed and incurred costs.

(B) Documents reflecting mitigation of costs.

(C) To the extent lost profits are included in the claim, documentation identifying those profits and the manner of calculation.

(D) Documents reflecting the anticipated start date, the actual start date, and reasons for the delay between the dates, if any.

(2) In determining any amount to be paid, the department shall do all of the following:

(A) Conduct a fiscal analysis of the local initiative entity's claimed costs.

(B) Determine the appropriate amount of payment, after taking into consideration the supporting documentation and the results of any audit.

(C) Provide funding for any such payment, as approved by the Department of Finance through the deficiency process.

(D) Complete the determination required in subparagraph (B) within six months after receipt of a local initiative entity's completed claim and supporting documentation. Prior to final determination, there shall be a review and comment period for that local initiative entity.

(E) Make reasonable efforts to obtain federal financial participation. In the event federal financial participation is not allowed for this payment, the state's payment shall be 50 percent of the total amount determined to be payable.

(r) Notwithstanding any other law, the Controller may use the moneys in the Medi-Cal Inpatient Payment Adjustment Fund for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. However, interest shall be paid on all moneys loaned to the General Fund from the Medi-Cal Inpatient Payment Adjustment Fund. Interest payable shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which loaned. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the Medi-Cal Inpatient Payment Adjustment Fund was created.

SEC. 250. Section 14166.221 of the Welfare and Institutions Code is amended to read:

14166.221. (a) It is the intent of the Legislature for the department to maximize the receipt of federal funds for California's Medi-Cal program, including this demonstration project, by identifying state resources which will enable the state to obtain additional federal reimbursement during this unprecedented fiscal crisis. It is further the intent of the Legislature that any program identified by the department for the purposes specified in this section shall not be modified or altered in any manner unless

subsequent statutory authority is expressly provided by the Legislature.

(b) Notwithstanding Section 14166.22, in order to maximize federal claiming under the demonstration project, the department shall have broad discretion to claim federal reimbursement consistent with all applicable federal claiming rules for the following expenditures in an order of priority determined by the department:

(1) Expenditures in programs funded in whole or in part by realignment funds under Chapter 6 (commencing with Section 17600) of Part 5, including, but not limited to, the County Medical Services Program.

(2) Expenditures in programs funded in whole or in part by the County Mental Health Services Act.

(3) Other public expenditures, to the extent the department determines the expenditures to be appropriate for claiming under the demonstration project.

(4) Expenditures in any programs referenced in subdivision (a) of Section 14166.22 or other state-only funded programs as the department, in its discretion, determines should be used for the purposes of this section. These programs may include programs administered by other state agencies or departments.

(c) The department shall have discretion to claim under this section for any and all additional demonstration project funding made available pursuant to any amendments to the demonstration project made on or after October 1, 2008, or pursuant to any federal laws that increase the amount of available funding, including, but not limited to, the federal American Recovery and Reinvestment Act of 2009 ~~(Public Law~~ *(P.L.* 111-5). This additional funding shall include federal funds made available due to an increase in the federal medical assistance percentage in addition to any other increase in the amount of federal funding.

(d) Any amounts received in the 2008–09, 2009–10, and 2010–11 fiscal years from the federal government pursuant to additional demonstration project funding as specified in this section shall be deposited in the Federal Trust Fund. ~~Nothwithstanding~~ *Notwithstanding* Section 28.00 of the Budget Act of 2009, the Department of Finance may authorize expenditure of these funds in a manner consistent with federal law and that offsets General Fund expenditures otherwise authorized in the Budget Act of 2009

for the Medi-Cal program, and as appropriated in Item 4260-101-0001 *of Section 2.00 of that act*, or for the Health Care Support Fund. For any adjustments made under the authority provided for by this section, the Department of Finance shall provide notification in writing to the chairperson of the Joint Legislative Budget Committee not less than 30 days prior to the effective date of the adjustment, 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 notification to the chairperson of the joint committee shall include, at a minimum, the amounts of the proposed appropriation adjustments, a description of any assumptions used in making the adjustments, the relevant federal authority, and any other clarifying description as relevant.

(e) If the federal Centers for Medicare and Medicaid Services or any federal or state court issues a ruling that any or all federal dollars obtained by claiming for expenditures from any particular program referenced in subdivision (b) cannot be used to increase state revenues, the department may discontinue use of those expenditures for claiming under this section and substitute other expenditures from other programs referenced in subdivision (b) at its discretion.

(f) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of a provider bulletin, or other similar instruction, without taking regulatory action. The department shall also provide notification to the Joint Legislative Budget Committee within five working days if that action is taken in order to inform the Legislature that the action is being implemented.

SEC. 251. Section 14167.3 of the Welfare and Institutions Code is amended to read:

14167.3. (a) Private hospitals shall be paid supplemental amounts for the provision of hospital inpatient services and subacute services as set forth in this section. The supplemental amounts shall be in addition to any other amounts payable to hospitals with respect to those services and shall not affect any other payments to hospitals.

(b) Except as set forth in subdivisions (g) and (h), each private hospital shall be paid the following amounts as applicable for the

provision of hospital inpatient services for each subject federal fiscal year:

(1) Six hundred forty-seven dollars and seventy cents ($647.70) multiplied by the hospital's general acute care days.

(2) Four hundred eighty-five dollars ($485) multiplied by the hospital's acute psychiatric days that were paid directly by the department and were not the financial responsibility of a mental health plan.

(3) One thousand three hundred fifty dollars ($1,350) multiplied by the number of the hospital's high acuity days if the hospital's Medicaid inpatient utilization rate is less than 41.1 percent, at least 5 percent of the hospital's general acute care days are high acuity days, and the hospital is not a small and rural hospital as defined in Section 124840 of the Health and Safety Code. This amount shall be in addition to the amounts specified in paragraphs (1) and (2).

