AMENDED IN SENATE JUNE 13, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1466

Introduced by Committee on Budget (Blumenfield (Chair), Alejo, Bonilla, Brownley, Buchanan, Butler, Cedillo, Chesbro, Dickinson, Feuer, Gordon, Huffman, Mitchell, Monning, and Swanson)

January 10, 2012

~~An act relating to the Budget Act of 2012.~~ *An act to amend Sections 17206 and 19604 of the Business and Professions Code, to amend Section 1936 of the Civil Code, to amend Section 318 of the Corporations Code, to amend Section 57031 of the Food and Agricultural Code, to amend Sections 3502.5, 3507.1, 3507.3, 3513, 3527, 3541.3, 3563, 8240, 8241, 8245, 8879.58, 8879.59, 10210, 11139.5, 11270, 11532, 11538, 11540, 11544, 11546, 12804, 12901, 12903, 12904, 12905, 12906, 12925, 12930, 12935, 12944, 12946, 12947.5, 12950, 12950.1, 12963.5, 12965, 12966, 12970, 12973, 12975, 12980, 12981, 12981.1, 12985, 12987, 12988, 12989.1, 12989.2, 12990, 13071, 19704, 19815, 50085.5, 71632.5, 71636.1, 71636.3, 71637, and 76104.7 of, to add Sections 8169.7,12531, 12907, 13300.5, 15849.65, and 16340 to, to add Article 3 (commencing with Section 10270) to Chapter 1 of Part 2 of Division 2 of Title 2 of, to add Division 4.5 (commencing with Section 3600) to Title 1 of, to repeal Sections 11535, 11536, 11537, 11543, 12967, 12968, 12969, 12972, 12987.1, 12989, and 50087 of, to repeal Article 1 (commencing with Section 8260) of Chapter 3.5 of Division 1 of Title 2 of, to repeal Chapter 1 (commencing with Section 14995) of Part 5.6 of Division 3 of Title 2 of, and to repeal and amend Sections 5924 and 15849.6 of, the Government Code, to amend Section 102346 of the Health and Safety Code, to amend Section 11770 of the Insurance Code, to amend Sections 56, 62.9, 138.7, 150,*

151, 152, 153, 156, 511, 515.5, 515.6, 1202, 1773.3, 1776, 1777.5, 1777.7, 2012, 2013, 2686, 3072, 3073, 6332, 6401.7, 6409, 6410, 6411, 6413, and 6413.2 of, to amend the heading of Chapter 7 (commencing with Section 150) of Division 1 of, to add Chapter 4.5 (commencing with Section 108) to Division 1 of, and to repeal Sections 65, 3099, 3099.2, 3099.3, 3099.4, and 3099.5 of, and to repeal Chapter 9 (commencing with Section 1137) of Part 3 of Division 2 of, the Labor Code, to amend Section 972.1 of the Military and Veterans Code, to amend Section 422.92, 13519, 13776, 13777.2, and 13836.1 of the Penal Code, to amend Section 6611 of the Public Contract Code, to amend Sections 25051, 28850, 30750, 30751, 40120, 50120, 70120, 90300, 99561, 95650, 98162.5, 100301, 101341, 102401, 103401, and 125521 of the Public Utilities Code, to amend Section 19533 of, and to repeal Article 6 (commencing with Section 19290) of Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, to amend Section 401 of the Unemployment Insurance Code, to amend Section 4.2 of the Fresno Metropolitan Transit District Act (Chapter 1932 of the Statutes of 1961), and to amend Sections 13.90 and 13.91 of the West Bay Rapid Transit Authority Act (Chapter 104 of the First Extraordinary Session of the Statutes of 1964), relating to state and local government, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

AB 1466, as amended, Committee on Budget. ~~Budget Act of 2012.~~ *State government.*

(1) Existing law establishes the California State Mediation and Conciliation Service (CSMCS) within the Department of Industrial Relations to investigate and mediate labor disputes, as specified. Existing law governs public transportation labor disputes.

This bill would repeal and recast those provisions and establish the CSMCS within the Public Employment Relations Board (PERB). The bill would vest PERB with all of the powers, duties, purposes, responsibilities and jurisdiction vested in the Department of Industrial Relations and exercised or carried out through CSMCS.

(2) Existing law regulates consumer rental car agreements and authorizes rental car companies to collect a customer facility charge based on a fee required by an airport operated by specified entities. Existing law also directs those airports to complete independent audits

to substantiate the need for the fee prior to the collection of these fees from rental companies. Existing law requires the Controller to review these independent audits and report its conclusions to the Legislature, as specified. Existing law also requires the Controller to be reimbursed for these reviews by the airport being audited.

This bill would remove the provisions requiring the Controller to review, and report to the Legislature regarding, the independent audits described above.

(3) Existing law requires every city, county, or city and county that has at least 5,000 residents or in which 5% of the population is of Filipino ancestry or ethnic origin and that conducts a survey as to the ancestry or ethnic origin of its employees, or that maintains any statistical tabulation of minority group employees, to categorize employees whose ancestry or ethnic origin is Filipino as Filipinos in the survey or tabulation.

This bill would repeal that requirement.

(4) Existing law requires the Department of General Services to offer for sale land that is declared excess or is declared surplus by the Legislature, and that is not needed by any state agency, to local agencies and private entities and individuals, subject to specified conditions.

This bill would authorize the Department of General Services to sell all or a portion of specified parcels of property located in the City of Sacramento that are leased by the department to the Capitol Area Development Authority, subject to specified criteria. The bill would require the proceeds of that sale to be deposited into the General Fund or the Deficit Recovery Fund, as specified.

(5) Existing law requires a $3 state-only penalty to be levied in each county for every $10, or part of $10, of a fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, as specified.

This bill would increase the amount of the state-only penalty to $4 for every $10, or part of $10, of those payments.

(6) Existing law, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B at the November 7, 2006, general election, authorizes the issuance of $19.925 billion of general obligation bonds for specified purposes. Existing law specifies the responsibilities of the California Emergency Management Agency (Cal EMA) with respect to the allocation of bond funds appropriated from the Transit System Safety, Security, and Disaster Response Account.

This bill would require Cal EMA, in prioritizing the funding of projects, to additionally prioritize projects that demonstrate the ability and intent to expend a significant percentage of project funds within 6 months. During each fiscal year a transit agency or transit operator receives funds, the bill would authorize Cal EMA to monitor project expenditures.

(7) Existing law establishes in state government the Commission on Uniform State Laws, with a specified membership.

This bill would transfer the Commission on Uniform State Laws to the Legislative Counsel Bureau, and would make conforming changes in law.

(8) Existing law establishes the Technology Services Board within the Office of Technology Services. Existing law requires the Secretary of California Technology to submit, for board consideration, proposed rates for Office of Technology Services' services. Existing law requires the secretary, prior to submitting the rates to the board, to first submit the proposed rates to the Department of Finance, and requires the department to evaluate the reasonableness of the proposed rates.

This bill would repeal the provisions establishing the Technology Services Board, and make various conforming changes. This bill would also require the secretary to instead submit the proposed rates directly to the Director of Finance, and would require the Director of Finance to approve the proposed rates based on certain standards and criteria.

(9) Existing law establishes the California Technology Agency within state government, and requires the office to carry out specified duties relating to creating and managing the technology policy of the state. Existing law requires the agency to be responsible for the approval and oversight of information technology projects.

This bill would require a state department to get written approval from the California Technology Agency to procure oversight services for information technology projects unless otherwise required by law.

(10) Existing law requires the Department of Finance to certify annually to the Controller the amount determined to be the fair share of administrative costs due and payable from each state agency and to certify to the Controller any amount redetermined to be the fair share of administrative costs due and payable from a state agency. Existing law requires the Controller to notify a state agency of that amount, and, unless the state agency requests that those payments be deferred, to transfer that amount from specified funds to the Central Service Cost Recovery Fund. Existing law defines "administrative costs" as the

amounts expended by various specified state entities for supervision or administration of the state government or for services to the various state agencies.

This bill would modify the definition of administrative costs to include amounts expended by the Financial Information System for California.