(4) One thousand three hundred fifty dollars ($1,350) multiplied by the number of the hospital's high acuity days if the hospital qualifies to receive the amount set forth in paragraph (3) and has been designated as a Level I, Level II, Adult/Ped Level I, or Adult/Ped Level II trauma center by the ~~emergency medical services authority~~ *Emergency Medical Services Authority* established pursuant to Section 1797.1 of the Health and Safety Code. This amount shall be in addition to the amounts specified in paragraphs (1), (2), and (3).

(c) A private hospital that provides Medi-Cal subacute services during a subject federal fiscal year and has a Medicaid inpatient utilization rate that is greater than 5.0 percent and less than 26.10 percent shall be paid for the provision of subacute services during each subject federal fiscal year a supplemental amount equal to 50 percent of the Medi-Cal subacute payments made to the hospital during the 2008 calendar year.

(d) (1) In the event federal financial participation for a subject federal fiscal year is not available for all of the supplemental amounts payable to private hospitals under subdivision (b) due to the application of a federal limit or for any other reason, both of the following shall apply:

(A) The total amount payable to private hospitals under subdivision (b) for the subject federal fiscal year shall be reduced

to reflect the amount for which federal financial participation is available.

(B) The amount payable under subdivision (b) to each private hospital for the subject federal fiscal year shall be equal to the amount computed under subdivision (b) multiplied by the ratio of the total amount for which federal financial participation is available to the total amount computed under subdivision (b).

(2) In the event federal financial participation for a subject federal fiscal year is not available for all of the supplemental amounts payable to private hospitals under subdivision (c) due to the application of a federal upper limit or for any other reason, both of the following shall apply:

(A) The total amount payable to private hospitals under subdivision (c) for the subject federal fiscal year shall be reduced to reflect the amount for which federal financial participation is available.

(B) The amount payable under subdivision (c) to each private hospital for the subject federal fiscal year shall be equal to the amount computed under subdivision (c) multiplied by the ratio of the total amount for which federal financial participation is available to the total amount computed under subdivision (c).

(e) In the event the amount otherwise payable to a hospital under this section for a subject federal fiscal year exceeds the amount for which federal financial participation is available for that hospital, the amount due to the hospital for that federal fiscal year shall be reduced to the amount for which federal financial participation is available.

(f) The amounts set forth in this section are inclusive of federal financial participation.

(g) No payments shall be made under this section to a new hospital.

(h) No payments shall be made under this section to a converted hospital for the subject federal fiscal year in which the hospital becomes a converted hospital or for subsequent subject federal fiscal years.

SEC. 252. Section 14167.6 of the Welfare and Institutions Code is amended to read:

14167.6. (a) The department shall enhance payments to Medi-Cal managed health care plans for the subject federal fiscal years as set forth in this section.

(b) The enhanced payments shall be made as part of the monthly capitated payments made by the department to managed health care plans.

(c) The department shall determine the amount of the enhanced payments to managed health care plans for each subject month consistent with the following objectives:

(1) Pay to managed health care plans in the aggregate the sum of the individual hospital managed care supplemental payments for each month.

(2) Result in payment of the individual hospital managed care supplemental payment to each subject hospital in accordance with Section 14167.10.

(3) Result in rates that may be certified as actuarially sound.

(4) Result in rates that are approved by the federal government for purposes of federal financial participation.

(d) The department shall make enhanced payments to managed health care plans exclusively for the purpose of making supplemental payments to hospitals, in order to support the availability of hospital services and ensure access for Medi-Cal beneficiaries. Managed health care plans shall pass through enhanced payments to hospitals in a manner determined by the department. The enhanced payments to managed health care plans shall be made as follows:

(1) The enhanced payments shall commence during the second month following the month during which the quality assurance fee set forth in Article 5.22 (commencing with Section 14167.31) is due and payable from hospitals if the quality assurance fee includes funds for enhanced payments to managed health care plans. The last enhanced payments made pursuant to this section shall be made during December 2010.

(2) The enhanced payments made during the first month in which enhanced payments are made pursuant to this section shall include the sum of the enhanced payments for all prior months for which payments are due.

(3) The enhanced payments made during December 2010 shall include payments for December 2010 to September 2011, inclusive, to the extent that federal financial participation is available for the enhanced payments.

(e) Payments to managed health care plans that would be paid in the absence of the payments made pursuant to this section shall not be reduced as a consequence of payment under this section.

(f) (1) Each managed health care plan shall expend, in the form of supplemental payments to hospitals, 100 percent of any rate enhanced payments it receives under this section, pursuant to Section 14167.10.

(2) Interest earned by the managed health care plans during timely implementation of subdivision (b) of Section 14167.10 shall be in lieu of any administrative fee that the department might otherwise pay to the plans for implementation of this article.

(3) The department may issue change orders to amend contracts with managed health care plans on either a quarterly or semiannual basis to adjust monthly capitation payments to coincide with updated enrollment data so that the amounts paid to hospitals pursuant to this section equals, or nearly equals, the amounts set forth in subdivision (a) of Section 14167.10.

(g) In the event federal financial participation is not available for all of the enhanced managed care payments determined for a month pursuant to this section for any reason, the enhanced payments mandated by this section for that month shall be reduced proportionately to the amount for which federal financial participation is available.

(h) Enhanced payments to a managed health care plan pursuant to this section shall not be taken into consideration by the department or the Department of Managed Health Care in determining the percentage of total costs attributed to administrative costs for the purposes of determining compliance with any administrative costs limit, including, but not limited to, those described in Sections ~~14087.1~~ *14087.101* and 14464 *of this code*, Section 1378 of the Health and Safety Code, and Section 1300.78 of Title 28 of the California Code of Regulations.

(i) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of policy letters or similar instructions, without taking further regulatory action.

SEC. 253. Section 14167.7 of the Welfare and Institutions Code is amended to read:

14167.7. (a) The amount of any payments made under this article to private hospitals, including the amount of payments made under Sections 14167.2 and 14167.3 and additional payments to private hospitals by managed health care plans pursuant to Section 14167.6, shall not be included in the calculation of the low-income percent or the OBRA 1993 payment limitation, as defined in paragraph (24) of subdivision (a) of Section 14105.98, for purposes of determining payments to private hospitals pursuant to Section 14166.11.

(b) The amount of any payments made to a hospital under this article shall not be included in the calculation of stabilization funding under Article ~~5.20~~ *5.2* (commencing with Section 14166).

SEC. 254. Section 14167.10 of the Welfare and Institutions Code is amended to read:

14167.10. (a) (1) At the same time that the department makes an enhanced payment to a managed health care plan under Section 14167.6, the department shall notify the plan of each hospital to which the plan shall make supplemental managed care payments as a consequence of receiving the enhanced payment and the amount of the supplemental payment. The department shall determine the amount of the supplemental payment due to each subject hospital so that the total supplemental managed care payments to the hospital from all managed health care plans resulting from payments made to the managed health care plans for the subject month under Section 14167.6 equals or approximately equals the hospital's individual hospital managed care supplemental payment.

(2) In the case of the enhanced payments made to a managed health care plan during the first month in which the payments are made to the plan, the amounts of supplemental payments due to each hospital pursuant to paragraph (1) shall be multiplied by the number of months for which the enhanced payments were made.

(3) The notice provided by the department in connection with the enhanced managed care payments to each managed health care plan during December 2010 shall also direct the managed health care plan to make monthly supplemental payments to hospitals for months, if any, from January 2011 to September 2011, inclusive, for which federal financial participation is available as described in paragraph (3) of subdivision (d) of Section 14167.6 and the

amount of the supplemental payments as calculated pursuant to this subdivision.

(b) Each managed health care plan receiving payments under Section 14167.6 shall make supplemental payments to hospitals within 30 days of receiving the payments under Section 14167.6, except that if the managed health care plan receives enhanced payments during December 2010, which include payments relating to some or all of the month of January 2011 to September 2011, inclusive, the managed health care plan shall make payments relating to the months of January 2011 to September 2011, inclusive, during each month to which the payment relates. The payments shall be made to those hospitals and in those amounts set forth by the department in its notice provided pursuant to subdivision (a).

(c) The supplemental payments made to hospitals pursuant to this section shall be in addition to any other amounts payable to hospitals by a managed health care plan or otherwise and shall not affect any other payments to hospitals.

(d) For each subject federal fiscal year, the sum of all supplemental payments made by a managed health care plan to subject hospitals pursuant to this section shall equal, or approximately equal, all enhanced payments received by the managed health care plan from the department pursuant to Section 14167.6.

(e) Managed health care plans shall not take into account payments made pursuant to this article in negotiating the amount of payments to hospitals that are not made pursuant to this article.

(f) The obligations of a Medi-Cal managed health care plan to make payments to a hospital for services furnished by the hospital that are not covered by a contract between the managed health care plan and the hospital, including the amounts of payments required apart from payments under this article, shall not be affected by any payments made under this article.

(g) In the event federal financial participation for a month is not available for all of the enhanced managed health care plan payments pursuant to Section 14167.6 for any reason, the supplemental payments made to hospitals under this section shall be reduced proportionately to the amount for which federal financial participation is available, and the department's notice under subdivision (a) shall reflect that reduction.

(h) No payments shall be made under this section to a new hospital.

(i) Any delegation or attempted delegation by a managed health care plan of its obligation to make payments under this section shall not relieve the plan from its obligation to make those payments. Managed health care plans shall submit the documentation the department may require to demonstrate compliance with this subdivision. The documentation shall demonstrate actual payments to hospitals, and not assignment to subcontractors of the managed health care plan's obligation of the duty to pay hospitals. The department and each managed health care plan shall make available to each subject hospital, within 15 days of receipt of the hospital's written request, documentation demonstrating the amount that the plan paid to the subject hospital for a subject month and the amount due from the plan to the subject hospital for the subject month.

(j) If the department determines that a managed health care plan has failed to pay any enhanced payment amounts it received pursuant to Section 14167.6 to hospitals as required by this section, the department shall immediately recover the amounts determined by an offset to the capitation payments made to the managed health care plan and by any other legal means available. At least 30 calendar days prior to seeking any recovery, the department shall notify the managed health care plan to explain the nature of the department's determination, to establish the amount of the enhanced payment amount in excess of supplemental payments to hospitals, and to describe the recovery process. The department may terminate any or all contracts between the department and a managed health care plan that fails to make payments as required by this section.

(k) The department shall pay to a managed health care plan or plans, as the director determines is or are appropriate, any amounts recovered under subdivision ~~(i)~~ *(j)* for the purpose of making payments to hospitals pursuant to this section and shall direct the managed health care plan or plans receiving those amounts to make specific payments to specific hospitals to ensure that hospitals receive the amounts set forth in this section.

(*l*) Managed health care plans shall in no event be obligated under this section to make supplemental payments to hospitals that

exceed the enhanced payments made to the managed care health plans under Section 14167.6.

SEC. 255. Section 14522.4 of the Welfare and Institutions Code is amended to read:

14522.4. (a) The following definitions shall apply for the purposes of this chapter:

(1) "Activities of daily living (ADL)" means activities performed by the participant for essential living purposes, including bathing, dressing, self-feeding, toileting, ambulation, and transferring.

(2) "Instrumental activities of daily living (IADL)" means functions or tasks of independent living limited to hygiene and medication management.