(11) Existing law requires the Director of Finance, in coordinating the internal auditors of state agencies, to ensure that these auditors utilize the "Standards for the Professional Practices of Internal Auditing."

This bill would also require the director to be responsible for coordinating state agency internal audits and indentifying when agencies are required to comply with federally mandated audits.

(12) Existing law requires the Department of Finance, the Controller, the Treasurer, and the Department of General Services to collaboratively develop, implement, utilize, maintain, and operate the Financial Information System for California (FISCAL) as a single integrated financial management system, as specified. Existing law requires the fiscal Project Office in the Department of Finance to implement these provisions until the Office of the Financial Information System is established.

This bill would require the FISCal Project Office to report to the Legislature, by February 15 of each year, an update on the project, as specified. The provisions of the bill would remain in effect only until a post-implementation evaluation report has been approved by the California Technology Agency.

(13) Existing law sets forth the duties and powers of the Treasurer in the sale of state bonds. Moneys are continuously appropriated from the General Fund in an annual amount necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state pursuant to any credit enhancement or liquidity agreement entered into by the state, as specified, for bonds payable pursuant to an appropriation from the General Fund. Existing law, until June 30, 2013, prohibits the amount appropriated for these fees, costs, and other similar expenses from exceeding 3% of the original principal amount of the bonds.

This bill would repeal the inoperative date of those provisions, thereby extending the 3% interest rate indefinitely, thereby making an appropriation.

(14) Existing law establishes the Local Agency Investment Fund, authorizes a local government having money in its treasury not required

for immediate needs to remit it to the Treasurer for deposit in that fund for the purpose of investment, and prescribes the handling of that money.

This bill would establish the Voluntary Investment Program Fund within the state Treasury for the receipt of voluntary deposits from local entities, as specified. The bill would provide that the deposits in the fund may be used only to cover short-term cash needs of the state, as specified.

(15) Existing law creates the Electronic Funds Transfer Task Force, consisting of 8 members appointed by specified agencies, boards, departments, and offices.

This bill would eliminate the Electronic Funds Transfer Task Force.

(16) Existing law, the State Building Construction Act of 1955, authorizes the State Public Works Board to acquire and construct public buildings for use by state agencies, when authorized by a separate act or appropriation enacted by the Legislature. Existing law authorizes the board to issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing.

This bill would revise and recast that provision to instead authorize the State Public Works Board to issue bonds, notes, or other obligations to finance the acquisition, design, or construction of a public building as authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing, including interest payable on any interim loan or interim financing for the public building.

(17) Existing law establishes the Department of Industrial Relations, divided into 6 divisions known as the Division of Worker's Compensation, the Division of Occupational Safety and Health, the Division of Labor Standards Enforcement, the Division of Labor Statistics and Research, the Division of Apprenticeship Standards, and the State Compensation Insurance Fund. Under existing law, the Division of Labor Statistics and Research collects, compiles, and presents facts and statistics relating to the condition of labor in the state. Existing law provides that, except as specified, no use shall be made in the reports of the Labor Statistics and Research Division of the names of persons supplying information and makes any agent or employee of the division who violates this provision guilty of a misdemeanor.

This bill would abolish the Division of Labor Statistics and Research and transfer the duties of that division to the Division of Occupational

Health and Safety and the Division of Labor Standards Enforcement and make conforming changes. The bill would broaden the application of the misdemeanor referenced above to any agent or employee of the department, thereby creating a state-mandated local program.

(18) Existing law requires the Division of Apprenticeship Standards to establish and validate minimum standards for the competency and training of electricians through a system of testing and certification.

This bill would recast the electrician certification responsibilities of the Division of Apprenticeship Standards under the Division of Labor Standards Enforcement and make conforming changes.

(19) Existing law provides that the Department of Industrial Relations shall monitor and enforce compliance with applicable prevailing wage requirements for any public works project paid for out of public funds. Existing law provides that any awarding agency whose public works contract is subject to provisions regulating the employment of apprentices upon public works shall send a copy of the award to the Division of Apprenticeship Standards.

This bill would instead require that an awarding agency whose public works contract falls within the jurisdiction of specified monitoring and enforcement compliance provisions, is subject to provisions regulating the employment of apprentices upon public works, or is subject to any other provision providing for the payment of fees to the department for enforcing prevailing wage requirements send a copy of the award to the department.

(20) Existing law provides that a contractor or subcontractor who is determined to have knowingly committed a serious violation of specified provisions may be denied the right to bid on or be awarded or perform work on any public works for a period of time. Existing law provides that an affected contractor, subcontractor, or responsible officer may obtain a review of the determination imposing the debarment or civil penalty within 30 days.

This bill would instead allow for the request of the review within 60 days and make other related changes.

(21) Existing law requires that the Director of Industrial Relations levy and collect assessments from employers in an amount determined by the director, as specified. In that connection, existing law requires the director to include in the total assessment amount the Department of Industrial Relations' costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board or another agency or department for its cost of collection

activities. Existing law requires the Department of Industrial Relations to enter into an agreement with the Franchise Tax Board that transfers responsibility from the Department of Industrial Relations to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest.

This bill would repeal the requirement that the Department of Industrial Relations enter into an agreement with the Franchise Tax Board to transfer responsibility from the Department of Industrial Relations to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest, including the assessments from employers in an amount determined by the Director of Industrial Relations to be sufficient to fund specified workers' compensation programs implemented in the state and any penalties. This bill would require the Director of Industrial Relations to include in that total assessment amount the cost of reimbursing the Employment Development Department or another agency or department for its cost of collection activities, as provided.

(22) Existing law establishes the California State Mediation and Conciliation Service (CSMCS) within the Department of Industrial Relations to investigate and mediate labor disputes, as specified. Existing law governs public transportation labor disputes.

This bill would repeal and recast those provisions and establish the CSMCS within the Public Employment Relations Board (PERB). The bill would vest PERB with all of the powers, duties, purposes, responsibilities and jurisdiction vested in the Department of Industrial Relations and exercised or carried out through CSMCS.

(23) The California Fair Employment and Housing Act establishes the Department of Fair Employment and Housing in the State and Consumer Services Agency, with the power and duties to, among other things, receive, investigate, and conciliate complaints relating to employment and housing discrimination. The California Fair Employment and Housing Act also establishes the Fair Employment and Housing Commission within the State and Consumer Services Agency, with the powers and duties to, among other things, conduct hearings, subpoena witnesses, create or provide financial or technical assistance to advisory agencies and conciliation councils, publish opinions and publications, and conduct mediations at the request of the Department of Fair Employment and Housing.

This bill would eliminate the Fair Employment and Housing Commission and would transfer the duties of the commission to the

Department of Fair Employment and Housing. The bill would create within the department a Fair Employment and Housing Council that would succeed to the powers and duties of the former commission. The bill would establish the Fair Employment and Housing Enforcement and Litigation Fund in the State Treasury to be administered by the department, subject to appropriation, for purposes of deposit of attorney's fees and costs awarded to the department in specified civil actions. The bill would authorize transfer of those funds to the General Fund upon a specified circumstance. The bill would expand specified powers of the department related to complaints, mediations, and prosecutions, and would provide mandatory dispute resolution at no cost to the parties involved, as specified. The bill would eliminate a specified cap of actual damages under the act, and would instead require certain actions be brought in court by civil action, rather than by accusation by the department.

(24) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to comply with certain procedures in dealing with a borrower who is in default prior to filing a notice of default and to explore options for the borrower to avoid foreclosure, as specified. Existing law provides that a violation of these provisions would result in specified civil penalties, including penalties for unfair business practices. Existing law provides that civil penalties collected for unfair business practice violations brought by the Attorney General are deposited in the Unfair Competition Law Fund within the General Fund.

This bill would establish the National Mortgage Special Deposit Fund in the State Treasury as a continuously appropriated fund and would require certain direct payments made to the state under the National Mortgage Settlement to be deposited in the fund for allocation by the Director of Finance, as specified. This bill would further authorize the Director of Finance to allocate moneys from the fund to offset General Fund expenditures during the 2011–12, 2012–13, and 2013–14 fiscal years for purposes consistent with the National Mortgage Settlement. The bill would also require that civil penalties collected under the National Mortgage Settlement be deposited into the Unfair Competition Fund, and be continuously appropriated to the Department of Justice to offset the General Fund costs incurred by the department, thereby also making an appropriation.