(3) "Personal health care provider" means the participant's personal physician, physician's assistant, or nurse practitioner, operating within his or her scope of practice.

(4) "Care coordination" means the process of obtaining information from, or providing information to, the participant, the participant's family, the participant's personal health care provider, or social services agencies to facilitate the delivery of services designed to meet the needs of the participant, as identified by one or more members of the multidisciplinary team.

(5) "Facilitated participation" means an interaction to support a participant's involvement in a group or individual activity, whether or not the participant takes active part in the activity itself.

(6) "Group work" means a social work service in which a variety of therapeutic methods are applied within a small group setting to promote participants' self-expression and positive adaptation to their environment.

(7) "Professional nursing" means services provided by a registered nurse or licensed vocational nurse functioning within his or her scope of practice.

(8) "Psychosocial" means a participant's psychological status in relation to the participant's social and physical environment.

(9) "Assistance" means verbal or physical prompting or aid, including cueing, supervision, stand-by assistance, or hands-on support to complete the task correctly.

(10) "Substantial human assistance" means direct, hands-on assistance provided by a qualified caregiver, which entails physically helping the participant perform the essential elements of the ADLs and IADLs. It entails more than cueing, supervision,

or stand-by assistance to perform the ADLs and IADLs. It also includes the performance of the entire ADL or IADL for participants totally dependent on human assistance.

(11) ~~(a)~~ "Cognitive impairment" means the loss or deterioration of intellectual capacity characterized by impairments in short- or long-term memory, language, concentration and attention, orientation to people, place, or time, visual-spatial abilities or executive functions, or both, including, but not limited to, judgment, reasoning, or the ability to inhibit behaviors that interfere with social, occupational, or everyday functioning due to conditions, including, but not limited to, mild cognitive impairment, Alzheimer's disease or other form of dementia, or brain injury.

(b) Upon the date of execution of the declaration described under subdivision (g) of Section 14525.1, this section shall become operative and Section 14522.3 shall become inoperative and on that date is repealed.

SEC. 256. Section 14598 of the Welfare and Institutions Code is amended to read:

14598. (a) The Legislature finds and declares both of the following:

(1) The demonstration projects authorized by this article have proven to be successful at providing comprehensive, community-based services to frail elderly individuals at no greater cost than for providing nursing home care.

(2) Based upon that success, California now desires to provide community-based, risk-based, and capitated long-term care services under the Programs of All-Inclusive Care for the Elderly (PACE) as optional services under California's medicaid state plan and under contracts, entered into between the federal Centers for Medicare and Medicaid Services, the department, as the single state medicaid agency, and PACE organizations, meeting the requirements of the Balanced Budget Act of 1997 ~~(Public Law~~ *(P.L.* 105-33) and Part 460 (commencing with Section 460.2) of Subchapter E of *Chapter IV of* Title 42 of the Code of Federal Regulations.

(b) The department may enter into the contracts specified in subdivision (a) for implementation of the PACE program, and also may enter into separate contracts with the PACE organizations contracting under subdivision (a), to fully implement the single state agency responsibilities assumed by the department in those

contracts, ~~the provisions of~~ Section 14132.94, and any other state requirement found necessary by the department to provide comprehensive community-based, risk-based, and capitated long-term care services to California's frail elderly. The department may enter into separate contracts specified in subdivision (a) with up to 10 PACE organizations. The department may not enter into any contracts specified in subdivision (a) unless a ~~medicaid~~ *Medicaid* state plan amendment, electing PACE as a state ~~medicaid~~ *Medicaid* option as provided for in Section 14132.94, has been approved by the federal Centers for Medicare and Medicaid Services.

(c) Notwithstanding subdivisions (a) and (b), any demonstration project contract entered into under this article prior to January 1, 2004, shall remain in full force and effect under its own terms, but shall not be renewed or amended beyond the termination date in effect on that date.

(d) The requirements of the PACE model, as provided for pursuant to Section 1894 (42 U.S.C. Sec. 1395eee) and Section 1934 (42 U.S.C. Sec. 1396u-4) of the federal Social Security Act, shall not be waived or modified. The requirements that shall not be waived or modified include all of the following:

(1) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(2) The delivery of comprehensive, integrated acute and long-term care services.

(3) The interdisciplinary team approach to care management and service delivery.

(4) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(5) The assumption by the provider of full financial risk.

(6) The provision of a PACE benefit package for all participants, regardless of source of payment, that shall include all of the following:

(A) All Medicare-covered items and services.

(B) All Medicaid-covered items and services, as specified in the state's Medicaid plan.

(C) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(e) For purposes of this section, "PACE organizations" means those entities as defined in ~~42 C.F.R.~~ *Section* 460.6 *of Title 42 of the Code of Federal Regulations*.

SEC. 257. Section 15660 of the Welfare and Institutions Code is amended to read:

15660. (a) The Department of Justice shall secure any criminal record of a person to determine whether the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of ~~any~~ *a* felony that requires registration pursuant to Section 290 of the Penal Code, or whether the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a or 273d, or subdivision ~~(a) or~~ (b) *or (c)* of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, and shall provide a subsequent arrest notification pursuant to Section 11105.2 of the Penal Code, if both of the following conditions are met:

(1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice. For purposes of this paragraph, "employer" includes, but is not limited to, an in-home supportive services recipient, as ~~defined by~~ *provided in* Section 12302.2, an aged or disabled adult who is ineligible for benefits under Chapter 3 (commencing with Section 12000), who receives care by a person as described in paragraph (2), ~~any~~ *a* recipient of personal care services under the Medi-Cal program pursuant to Sections 14132.95 to 14132.97, inclusive, and ~~any~~ *a* public authority or nonprofit consortium, as described in subdivision (a) of Section 12301.6.

(2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home.

(b) (1) If it is found that the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of ~~any~~ *a* felony ~~which~~ *that* requires registration pursuant to Section 290 of the Penal Code, or that the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a or 273d, or subdivision ~~(a) or~~ (b) *or (c)* of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, the Department of Justice

shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact.

(2) ~~Any~~ *An* employer may deny employment to ~~any~~ *a* person who is the subject of a report under paragraph (1) ~~when~~ *if* the report indicates that the person has committed any of the crimes identified in paragraph (1).

(3) ~~Nothing in this section shall be construed to~~ *This section does not* require ~~any~~ *an* employer to hire ~~any~~ *a* person who is the subject of a report under paragraph (1) ~~when~~ *if* the report indicates that the person has not committed any of the crimes indicated in paragraph (1).

(c) (1) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice ~~shall~~, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, *shall* notify the employer that the fingerprints were illegible.

(2) Fingerprints may be taken by ~~any~~ *a* local law enforcement officer or agency for purposes of paragraph (1).

(3) Counties shall notify ~~any~~ *a* recipient of, or applicant for, in-home supportive services or personal care services under the Medi-Cal program, upon his or her application for in-home supportive services or personal care services or during his or her annual redetermination, or upon the recipient's changing providers, that a criminal record check is available, and that the check can be performed by the Department of Justice.

(d) (1) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(2) (A) If the employer is an in-home supportive services recipient, as defined in Section ~~123202.2~~ *12302.2*, a recipient of personal care services under the Medi-Cal program pursuant to

Sections 14132.95 to 14132.97, inclusive, or ~~any~~ *a* public authority or nonprofit consortium as described in subdivision (a) of Section 12301.6, the fee shall be shared by the county and the state in the same ratio as described in Section 12306.

(B) (i) Notwithstanding any other provision of law, and except as provided in clause (ii), the department shall, no later than January 1, 2009, implement subparagraph (A) through an all-county letter from the director.

(ii) No later than July 1, 2009, the department shall adopt regulations to implement ~~the provisions listed in~~ subparagraph (A).

(e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in accordance with this section to comply with the 30-calendar-day requirement for provision to the department of the criminal record information, as contained in subdivision (c).

SEC. 258. Section 16124 of the Welfare and Institutions Code is amended to read:

16124. (a) (1) Upon the appropriation of funds by the Legislature for the purposes set forth in this section, the State Department of Social Services shall establish a project in four counties and one state district office of the department to provide preadoption and postadoption services to ensure the successful adoption of children and youth who have been in foster care 18 months or more, are at least nine years of age, and are placed in an unrelated foster home or in a group home.

(2) The participating entities shall include the following:

(A) City and County of San Francisco.

(B) County of Los Angeles.

(C) Two additional counties and one state district office, based on criteria developed by the department in consultation with the County Welfare Directors Association, which shall demonstrate geographic diversity.

(3) A county that elects to apply for funding pursuant to this section shall submit an application to the department no later than a date determined by the department to ensure timely allocation of funds. The department shall review the applications received, and select the eligible counties in accordance with this section.

(b) Each entity identified pursuant to paragraph (2) of subdivision (a) shall receive funding to provide preadoption and

postadoption services to the adoptive parents and the targeted population identified in paragraph (1) of subdivision (a).

(1) Preadoption and postadoption services for the child and each family may include, but shall not be limited to, all of the following:

(A) Individualized or other recruitment efforts.

(B) Postadoption services, including respite care.

(C) Behavioral health services.

(D) Peer support groups.

(E) Information and referral services.

(F) Other locally designed services, as appropriate.

(G) Relative search efforts.

(H) Training of adoptive parents, foster youth, or mentoring families.

(I) Mediation services.

(J) Facilitation of siblings in the same placement.

(K) Facilitation of postadoption contact.

(L) Engaging youth in permanency decisionmaking.

(M) Any service or support necessary to resolve any identified barrier to adoption.

(2) The services specified in paragraph (1) may be provided directly by the county, contracted for by the county, or provided through reimbursement to the family, as approved by the county.

(c) The amount of funding provided in the appropriation of funds provided by the annual Budget Act to each county participating in the project shall be allocated as follows:

(1) Seven hundred fifty thousand dollars ($750,000) to the City and County of San Francisco.

(2) One million two hundred fifty thousand dollars ($1,250,000) to the County of Los Angeles.

(3) A total of two million dollars ($2,000,000), to be awarded to the two additional counties and the district office selected pursuant to subparagraph (C) of paragraph ~~(3)~~ *(2)* of subdivision (a), minus any funds subtracted by the department for the purpose of administering the project. The amount of funds provided to the department for administration of the project, including the costs of collecting and analyzing data pursuant to subdivision (h) and developing the information pursuant to subdivision (i), shall not exceed three hundred thousand dollars ($300,000).

(4) If the appropriated amount in the annual Budget Act differs from the total amount specified above, then the funds shall be

distributed in the same proportion as the amounts listed in paragraphs (1) to (3), inclusive.

(d) Funds shall be allocated to the counties pursuant to subdivision (c) no later than January 1 of each year, and shall remain available for expenditure until June 30, 2010.

(e) (1) The department shall seek approval for any federal matching funds that may be available to supplement the project.

(2) The implementation of the project shall not be dependent upon the receipt of federal funding.

(3) Project funds shall supplement, and not supplant, existing federal, state, and local funds, and shall be used only in accordance with the terms and conditions of the project.

(4) No expenditure made for services specified in subdivision (b) may be made to the extent that it renders the family ineligible for federal adoption assistance.

(f) The project shall be implemented only upon the adoption of a resolution adopted by each county board of supervisors.

(g) The department shall work with the counties to develop the requirements for the project, including the number of families that may participate in the project, given the available resources, and guidelines for data collection, as required by subdivision (h).