(25) Existing law requires the Department of Veterans Affairs to disburse funds, appropriated to the department for the purpose of

supporting county veterans service offices pursuant to the annual Budget Act, on a pro rata basis, to counties that comply with certain conditions. Existing law requires the Department of Veterans Affairs to determine annually the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county veterans service offices and requires the department to prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature, as specified.

This bill would require the Department of Veterans Affairs, by June 30, 2013, to develop a performance-based formula that will incentivize county veterans service offices to perform workload units, as defined, that help veterans access federal compensation and pension benefits and other benefits, in order to maximize the amount of federal money received by California veterans. This bill would require the department to conduct a review of the high-performing and low-performing county veterans service offices and based on this review, produce a best-practices manual for county veterans service offices by June 30, 2013.

(26) Existing law creates, in the Employment Development Department, the California Unemployment Insurance Appeals Board, consisting of 7 members, 2 of whom are required to be attorneys at law admitted to practice in California. Existing law authorizes the Governor to appoint 5 of the 7 members, as specified.

This bill would reduce the number of members of this board to 5 and reduce the number of members the Governor may appoint to 3. This bill would require all members of the board to be attorneys at law admitted to practice in any state of the United States with either a minimum of one year of experience in conducting judicial or administrative hearings or 5 years of experience in the practice of law. This bill would provide that these amendments apply to appointments made on or after January 1, 2013.

(27) Existing law creates within state government the Commission on the Status of Women, consisting of 17 members, including public members appointed by specified executive and legislative officials. Existing law sets forth the powers and duties of the commission, and requires the commission to study certain topics. Existing law requires the commission to act as a information center on the status of women and women's educational, employment, and other related needs.

This bill would rename the Commission on the Status of Women the Commission on the Status of Women and Girls, and make various

conforming changes to that effect. This bill would require the appointing powers, in making appointments of public members to the commission, to make every effort to ensure that there is a geographic balance of representation on the commission. This bill would modify the topics that the commission is required to study by adding some and removing others, including, among others, adding gender equity in the media. This bill would instead require the commission to act as a central information on issues that affect the lives of women and girls. This bill would require the commission to develop a strategy to attract financial support from private donors.

This bill would state that certain provisions of this bill will prevail over a specified section of the Governor's Reorganization Plan No. 2 of 2012, regardless of the dates on which this bill and that Plan take effect.

This bill would appropriate $1,000 from the General Fund to the Department of Finance for purposes of implementing this bill, thereby making an appropriation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

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

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

1 *SECTION 1. Section 17206 of the Business and Professions*
2 *Code is amended to read:*
3 17206. Civil Penalty for Violation of Chapter
4 (a) Any person who engages, has engaged, or proposes to engage
5 in unfair competition shall be liable for a civil penalty not to exceed
6 two thousand five hundred dollars ($2,500) for each violation,
7 which shall be assessed and recovered in a civil action brought in
8 the name of the people of the State of California by the Attorney

General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other

activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3. *Notwithstanding Section 13340 of the Government Code, any civil penalties deposited in the fund pursuant to the National Mortgage Settlement, as provided in Section 12531 of the Government Code, are continuously appropriated to the Department of Justice for the purpose of offsetting General Fund costs incurred by the Department of Justice.*

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 2. Section 19604 of the Business and Professions Code is amended to read:

19604. The board may authorize any racing association, racing fair, betting system, or multijurisdictional wagering hub to conduct advance deposit wagering in accordance with this section. Racing associations, racing fairs, and their respective horsemen's organizations may form a partnership, joint venture, or any other affiliation in order to further the purposes of this section.

(a) As used in this section, the following definitions apply:

(1) "Advance deposit wagering" (ADW) means a form of parimutuel wagering in which a person residing within California or outside of this state establishes an account with an ADW provider, and subsequently issues wagering instructions concerning the funds in this account, thereby authorizing the ADW provider holding the account to place wagers on the account owner's behalf.

(2) "ADW provider" means a licensee, betting system, or multijurisdictional wagering hub, located within California or outside this state, that is authorized to conduct advance deposit wagering pursuant to this section.

(3) "Betting system" means a business conducted exclusively in this state that facilitates parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(4) "Breed of racing" means as follows:

(A) With respect to associations and fairs licensed by the board to conduct thoroughbred, fair, or mixed breed race meetings, "breed of racing" shall mean thoroughbred.

(B) With respect to associations licensed by the board to conduct quarter horse race meetings, "breed of racing" shall mean quarter horse.

(C) With respect to associations and fairs licensed by the board to conduct standardbred race meetings, "breed of racing" shall mean standardbred.

(5) "Contractual compensation" means the amount paid to an ADW provider from advance deposit wagers originating in this state. Contractual compensation includes, but is not limited to, hub fee payments, and may include host fee payments, if any, for out-of-state and out-of-country races. Contractual compensation is subject to the following requirements:

(A) Excluding contractual compensation for host fee payments, contractual compensation shall not exceed 6.5 percent of the amount wagered.

(B) The host fee payments included within contractual compensation shall not exceed 3.5 percent of the amount wagered. Notwithstanding this provision, the host fee payment with respect to wagers on the Kentucky Derby, Preakness Stakes, Belmont Stakes, and selected Breeders' Cup Championship races may be negotiated by the ADW provider, the racing associations accepting wagers on those races pursuant to Section 19596.2, and the horsemen's organization.

(C) In order to ensure fair and consistent market access fee distributions to associations, fairs, horsemen, and breeders, for each breed of racing, the percentage of wagers paid as contractual compensation to an ADW provider pursuant to the terms of a hub agreement with a racing association or fair when that racing association or fair is conducting live racing shall be the same as the percentage of wagers paid as contractual compensation to that ADW provider when that racing association or fair is not conducting live racing.

(6) "Horsemen's organization" means, with respect to a particular racing meeting, the organization recognized by the board as responsible for negotiating purse agreements on behalf of horsemen participating in that racing meeting.

(7) "Hub agreement" means a written agreement providing for contractual compensation paid with respect to advance deposit wagers placed by California residents on a particular breed of racing conducted outside of California. In the event a hub agreement exceeds a term of two years, then an ADW provider, one or more racing associations or fairs that together conduct no fewer than five weeks of live racing for the breed covered by the hub agreement, and the horsemen's organization responsible for negotiating purse agreements for the breed covered by the hub agreement shall be signatories to the hub agreement. A hub agreement is required for an ADW provider to receive contractual compensation for races conducted outside of California.

(8) "Hub agreement arbitration" means an arbitration proceeding pursuant to which the disputed provisions of the hub agreement pertaining to the hub or host fees from wagers on races conducted outside of California provided pursuant to paragraph (2) of subdivision (b) are determined in accordance with the provisions of this paragraph. If a hub agreement arbitration is requested, all of the following shall apply:

(A) The ADW provider shall be permitted to accept advance deposit wagers from California residents.

(B) The contractual compensation received by the ADW provider shall be the contractual compensation specified in the hub agreement that is the subject of the hub agreement arbitration.

(C) The difference between the contractual compensation specified in subparagraph (B) and the contractual compensation determined to be payable at the conclusion of the hub agreement arbitration shall be calculated and paid within 15 days following the arbitrator's decision and order. The hub agreement arbitration shall be held as promptly as possible, but in no event more than 60 days following the demand for that arbitration. The arbitrator shall issue a decision no later than 15 days following the conclusion of the arbitration. A single arbitrator jointly selected by the ADW provider and the party requesting a hub agreement arbitration shall conduct the hub agreement arbitration. However, if the parties cannot agree on the arbitrator within seven days of issuance of the written demand for arbitration, then the arbitrator shall be selected pursuant to the Streamlined Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services, or pursuant to the applicable rules of its successor organization. In making the hub agreement arbitration determination, the arbitrator shall be required to choose between the contractual compensation of the hub agreement agreed to by the ADW provider or whatever different terms for the hub agreement were proposed by the party requesting the hub agreement arbitration. The arbitrator shall not be permitted to impose new, different, or compromised terms to the hub agreement. The arbitrator's decision shall be final and binding on the parties. If an arbitration is requested, either party may bring an action in state court to compel a party to go into arbitration or to enforce the decision of the arbitrator. The cost of the hub agreement arbitration, including the cost of the arbitrator, shall be borne in equal shares by the parties to the hub agreement and the party or parties requesting a hub agreement arbitration. The hub agreement arbitration shall be administered by the Judicial Arbitration and Mediation Services pursuant to its Streamlined Arbitration Rules and Procedures or its successor organization.