(h) (1) The department shall work with the participating county and the state district office to analyze the effects of the project.

(2) Measures assessed by the state and counties shall include, but shall not be limited to, the following:

(A) The extent to which the adoptions of the targeted population identified in paragraph (1) of subdivision (a) increased as a result of the project.

(B) The number of families and children served by the project.

(C) The type and amount of preadoption and postadoption services that were provided to children and families under the project.

(i) The department shall provide information to the Legislature on the results of the project by May 31, 2011.

(j) Adoption programs in the project counties shall be encouraged to create public-private partnerships with private adoption agencies to maximize their success in improving permanent outcomes for older foster youth.

SEC. 259. Section 18220.1 of the Welfare and Institutions Code is amended to read:

18220.1. Of the amount deposited in the Local Safety and Protection Account in the Transportation Fund authorized by Section 10752.2 of the Revenue and Taxation Code, the Controller shall allocate 6.50 percent in the 2008–09 fiscal year and 5.85 percent in the 2009–10 fiscal year and each year thereafter. The Controller shall allocate these funds on a quarterly basis beginning April 1, 2009, to the Department of Corrections and Rehabilitation. The department shall allocate the funds appropriated in the ~~2008–09~~ Budget Act *of 2008* and included in the Local Safety and Protection Account among counties that operate juvenile camps and ranches based on the number of occupied beds in each camp as of 12:01 ~~am~~ *a.m.* each day, up to the Corrections Standards Authority rated maximum capacity, as determined by the Corrections Standards Authority.

SEC. 260. Section 18987.62 of the Welfare and Institutions Code is amended to read:

18987.62. (a) Upon request from a county, the director may waive regulations governing foster care payments or the operation of group homes to enable counties to implement the agreements established pursuant to Section 18987.61. Waivers granted by the director shall be applicable only to services provided under the terms of the agreement and for the duration of the agreement, whichever is earlier, unless the director authorizes an extension of the waiver pursuant to subdivision (f). A waiver shall only be granted when all of the following apply:

(1) The agreement promises to offer a worthwhile test of an innovative approach or to encourage the development of a new service for which there is a recognized need.

(2) The regulatory requirement prevents the implementation of the agreement.

(3) The requesting county proposes to monitor the agreement through performance measures that ensure that the purposes of the waived regulation will be achieved.

(b) The director shall take steps that are necessary to prevent the loss of any substantial amounts of federal funds as a result of the waivers granted under this section. The waiver may specify the extent to which the requesting county shall share in any cost resulting from any loss of federal funding.

(c) The director shall not waive regulations that apply to the health and safety of children served by participating private nonprofit agencies.

(d) The director shall notify the appropriate policy and fiscal committees of the Legislature whenever waivers are granted and when a waiver of regulations was required for the implementation of the county's proposed agreement. The director shall identify the reason why the development of the services outlined by the agreement between the county and the service provider are hindered by the regulations to be waived.

(e) The county or private nonprofit agency shall fund an independent evaluation of the waiver, as described in subdivision (f) of Section 18987.61.

(f) The director may grant a county's request to extend the waiver for up to an additional three years based upon a review and analysis of all of the following information:

(1) The results of the report, if required under subdivision (e) of Section 18987.61.

(2) The results of the independent evaluation of the waiver, pursuant to subdivision (e) of this section.

(3) Justification for the extension, and verification of continued compliance with this section.

(g) (1) For any waiver approved on or before January 1, 2010, an extension of the waiver for up to an additional three years may be based upon the department's review and analysis of the information required to be submitted in subdivision (f).

(2) If an independent evaluation has not yet been completed, the department may grant an extension based upon its review of available information. However, an independent evaluation shall be required to be completed within one year prior to the end of the waiver.

SEC. 261. Section 5.1 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), as amended by Chapter 688 of the Statutes of 2008, is amended to read:

Sec. 5.1. (a) ~~(1)~~ Notwithstanding any other provision of the Castaic Lake Water Agency Law, the number of directors on the board shall be as follows:

~~(2)~~

(1) One nominee for the office of appointed director shall be nominated by each purveyor and submitted in writing to the board of directors. The board of directors shall appoint each nominee within 30 days after the nomination is submitted, or may within the same time period by resolution reject any nominee for cause which is documented in the resolution by a detailed statement of reasons. If the board of directors rejects a nominee of any purveyor, the affected purveyor shall promptly submit a second and different nominee to the board of directors. The board of directors shall appoint the second nominee within 30 days after the second nomination is submitted, or may within the same time period likewise by resolution reject that second nominee for cause which is documented in the resolution by a detailed statement of reasons. If the board of directors rejects any second nominee of any purveyor, the affected purveyor shall select a third and still different nominee, which nominee shall be entitled without further board action to take an oath of office as required by law and to thereafter serve as an appointed director of the agency.

~~(3)~~

(2) A nominee of a purveyor may be a shareholder, director, officer, agent, or employee of the nominating purveyor, and shall be a registered voter within Los Angeles County or Ventura County. Any nominee of a purveyor who is the chief executive officer, chief operating officer, or the general manager of the purveyor shall be rejected for appointment only on the ground that the nominee is legally disqualified from holding the office of director by reason of a provision of law applicable to appointed directors of the agency.

~~(4)~~

(3) The term of office of an appointed director is four years.

~~(5)~~

(4) Upon expiration of an initial term of office of an appointed director, the office of that appointed director shall be filled pursuant to Section 5.2. If a vacancy occurs in the office of an appointed director, it shall be filled in the same manner as is provided in subdivisions (a) and (b) of Section 5.2 for the appointment of a successor appointed director, except that the purveyor or its successor in interest to which the vacancy relates shall within not more than 60 days of the occurrence of the vacancy nominate a person for appointment to the vacant office, and the vacant office

shall be filled by the board of directors not later than 30 days after that nomination.

~~(6)~~

(5) An incumbent in the office of appointed director shall be subject to recall by the voters of the entire agency in accordance with Division 11 (commencing with Section 11000) of the Elections Code, except that any vacancy created by a successful recall shall be filled in accordance with the procedure provided by this section for a vacancy created other than by a recall election.

(b) (1) Notwithstanding any other provision of the Castaic Lake Water Agency Law, if the agency acquires a private water purveyor, the term of office of the director appointed by the private purveyor shall terminate at ~~12 o'clock~~ noon on the first Monday after January 1 of the year following the acquisition.

(2) The successor to the director described in paragraph (1) shall be elected at-large by agency voters at the statewide general election held in November of the even-numbered year following the acquisition, and shall take office at ~~12 o'clock~~ noon on the first Monday after January 1 of the year following the election. The successor and each elected director thereafter to hold the office described in this subdivision shall hold office for the term of four years from the date of taking office and until the election and qualification of the next director to hold that office.

(3) The elected office described in paragraph (2) shall cease to exist upon the abolishment of the offices of appointed directors pursuant to subdivision (c) of Section 5.2.

(4) Paragraph (1) shall not be effective with respect to the director appointed by the Santa Clarita Water Company until a court of competent jurisdiction issues a final decision holding that the agency acquired the company.

SEC. 262. Section 1 of the Osteopathic Act, as amended by Section 69 of Chapter 18 of the 2009-10 Fourth Extraordinary Session, is amended to read:

Section 1. A self-sustaining Osteopathic Medical Board of California to consist of seven members and to be known as the "Osteopathic Medical Board of California" is hereby created and established. The Governor shall appoint the members of the board, each of whom shall have been a citizen of this state and in active practice for at least five years next preceding his or her appointment. Five of the members shall be appointed from among

persons who are graduates of osteopathic schools who hold unrevoked physician's and surgeon's D.O. licenses or certificates to practice in this state. Two members shall be naturopathic doctors licensed under the Naturopathic Doctors Act (Chapter 8.2 (commencing with Section 3610) of Division 2 of the Business and Professions Code). No one residing or practicing outside of this state may be appointed to, or sit as a member of, the board. The Governor shall fill by appointment all vacancies on the board for the unexpired term. The term of office of each member shall be three years~~;~~, provided~~,~~ that, of the first board appointed, one shall be appointed for one year, two for two years, and two for three years, and that thereafter all appointments shall be for three years, except that appointments to fill vacancies shall be for the unexpired term only. No member shall serve for more than three full consecutive terms. The Governor shall have power to remove from office any osteopathic physician and surgeon member of the board for neglect of duty required by the Osteopathic Act or Medical Practice Act *(Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code)*. The Governor shall have power to remove from office any naturopathic doctor member of the board for neglect of duty required by the Naturopathic Doctors Act. The Governor shall have power to remove any member of the board for no longer complying with the residency or practice requirements of this section, for incompetency, or for unprofessional conduct. Each member of the board shall, before entering upon the duties of his or her office, take the constitutional oath of office. All fees collected on behalf of the Osteopathic Medical Board of California and all receipts of every kind and nature~~,~~ shall be reported at the beginning of each month for the month preceding, to the Controller and at the same time the entire amount must be paid into the State Treasury and shall be credited to a fund to be known as the Osteopathic Medical Board of California Contingent Fund, which fund is hereby created. The contingent fund shall be for the use of the Osteopathic Medical Board of California and out of it and not otherwise shall be paid all expenses of the board. Each member of the board shall receive a per diem and expenses as provided in Section 103 *of the Business and Professions Code*, provided *that* the fees and other receipts of the board are sufficient to meet this expense.

The Governor shall appoint the members of the board within 30 days after this act takes effect. The board shall be organized within 60 days after the appointment of its members by the Governor by electing from its number a president, vice president, and a secretary who shall also be the treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting during the first quarter of each calendar year at a time and place designated by the board with power of adjournment from time to time until its business is concluded. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the City of San Francisco, one published in the City of Sacramento, and one published in the City of Los Angeles which notice shall also specify the time and place of holding the examination of applicants. The secretary of the board upon an authorization from the president of the board, or the chairperson of the committee, may call meetings of any duly appointed committee of the board at a specified time and place and it shall not be necessary to advertise those committee meetings. The board shall receive through its secretary applications for certificates to be issued by the board and shall, on or before the first day of January in each year, transmit to the Governor a full report of all its proceedings together with a report of its receipts and disbursements.

The office of the board shall be in the City of Sacramento. Suboffices may be established in Los Angeles and San Francisco and records as may be necessary may be transferred temporarily to those suboffices. Legal proceedings against the board may be instituted in any one of the three cities.

The board may from time to time adopt rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of a majority of the members of the board to carry any motion or resolution, to adopt any rules, pass any measure or to authorize the issuance or the revocation of any certificate. Any member of the board may administer oaths in all matters pertaining to the duties of the board and the board shall have authority to take evidence in any matter cognizable by it. The board shall keep an official record of its proceedings, a part of which record shall consist of a register of all applicants for

certificates under this act together with the action of the board upon each application.

The board shall have the power to employ legal counsel to advise and assist it in connection with all matters cognizable by the board or in connection with any litigation or legal proceedings instituted by or against the board and may also employ clerical assistance as it may deem necessary to carry into effect this act. The board may fix the compensation to be paid for those services and may incur other expense as it may deem necessary~~;~~, provided, however, that all of that expense shall be payable only from the fund hereinbefore provided for and to be known as the Osteopathic Medical Board of California Contingent Fund.