(9) "Incentive awards" means those payments provided for in Sections 19617.2, 19617.7, 19617.8, 19617.9, and 19619. The amount determined to be payable for incentive awards under this

section shall be payable to the applicable official registering agency and thereafter distributed as provided in this chapter.

(10) "Licensee" means any racing association or fair licensed to conduct a live racing meet in this state, or affiliation thereof, authorized under this section.

(11) "Market access fee" means the amount of advance deposit wagering handle remaining after the payment of winning wagers, and after the payment of contractual compensation, if any, to an ADW provider. Market access fees shall be distributed in accordance with subdivision (f).

(12) "Multijurisdictional wagering hub" means a business conducted in more than one jurisdiction that facilitates parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(13) "Racing fair" means a fair authorized by the board to conduct live racing.

(14) "Zone" means the zone of the state, as defined in Section 19530.5, except as modified by the provisions of subdivision (f) of Section 19601. For these purposes, the central and southern zones shall together be considered one zone.

(b) Wagers shall be accepted according to the procedures set forth in this subdivision.

(1) No ADW provider shall accept wagers or wagering instructions on races conducted in California from a resident of California unless all of the following conditions are met:

(A) The ADW provider is licensed by the board.

(B) A written agreement allowing those wagers exists with the racing association or fair conducting the races on which the wagers are made.

(C) The agreement referenced in subparagraph (B) shall have been approved in writing by the horsemen's organization responsible for negotiating purse agreements for the breed on which the wagers are made in accordance with the Interstate Horseracing Act (15 U.S.C. Sec. 3001 et seq.), regardless of the location of the ADW provider, whether in California or otherwise, including, without limitation, any and all requirements contained therein with respect to written consents and required written agreements of horsemen's groups to the terms and conditions of the acceptance of those wagers and any arrangements as to the exclusivity between the host racing association or fair and the

ADW provider. For purposes of this subdivision, the substantive provisions of the Interstate Horseracing Act shall be taken into account without regard to whether, by its own terms, that act is applicable to advance deposit wagering on races conducted in California accepted from residents of California.

(2) No ADW provider shall accept wagers or wagering instructions on races conducted outside of California from a resident of California unless all of the following conditions are met:

(A) The ADW provider is licensed by the board.

(B) There is a hub agreement between the ADW provider and one or both of (i) one or more racing associations or fairs that together conduct no fewer than five weeks of live racing on the breed on which wagering is conducted during the calendar year during which the wager is placed, and (ii) the horsemen's organization responsible for negotiating purse agreements for the breed on which wagering is conducted.

(C) If the parties referenced in clauses (i) and (ii) of subparagraph (B) are both signatories to the hub agreement, then no party shall have the right to request a hub agreement arbitration.

(D) If only the party or parties referenced in clause (i) of subparagraph (B) is a signatory to the hub agreement, then the signatories to the hub agreement shall, within five days of execution of the hub agreement, provide a copy of the hub agreement to the horsemen's organization responsible for negotiating purse agreements for the breed on which wagering is conducted for each race conducted outside of California on which California residents may place advance deposit wagers. Prior to receipt of the hub agreement, the horsemen's organization shall sign a nondisclosure agreement with the ADW provider agreeing to hold confidential all terms of the hub agreement. If the horsemen's organization wants to request a hub agreement arbitration, it shall send written notice of its election to the signatories to the hub agreement within 10 days after receipt of the copy of the hub agreement, and shall provide its alternate proposal to the hub and host fees specified in the hub agreement with that written notice. If the horsemen's organization does not provide that written notice within the 10-day period, then no party shall have the right to request a hub agreement arbitration. If the horsemen's organization does provide that written notice within

the 10-day period, then the ADW provider shall have 10 days to elect in writing to do one of the following:

(i) Abandon the hub agreement.

(ii) Accept the alternate proposal submitted by the horsemen's organization.

(iii) Proceed with a hub agreement arbitration.

(E) If only the party referenced in clause (ii) of subparagraph (B) is a signatory to the hub agreement, then the signatories to the hub agreement shall, within five days of execution of the hub agreement, provide written notice of the host and hub fees applicable pursuant to the hub agreement for each race conducted outside of California on which California residents may place advance deposit wagers, which notice shall be provided to all racing associations and fairs conducting live racing of the same breed covered by the hub agreement. If any racing association or fair wants to request a hub agreement arbitration, it shall send written notice of its election to the signatories to the hub agreement within 10 days after receipt of the notice of host and hub fees. It shall also provide its alternate proposal to the hub and host fees specified in the hub agreement with the notice of its election. If more than one racing association or fair provides notice of their request for hub agreement arbitration, those racing associations or fairs, or both, shall have a period of five days to jointly agree upon which of their alternate proposals shall be the official proposal for purposes of the hub agreement arbitration. If one or more racing associations or fairs that together conduct no fewer than five weeks of live racing on the breed on which wagering is conducted during the calendar year during which the wager is placed does not provide written notice of their election to arbitrate within the 10-day period, then no party shall have the right to request a hub agreement arbitration. If a valid hub agreement arbitration request is made, then the ADW provider shall have 10 days to elect in writing to do one of the following:

(i) Abandon the hub agreement.

(ii) Accept the alternate proposal submitted by the racing associations or fairs.

(iii) Proceed with a hub agreement arbitration.

The results of any hub agreement arbitration elected pursuant to this subdivision shall be binding on all other associations and fairs conducting live racing on that breed.

(F) The acceptance thereof is in compliance with the provisions of the Interstate Horseracing Act (15 U.S.C. Sec. 3001 et seq.), regardless of the location of the ADW provider, whether in California or otherwise, including, without limitation, any and all requirements contained therein with respect to written consents and required written agreements of horsemen's groups to the terms and conditions of the acceptance of ~~such~~ *the* wagers and any arrangements as to the exclusivity between the host racing association or fair and the ADW provider.

(c) An advance deposit wager may be made only by the ADW provider holding the account pursuant to wagering instructions issued by the owner of the funds communicated by telephone call or through other electronic media. The ADW provider shall ensure the identification of the account's owner by using methods and technologies approved by the board. Any ADW provider that accepts wagering instructions concerning races conducted in California, or accepts wagering instructions originating in California, shall provide a full accounting and verification of the source of the wagers thereby made, including the postal ZIP Code and breed of the source of the wagers, in the form of a daily download of parimutuel data to a database designated by the board. The daily download shall be delivered in a timely basis using file formats specified by the database designated by the board, and shall include any and all data necessary to calculate and distribute moneys according to the rules and regulations governing California parimutuel wagering. Any and all reasonable costs associated with the creation, provision, and transfer of this data shall be borne by the ADW provider.

(d) (1) (A) The board shall develop and adopt rules to license and regulate all phases of operation of advance deposit wagering for ADW providers operating in California, including advance deposit wagering activity that takes place within a minisatellite wagering facility. The board may recover any costs associated with the licensing or regulation of advance deposit wagering activities in a minisatellite wagering facility either directly from the ADW provider or through an appropriate increase in the funding formula devised by the board pursuant to paragraph (1) of subdivision (a) of Section 19616.51.

(B) The board shall not approve an application for an original or renewal license as an ADW provider unless the entity, if

requested in writing by a bona fide labor organization no later than 90 days prior to licensing, has entered into a contractual agreement with that labor organization that provides all of the following:

(i) The labor organization has historically represented employees who accept or process any form of wagering at the nearest horse racing meeting located in California.

(ii) The agreement establishes the method by which the ADW provider will agree to recognize and bargain in good faith with a labor organization which has demonstrated majority status by submitting authorization cards signed by those employees who accept or process any form of wagering for which a California ADW license is required.

(iii) The agreement requires the ADW provider to maintain its neutrality concerning the choice of those employees who accept or process any form of wagering for which a California ADW license is required whether or not to authorize the labor organization to represent them with regard to wages, hours, and other terms and conditions of employment.

(iv) The agreement applies to those classifications of employees who accept or process wagers for which a California ADW license is required whether the facility is located within or outside of California.

(C) (i) The agreement required by subparagraph (B) shall not be conditioned by either party upon the other party agreeing to matters outside the requirements of subparagraph (B).

(ii) The requirement in subparagraph (B) shall not apply to an ADW provider which has entered into a collective bargaining agreement with a bona fide labor organization that is the exclusive bargaining representative of employees who accept or process parimutuel wagers on races for which an ADW license is required whether the facility is located within or outside of California.

(D) Permanent state or county employees and nonprofit organizations that have historically performed certain services at county, state, or district fairs may continue to provide those services.

(E) Parimutuel clerks employed by racing associations or fairs or employees of ADW providers who accept or process any form of wagers who are laid off due to lack of work shall have preferential hiring rights for new positions with their employer in occupations whose duties include accepting or processing any

form of wagers, or the operation, repair, service, or maintenance of equipment that accepts or processes any form of wagering at a racetrack, satellite wagering facility, or ADW provider licensed by the board. The preferential hiring rights established by this subdivision shall be conditioned upon the employee meeting the minimum qualification requirements of the new job.

(2) The board shall develop and adopt rules and regulations requiring ADW providers to establish security access policies and safeguards, including, but not limited to, the following:

(A) The ADW provider shall use board-approved methods to perform location and age verification confirmation with respect to persons establishing an advance deposit wagering account.

(B) The ADW provider shall use personal identification numbers (PINs) or other technologies to assure that only the accountholder has access to the advance deposit wagering account.

(C) The ADW provider shall provide for withdrawals from the wagering account only by means of a check made payable to the accountholder and sent to the address of the accountholder or by means of an electronic transfer to an account held by the verified accountholder or the accountholder may withdraw funds from the wagering account at a facility approved by the board by presenting verifiable account identification information.

(D) The ADW provider shall allow the board access to its premises to visit, investigate, audit, and place expert accountants and other persons it deems necessary for the purpose of ensuring that its rules and regulations concerning credit authorization, account access, and other security provisions are strictly complied with. To ensure that the amounts retained from the parimutuel handle are distributed under law, rules, or agreements, any ADW provider that accepts wagering instructions concerning races conducted in California or accepts wagering instructions originating in California shall provide an independent "agreed-upon procedures" audit for each California racing meeting, within 60 days of the conclusion of the race meeting. The auditing firm to be used and the content and scope of the audit, including host fee obligations, shall be set forth in the applicable agreement. The ADW provider shall provide the board, horsemen's organizations, and the host racing association with an annual parimutuel audit of the financial transactions of the ADW provider with respect to wagers authorized pursuant to this section, prepared in accordance

with generally accepted auditing standards and the requirements of the board. Any and all reasonable costs associated with those audits shall be borne by the ADW provider.

(3) The board shall prohibit advance deposit wagering advertising that it determines to be deceptive to the public. The board shall also require, by regulation, that every form of advertising contain a statement that minors are not allowed to open or have access to advance deposit wagering accounts.

(e) In order for a licensee, betting system, or multijurisdictional wagering hub to be approved by the board as an ADW provider, it shall meet both of the following requirements:

(1) All wagers thereby made shall be included in the appropriate parimutuel pool under a contractual agreement with the applicable host track.

(2) The amounts deducted from advance deposit wagers shall be in accordance with the provisions of this chapter.

(f) After the payment of contractual compensation, the amounts received as market access fees from advance deposit wagers, which shall not be considered for purposes of Section 19616.51, shall be distributed as follows:

(1) An amount equal to 0.0011 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the Center for Equine Health to establish the Kenneth L. Maddy Fund for the benefit of the School of Veterinary Medicine at the University of California at Davis.

(2) An amount equal to 0.0003 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the ~~Department of Industrial Relations~~ *Public Employment Relations Board* to cover costs associated with audits conducted pursuant to Section 19526 and for the purposes of reimbursing the State Mediation and Conciliation Service for costs incurred pursuant to this section. However, if that amount would exceed the costs of the ~~Department of Industrial Relations~~ *Public Employment Relations Board*, the amount distributed to ~~the department~~ *that board* shall be reduced, and that reduction shall be forwarded to an organization designated by the racing association or fair described in subdivision (a) for the purpose of augmenting a compulsive gambling prevention program specifically addressing that problem.

(3) An amount equal to 0.00165 multiplied by the amount handled on advance deposit wagers that originate in California for each racing meeting shall be distributed as follows:

(A) One-half of the amount shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) One-half of the amount shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(4) With respect to wagers on each breed of racing that originate in California, an amount equal to 2 percent of the first two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to 1.5 percent of the next two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to 1 percent of the next two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, and an amount equal to 0.50 percent of handle from all advance deposit wagers originating from within California in excess of seven hundred fifty million dollars ($750,000,000) annually, shall be distributed as satellite wagering commissions. Satellite wagering facilities that were not operational in 2001, other than one each in the Cities of Inglewood and San Mateo, and two additional facilities each operated by the Alameda County Fair and the Los Angeles County Fair and their partners and other than existing facilities which are relocated, are not eligible for satellite wagering commission distributions under this section. The satellite wagering facility commissions calculated in accordance with this subdivision shall be distributed to each satellite wagering facility and racing association or fair in the zone in which the wager originated in the same relative proportions that the satellite wagering facility or the racing association or fair generated satellite commissions during

the previous calendar year. If there is a reduction in the satellite wagering commissions pursuant to this section, the benefits therefrom shall be distributed equitably as purses and commissions to all associations and racing fairs generating advance deposit wagers in proportion to the handle generated by those associations and racing fairs. If a satellite wagering facility is permanently closed other than for renovation or remodeling, or if a satellite wagering facility is unwilling or unable to accept all of the signals that are available to that facility, the commissions otherwise provided for in this subdivision that would be payable to that facility shall be proportionately reduced to take into account the time that satellite wagering is no longer conducted by that facility, or the payment of those commissions shall be eliminated entirely if the facility is permanently closed, and, in either case, the satellite wagering commissions not paid shall be proportionately redistributed to the other eligible satellite wagering facilities. For purposes of this section, the purse funds distributed pursuant to Section 19605.72 shall be considered to be satellite wagering facility commissions attributable to thoroughbred races at the locations described in that section.

(5) After the distribution of the amounts set forth in paragraphs (1) to (4), inclusive, the remaining market access fees from advance deposit wagers originating in California shall be as follows:

(A) With respect to wagers on each breed of racing, the amount remaining shall be distributed to the racing association or fair that is conducting live racing on that breed during the calendar period in the zone in which the wager originated. That amount shall be allocated to that racing association or fair as commissions, to horsemen participating in that racing meeting in the form of purses, and as incentive awards, in the same relative proportion as they were generated or earned during the prior calendar year at that racing association or fair on races conducted or imported by that racing association or fair after making all deductions required by applicable law. Notwithstanding any other provision of law, the distributions with respect to each breed of racing set forth in this subparagraph may be altered upon the approval of the board, in accordance with an agreement signed by the respective associations, fairs, horsemen's organizations, and breeders organizations receiving those distributions.

(B) If the provisions of Section 19601.2 apply, then the amount distributed to the applicable racing associations or fairs shall first be divided between those racing associations or fairs in direct proportion to the total amount wagered in the applicable zone on the live races conducted by the respective association or fair. Notwithstanding this requirement, when the provisions of subdivision (b) of Section 19607.5 apply to the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento, then the total amount distributed to the applicable racing associations or fairs shall first be divided equally, with 50 percent distributed to applicable fairs and 50 percent distributed to applicable associations.