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

SEC. 263. Section 1 of the Osteopathic Act, as added by Section 70 of Chapter 18 of the 2009-10 Fourth Extraordinary Session, is amended to read:

Section 1. A self-sustaining Osteopathic Medical Board of California to consist of five members and to be known as the "Osteopathic Medical Board of California" is hereby created and established. The Governor shall appoint the members of the board, each of whom shall have been a citizen of this state and in active practice for at least five years next preceding his or her appointment. Each of the members shall be appointed from among persons who are graduates of osteopathic schools who hold unrevoked physician's and surgeon's D.O. licenses or certificates to practice in this state. No one residing or practicing outside of this state may be appointed to, or sit as a member of, the board. The Governor shall fill by appointment all vacancies on the board for the unexpired term. The term of office of each member shall be three years~~;~~, provided~~,~~ that, of the first board appointed, one shall be appointed for one year, two for two years, and two for three years, and that thereafter all appointments shall be for three years, except that appointments to fill vacancies shall be for the unexpired term only. No member shall serve for more than three full consecutive terms. The Governor shall have power to remove from office any member of the board for neglect of duty required by the Osteopathic Act or Medical Practice Act *(Chapter 5 (commencing with Section 2000) of Division 2 of the Business and*

Professions Code), for no longer complying with the residency or practice requirements of this section, for incompetency, or for unprofessional conduct. Each member of the board shall, before entering upon the duties of his or her office, take the constitutional oath of office. All fees collected on behalf of the Osteopathic Medical Board of California and all receipts of every kind and nature~~,~~ shall be reported at the beginning of each month for the month preceding, to the Controller and at the same time the entire amount must be paid into the State Treasury and shall be credited to a fund to be known as the Osteopathic Medical Board of California Contingent Fund, which fund is hereby created. The contingent fund shall be for the use of the Osteopathic Medical Board of California and out of it and not otherwise shall be paid all expenses of the board. Each member of the board shall receive a per diem and expenses as provided in Section 103 *of the Business and Professions Code*, provided *that* the fees and other receipts of the board are sufficient to meet this expense.

The Governor shall appoint the members of the board within 30 days after this act takes effect. The board shall be organized within 60 days after the appointment of its members by the Governor by electing from its number a president, vice president, and a secretary who shall also be the treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting during the first quarter of each calendar year at a time and place designated by the board with power of adjournment from time to time until its business is concluded. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the City of San Francisco, one published in the City of Sacramento, and one published in the City of Los Angeles which notice shall also specify the time and place of holding the examination of applicants. The secretary of the board upon an authorization from the president of the board, or the chairperson of the committee, may call meetings of any duly appointed committee of the board at a specified time and place and it shall not be necessary to advertise those committee meetings. The board shall receive through its secretary applications for certificates to be issued by the board and shall, on or before the first day of January in each year, transmit to the Governor a full

report of all its proceedings together with a report of its receipts and disbursements.

The office of the board shall be in the City of Sacramento. Suboffices may be established in Los Angeles and San Francisco and records as may be necessary may be transferred temporarily to those suboffices. Legal proceedings against the board may be instituted in any one of the three cities.

The board may from time to time adopt rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of three members of the board to carry any motion or resolution, to adopt any rules, pass any measure or to authorize the issuance or the revocation of any certificate. Any member of the board may administer oaths in all matters pertaining to the duties of the board and the board shall have authority to take evidence in any matter cognizable by it. The board shall keep an official record of its proceedings, a part of which record shall consist of a register of all applicants for certificates under this act together with the action of the board upon each application.

The board shall have the power to employ legal counsel to advise and assist it in connection with all matters cognizable by the board or in connection with any litigation or legal proceedings instituted by or against the board and may also employ clerical assistance as it may deem necessary to carry into effect this act. The board may fix the compensation to be paid for those services and may incur other expense as it may deem necessary~~:~~, provided, however, that all of that expense shall be payable only from the fund hereinbefore provided for and to be known as the Osteopathic Medical Board of California Contingent Fund.

This section shall become operative on January 1, 2013.

SEC. 264. Section 1 of Chapter 226 of the Statutes of 2009 is amended to read:

Section 1. (a) The Legislature finds and declares that it has long been established in California that ~~the~~ *a horse* racing association and its parimutuel operation ~~is~~ *are* actually only holding the stakes. The funds wagered are not the property of the racing association. The racing association merely holds the funds wagered until the results of the race are known, then the association pays the winning wagers, and holds funds for others pursuant to the California Horse Racing Law. It has always been known that the funds due the various distributees are not the property of the racing

association. The racing association is merely acting as a trustee until the funds are paid to those as provided for in statute.

(b) It is therefore the intent of the Legislature that the purpose of this act is not to change California law, but merely to codify this trustee relationship.

SEC. 265. Section 2 of Chapter 405 of the Statutes of 2009 is amended to read:

Sec. 2. Section ~~2.5~~ *1.5* of this bill incorporates amendments to Section 25660 of the Business and Professions Code proposed by both this bill and AB 1191. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2010, (2) each bill amends Section 25660 of the Business and Professions Code, and (3) this bill is enacted after AB 1191, in which case Section 1 of this bill shall not become operative.

SEC. 266. Section 3 of Chapter 426 of the Statutes of 2009 is amended to read:

Sec. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the *California* Citrus Pest and Disease Prevention Committee to, among other things, develop a work plan to deal with the recent discovery in Santa Ana of Asian citrus psyllids, a tiny insect that often carries citrus green disease, a pathogen that has destroyed groves in Florida and wiped out much of the citrus industries in China, India, Saudi Arabia, Egypt, and Brazil, it is necessary for this act to take effect immediately.

SEC. 267. Any section of any act enacted by the Legislature during the 2010 calendar year that takes effect on or before January 1, 2011, 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 2010 calendar year and takes effect on or before January 1, 2011, amends, amends

and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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