(C) Notwithstanding any provisions of this section to the contrary, with respect to wagers on out-of-state and out-of-country thoroughbred races conducted after 6 p.m., Pacific time, 50 percent of the amount remaining shall be distributed as commissions to thoroughbred associations and racing fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subparagraph (A), and the remaining 50 percent, together with the total amount remaining from advance deposit wagering originating from California out-of-state and out-of-country harness and quarter horse races conducted after 6 p.m., Pacific time, shall be distributed as commissions on a pro rata basis to the applicable licensed quarter horse association and the applicable licensed harness association, based upon the amount handled in state, both on- and off-track, on each breed's own live races in the previous year by that association, or its predecessor association. One-half of the amount thereby received by each association shall be retained by that association as a commission, and the other half of the money received shall be distributed as purses to the horsemen participating in its current or next scheduled licensed racing meeting.

(D) Notwithstanding any provisions of this section to the contrary, with respect to wagers on out-of-state and out-of-country nonthoroughbred races conducted before 6 p.m., Pacific time, 50 percent of the amount remaining shall be distributed as commissions as provided in subparagraph (C) for licensed quarter horse and harness associations, and the remaining 50 percent shall be distributed as commissions to the applicable thoroughbred associations or fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subparagraph (A).

(E) Notwithstanding any provision of this section to the contrary, the distribution of market access fees pursuant to this subparagraph may be altered upon the approval of the board, in accordance with an agreement signed by all parties whose distributions would be affected.

(g) A racing association, a fair, a satellite wagering facility, or a minisatellite wagering facility may enter into an agreement with an ADW provider to accept and facilitate the placement of any wager from a patron at its facility that a California resident could make through that ADW provider. Deductions from wagers made pursuant to ~~such an~~ *the* an agreement shall be distributed in accordance with the provisions of this chapter governing wagers placed at that facility, except that the board may authorize alternative distributions as agreed to by the ADW provider, the operator of the facility accepting the wager, the association or fair conducting that breed of racing in the zone where the wager is placed, and the respective horsemen's organization.

(h) Any issues concerning the interpretation or application of this section shall be resolved by the board.

(i) Amounts distributed under this section shall be proportionally reduced by an amount equal to 0.00295 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting, except for harness racing meetings, provided that the amount of this reduction shall not exceed two million dollars ($2,000,000). The method used to calculate the reduction in proportionate share shall be approved by the board. The amount deducted shall be distributed as follows:

(1) Fifty percent of the money to the board to establish and to administer jointly with the organization certified as the majority representative of California-licensed jockeys pursuant to Section 19612.9, a defined contribution retirement plan for California-licensed jockeys who retired from racing on or after January 1, 2009.

(2) The remaining 50 percent of the money shall be distributed as follows:

(A) Seventy percent shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys

distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) Thirty percent shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(j) Amounts distributed under this section shall be proportionally reduced by an amount equal to 0.00295 multiplied by the amount handled on advance deposit wagers originating in California for each harness racing meeting, provided that the amount of this reduction shall not exceed five hundred thousand dollars ($500,000). The method used to calculate the reduction in proportionate share shall be approved by the board. The amount deducted shall be distributed as follows:

(1) First to the welfare fund established for the benefit of horsemen and backstretch personnel, pursuant to subdivision (b) of Section 19641, and administered by the organization representing the horsemen participating in the race meeting, in the amount requested by the welfare fund. Moneys distributed pursuant to this paragraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(2) The amount remaining, if any, shall be utilized for the benefit of the horsemen as specified in a written agreement between the racing association that conducts the live harness race meeting and the organization representing the horsemen participating in the race meeting.

SEC. 3. Section 1936 of the Civil Code, as amended by Section 1 of Chapter 531 of the Statutes of 2011, is amended to read:

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

(1) “Rental company” means a person or entity in the business of renting passenger vehicles to the public.

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

(3) “Authorized driver” means (A) the renter, (B) the renter’s spouse if that person is a licensed driver and satisfies the rental

company's minimum age requirement, (C) the renter's employer or coworker if he or she is engaged in business activity with the renter, is a licensed driver, and satisfies the rental company's minimum age requirement, and (D) a person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) "Customer facility charge" means any fee, including an alternative fee, required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) To finance, design, and construct consolidated airport car rental facilities.

(ii) To finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated car rental facilities, and acquire vehicles for use in that system.

(iii) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary, the Assembly Committee on Transportation, and the Senate Committee on Transportation and Housing. In the case of a transportation system, the audit also shall consider the reasonable costs of providing the transit system or busing network. Notwithstanding clause (iii) of subparagraph (A), the fees designated as a customer facility charge shall not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) Except as provided in subparagraph (D), the authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(D) If a bond or other form of indebtedness is not used for financing, or the bond or other form of indebtedness used for financing has been paid, the Oakland International Airport may require the collection of a customer facility charge for a period of up to 10 years from the imposition of the charge for the purposes allowed by, and subject to the conditions imposed by, this section.

(5) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

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

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

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

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

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

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

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

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

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

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of

optional services, may be changed by the renter at any time for the next and future rentals.

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

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

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

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

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

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). An administrative charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

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

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

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

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this

paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

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

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

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

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

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

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

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

(3) An authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false

information and the rental company would not have rented the vehicle if it had instead received true information.

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

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter's acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract also shall state that the damage waiver is optional. Further, the contract for these renters shall include a clear and conspicuous written disclosure that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

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

"NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

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

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

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

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County Regional Airport Authority formed pursuant to Division 17 (commencing with Section 170000) of the Public Utilities Code.

(B) The fee is calculated on a per contract basis or as provided in paragraph (2).

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

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract or the amount provided in paragraph (2).

(E) The fee for a consolidated rental car facility shall be collected only from customers of on-airport rental car companies. If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10) or the amount provided in paragraph (2), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided that the airport requires off-airport customers to use the common-use transportation system. For purposes of this subparagraph, "on-airport rental car company" means a rental company operating under an airport property lease or an airport concession or license agreement whose customers use or will use the consolidated rental car facility and the collection

of the fee as to those customers is consistent with subparagraph (C).

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, and constructing the facility and financing, designing, constructing, and operating any common-use transportation system, or acquiring vehicles for use in that system, and shall not be used for any other purpose.

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

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

(I) For any airport seeking to require rental car companies to collect an alternative customer facility charge pursuant to paragraph (2), the following provisions apply:

(i) Notwithstanding Section 10231.5 of the Government Code, the airport shall provide reports on an annual basis to the Senate and Assembly Committees on Judiciary detailing all of the following:

(I) The total amount of the customer facility charge collected.

(II) How the funds are being spent.

(III) The amount of and reason for any changes in the airport's budget or financial needs for the facility or common-use transportation system.

(IV) Whether airport concession fees authorized by Section 1936.01 have increased since the prior report, if any.

(ii) The airport shall complete the independent audit required by subparagraph (B) of paragraph (4) of subdivision (a) prior to initial collection of the customer facility charge, prior to any increase pursuant to paragraph (2), and every three years after initial collection and any increase until such time as the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a). ~~The Controller shall review those audits and independently examine and substantiate the necessity for and the amount of the customer facility charge. The Controller's costs shall be reimbursed by the individual airport being audited. Notwithstanding Section 10231.5 of the Government Code, the Controller shall report to the Legislature on its conclusions, including whether the airport's actual or projected costs are supported and justified, any steps the airport may take to limit costs, potential alternatives for meeting the airport's revenue~~

~~needs other than the collection of the fee, and whether and to what extent car rental companies or other businesses or individuals using the facility or common-use transportation system may pay for the costs associated with these facilities and systems other than the fee from rental customers, or whether the airport did not comply with any provision of this subparagraph.~~

(iii) Use of the bonds shall be limited to construction and design of the consolidated rental car facility, terminal modifications, and operating costs of the common-use transportation system, as specified in paragraph (4) of subdivision (a).

(2) Any airport may require rental car companies to collect an alternative customer facility charge under the following conditions:

(A) The airport first conducts a publicly noticed hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) to review the costs of financing the design and construction of a consolidated rental car facility and the design, construction, and operation of any common-use transportation system in which all of the following occur:

(i) The airport establishes the amount of revenue necessary to finance the reasonable cost to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system, based on evidence presented during the hearing.

(ii) The airport finds, based on evidence presented during the hearing, that the fee authorized in paragraph (1) will not generate sufficient revenue to finance the reasonable costs to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system.

(iii) The airport finds that the reasonable cost of the project requires the additional amount of revenue that would be generated by the proposed daily rate, including any rate increase, authorized pursuant to this paragraph.

(iv) The airport outlines each of the following:

(I) Steps it has taken to limit costs.

(II) Other potential alternatives for meeting its revenue needs other than the collection of the fee.

(III) The extent to which rental car companies or other businesses or individuals using the facility or common-use

transportation system will pay for the costs associated with these facilities and systems other than the fee from rental customers.

~~(v) The Controller reviews and substantiates the need for and amount of the fee pursuant to clause (ii) of subparagraph (I) of paragraph (1).~~

(B) The airport may not require the fee authorized in this paragraph to be collected at any time that the fee authorized in paragraph (1) of this subdivision is being collected.

(C) Pursuant to the procedure set forth in this subdivision, the fee may be collected at a rate charged on a per-day basis subject to the following conditions:

(i) Commencing January 1, 2011, the amount of the fee may not exceed six dollars ($6) per day.

(ii) Commencing January 1, 2014, the amount of the fee may not exceed seven dollars and fifty cents ($7.50) per day.

(iii) Commencing January 1, 2017, and thereafter, the amount of the fee may not exceed nine dollars ($9) per day.

(iv) At no time shall the fee authorized in this paragraph be collected from any customer for more than five days for each individual rental car contract.

(v) An airport subject to this paragraph shall initiate the process for obtaining the authority to require or increase the alternative fee no later than January 1, 2018. Any airport that obtains the authority to require or increase an alternative fee shall be authorized to continue collecting that fee until the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

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

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge

in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

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

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

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

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall disclose clearly the existence and amount of the customer facility charge. For purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and

computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

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

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

(o) A rental company shall not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

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

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

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

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

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

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

(3) This subdivision does not prohibit a rental company from equipping rental vehicles with GPS-based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology

that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

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

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

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

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

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

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

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

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

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

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed, in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the statement from the rearview mirror, it shall be hung from the steering wheel.

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

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

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

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make that change, prior to leaving the lot, by returning the form to an employee designated to receive the form

who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

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

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

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

(v) (1) When a rental company enters into a rental agreement in the state for the rental of a vehicle to any renter who is not a resident of this country and, as part of, or associated with, the rental agreement, the renter purchases liability insurance, as defined in subdivision (b) of Section 1758.85 of the Insurance Code, from the rental company in its capacity as a rental car agent for an authorized insurer, the rental company shall be authorized to accept, and, if served as set forth in this subdivision, shall accept, service of a summons and complaint and any other required documents against the foreign renter for any accident or collision resulting from the operation of the rental vehicle within the state during the rental period. If the rental company has a registered agent for service of process on file with the Secretary of State, process shall be served on the rental company's registered agent, either by first-class mail, return receipt requested, or by personal service.

(2) Within 30 days of acceptance of service of process, the rental company shall, provide a copy of the summons and complaint and any other required documents served in accordance with this subdivision to the foreign renter by first-class mail, return receipt requested.

(3) Any plaintiff, or his or her representative, who elects to serve the foreign renter by delivering a copy of the summons and complaint and any other required documents to the rental company pursuant to paragraph (1) shall agree to limit his or her recovery

against the foreign renter and the rental company to the limits of the protection extended by the liability insurance.

(4) Notwithstanding the requirements of Sections 17450 to 17456, inclusive, of the Vehicle Code, service of process in compliance with paragraph (1) shall be deemed valid and effective service.

(5) Notwithstanding any other provision of law, the requirement that the rental company accept service of process pursuant to paragraph (1) shall not create any duty, obligation, or agency relationship other than that provided in paragraph (1).

(w) 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. 4. Section 1936 of the Civil Code, as added by Section 2 of Chapter 531 of the Statutes of 2011, is amended to read:

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

(1) "Rental company" means a person or entity in the business of renting passenger vehicles to the public.

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

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

(4) (A) "Customer facility charge" means any fee, including an alternative fee, required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) To finance, design, and construct consolidated airport car rental facilities.

(ii) To finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated car rental facilities, and acquire vehicles for use in that system.

(iii) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary, the Assembly Committee on Transportation, and the Senate Committee on Transportation and Housing. In the case of a transportation system, the audit also shall consider the reasonable costs of providing the transit system or busing network. Notwithstanding clause (iii) of subparagraph (A), the fees designated as a customer facility charge shall not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) Except as provided in subparagraph (D), the authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(D) If a bond or other form of indebtedness is not used for financing, or the bond or other form of indebtedness used for financing has been paid, the Oakland International Airport may require the collection of a customer facility charge for a period of up to 10 years from the imposition of the charge for the purposes allowed by, and subject to the conditions imposed by, this section.

(5) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for

the sale of that vehicle, resulting from collision regardless of the cause of the damage.

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

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

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

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

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

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

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and

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

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

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

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

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

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

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

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

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). An administrative charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

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

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

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

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

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

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from

damage to the rented vehicle and not to the liability of another person.

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

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

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

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

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

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

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign that shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, such as liability for all collision damage regardless of cause, (B) the extent

of the renter's liability, such as liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter's acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract also shall state that the damage waiver is optional. Further, the contract for these renters shall include a clear and conspicuous written disclosure that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

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

"NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your

financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

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

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

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

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

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

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

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

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

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

(i) The manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from

the previous year in the Consumer Price Index. For the purposes of this section, "Consumer Price Index" means the United States Consumer Price Index for All Urban Consumers, for all items.

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

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

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

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

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

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

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County Regional Airport Authority formed pursuant to Division 17 (commencing with Section 170000) of the Public Utilities Code.

(B) The fee is calculated on a per contract basis or as provided in paragraph (2).

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

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract or the amount provided in paragraph (2).

(E) The fee for a consolidated rental car facility shall be collected only from customers of on-airport rental car companies. If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10) or the amount provided in paragraph (2), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided that the airport requires off-airport customers to use the common-use transportation system. For purposes of this subparagraph, "on-airport rental car company" means a rental company operating under an airport property lease or an airport concession or license agreement whose customers use or will use the consolidated rental car facility and the collection of the fee as to those customers is consistent with subparagraph (C).

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, and constructing the facility and financing, designing, constructing, and operating any common-use transportation system, or acquiring vehicles for use in that system, and shall not be used for any other purpose.

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

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

(I) For any airport seeking to require rental car companies to collect an alternative customer facility charge pursuant to paragraph (2), the following provisions apply:

(i) Notwithstanding Section 10231.5 of the Government Code, the airport shall provide reports on an annual basis to the Senate and Assembly Committees on Judiciary detailing all of the following:

(I) The total amount of the customer facility charge collected.

(II) How the funds are being spent.

(III) The amount of and reason for any changes in the airport's budget or financial needs for the facility or common-use transportation system.

(IV) Whether airport concession fees authorized by Section 1936.01 have increased since the prior report, if any.

(ii) The airport shall complete the independent audit required by subparagraph (B) of paragraph (4) of subdivision (a) prior to initial collection of the customer facility charge, prior to any increase pursuant to paragraph (2), and every three years after initial collection and any increase until such time as the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a). ~~The Controller shall review those audits and independently examine and substantiate the necessity for and the amount of the customer facility charge. The Controller's costs shall be reimbursed by the individual airport being audited. Notwithstanding Section 10231.5 of the Government Code, the Controller shall report to the Legislature on its conclusions, including whether the airport's actual or projected costs are supported and justified, any steps the airport may take to limit costs, potential alternatives for meeting the airport's revenue needs other than the collection of the fee, and whether and to what extent car rental companies or other businesses or individuals using the facility or common-use transportation system may pay for the costs associated with these facilities and systems other than the fee from rental customers, or whether the airport did not comply with any provision of this subparagraph.~~

(iii) Use of the bonds shall be limited to construction and design of the consolidated rental car facility, terminal modifications, and operating costs of the common-use transportation system, as specified in paragraph (4) of subdivision (a).

(2) Any airport may require rental car companies to collect an alternative customer facility charge under the following conditions:

(A) The airport first conducts a publicly noticed hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) to review the costs of financing the design and construction of a consolidated rental car facility and the design, construction, and operation of any common-use transportation system in which all of the following occur:

(i) The airport establishes the amount of revenue necessary to finance the reasonable cost to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system, based on evidence presented during the hearing.

(ii) The airport finds, based on evidence presented during the hearing, that the fee authorized in paragraph (1) will not generate sufficient revenue to finance the reasonable costs to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system.

(iii) The airport finds that the reasonable cost of the project requires the additional amount of revenue that would be generated by the proposed daily rate, including any rate increase, authorized pursuant to this paragraph.

(iv) The airport outlines each of the following:

(I) Steps it has taken to limit costs.

(II) Other potential alternatives for meeting its revenue needs other than the collection of the fee.

(III) The extent to which rental car companies or other businesses or individuals using the facility or common-use transportation system will pay for the costs associated with these facilities and systems other than the fee from rental customers.

~~(v) The Controller reviews and substantiates the need for and amount of the fee pursuant to clause (ii) of subparagraph (I) of paragraph (1).~~

(B) The airport may not require the fee authorized in this paragraph to be collected at any time that the fee authorized in paragraph (1) of this subdivision is being collected.

(C) Pursuant to the procedure set forth in this subdivision, the fee may be collected at a rate charged on a per-day basis subject to the following conditions:

(i) Commencing January 1, 2011, the amount of the fee may not exceed six dollars ($6) per day.

(ii) Commencing January 1, 2014, the amount of the fee may not exceed seven dollars and fifty cents ($7.50) per day.

(iii) Commencing January 1, 2017, and thereafter, the amount of the fee may not exceed nine dollars ($9) per day.

(iv) At no time shall the fee authorized in this paragraph be collected from any customer for more than five days for each individual rental car contract.

(v) An airport subject to this paragraph shall initiate the process for obtaining the authority to require or increase the alternative fee no later than January 1, 2018. Any airport that obtains the authority to require or increase an alternative fee shall be authorized to continue collecting that fee until the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

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

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and

charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

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

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

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

(B) If a person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided that he, she, or it is provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the

time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

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

(o) A rental company shall not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

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

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

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

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

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

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

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

(3) This subdivision does not prohibit a rental company from equipping rental vehicles with GPS-based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter

has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

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

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) This section shall become operative on January 1, 2015.

SEC. 5. Section 318 of the Corporations Code is amended to read:

318. (a) The Secretary of State shall develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors. As used in this section, "minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese,

Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics.

(b) For each woman or minority who participates in the registry, the Secretary of State shall maintain information on his or her educational, professional, community service, and corporate governance background. That information may include, but is not limited to:

(1) Paid or volunteer employment.

(2) Service in elected public office or on public boards or commissions.

(3) Directorships, officerships, and trusteeships of business and nonprofit entities, including committee experience.

(4) Professional, academic, or community awards or honors.

(5) Publications.

(6) Government relations experience.

(7) Experience with corporate constituents.

(8) Any other areas of special expertise.

(c) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may disclose any number of personal attributes that may contribute to board diversity. Those attributes may include, but are not limited to, gender, physical disability, race, or ethnic origin.

(d) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may indicate characteristics of corporations for which he or she would consider, or is especially interested in, serving as a director. These characteristics may include, but are not limited to, company size, industry, geographic location, board meeting frequency, director time commitments, director compensation, director insurance or indemnification, or social policy concerns.

(e) Any woman or minority may nominate himself or herself to the registry by filing with the Secretary of State the information required by subdivision (b) on a form the secretary prescribes. Any registrant may attach a copy of his or her resume and up to two letters of recommendation to his or her registration form. Each registrant's registration form, together with any attached resume or letters of recommendation, shall constitute his or her registry transcript.

(f) The Secretary of State shall make appropriate rules requiring registrants to renew or update their filings with the registry, as necessary to ensure continued accuracy of registry information.

(g) The Secretary of State shall assign each registrant a file number, then enter the information described in subdivisions (b), (c), and (d) into a data base, using the registrant's file number to identify him or her. The registry data base shall not disclose any registrant's name or street address, but may list the city, county, or ZIP Code of his or her business or residence address. The secretary shall make data base information available to those persons described in subdivisions (i) and (j). The secretary may provide that access either by permitting direct data base searches or by performing data base searches on written request.

(h) The Secretary of State may also make information contained in the registry data base available to any person or entity qualified to transact business in California that regularly engages in the business of providing data base access or search services; provided, that data base access will not be construed to entitle the user to access to any registrant's transcript.

(i) The Secretary of State shall make information contained in a reasonable number of registrants' transcripts available to any corporation or its representative. A ~~"representative",~~ "*representative*," for purposes of this subdivision, may be an attorney, an accountant, or a retained executive recruiter. A "retained executive ~~recruiter",~~ *recruiter*," for purposes of this subdivision, is an individual or business entity engaged in the executive search business that is regularly retained to locate qualified candidates for appointment or election as corporate directors or executive officers.

(j) The Secretary of State may also grant access to a reasonable number of registrants' transcripts to any other person who demonstrates to the secretary's satisfaction that the person does both of the following:

(1) Seeks access to the registry in connection with an actual search for a corporate director.

(2) Intends to use any information obtained from the registry only for the purpose of finding qualified candidates for an open position on a corporate board of directors.

(k) The Secretary of State may employ reasonable means to verify that any party seeking access to registry transcript

information is one of those specified in subdivision (i) or (j). To that end, the secretary may require a representative to identify its principal, but may not disclose that principal's identity to any other person.

(*l*) Upon written request specifying the registrant's file number, the Secretary of State shall provide any party entitled to access to registry transcripts with a copy of any registrant's transcript. The secretary may by rule or regulation specify other reasonable means by which persons entitled thereto may order copies of registrants' transcripts.

(m) Notwithstanding any other ~~provision of~~ law, ~~no~~ *a* person shall *not* be entitled to access to information the registry contains, except as this section specifically provides.

(n) The Secretary of State shall charge fees for registering with the registry, obtaining access to the registry data base, and obtaining copies of registrants' transcripts. The Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall fix those fees by regulation. Fees shall be fixed so that the aggregate amount of all fees collected shall be sufficient to cover the total cost of administering the registry program. Registration fees shall be fixed so as to encourage qualified women and minorities to participate. Fees shall be deposited into the Secretary of State's Business Fee Fund.

(o) The Secretary of State may make any rule, regulation, guideline, or agreement the secretary deems necessary to carry out the purposes and provisions of this section.

(p) The Secretary of State may cooperate with the ~~California~~ Commission on the Status of Women *and Girls*, the California Council to Promote Business Ownership by Women, the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, women's organizations, minority organizations, business and professional organizations, and any other individual or entity the secretary deems appropriate, for any of the following purposes:

(1) Promoting corporate use of the registry.

(2) Locating qualified women and minorities and encouraging them to participate in the registry.

(3) Educating interested parties on the purpose and most effective use of the registry.

The secretary may also prepare and distribute publications designed to promote informed use of the registry.

(q) The Secretary of State may seek registrants' consent to be listed in a published directory of women and minorities eligible to serve as corporate directors, which will contain a summary of each listed registrant's qualifications. The secretary may periodically publish, or cause to be published, such a directory. Only those registrants who so consent in writing may be included in the directory. The printed directory shall be provided to any person upon payment of a fee, which the Secretary of State will determine by regulation, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions.

(r) The Secretary of State shall implement this section no later than January 1, 1995.

(s) At least once in each three-year period during which the registry is available for corporate use, the Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall report to the Legislature on the extent to which the registry has helped women and minorities progress toward achieving parity in corporate board appointments or elections.

(t) The Secretary of State shall notify each University of California campus and each California State University campus of the opportunity to maintain the registry created pursuant to this section. If more than one campus of the university or state university expresses interest in maintaining the registry, the Secretary of State shall select a campus based on a competitive selection process. If a campus is selected, the Secretary of State shall transfer the information contained in the registry, free of cost, to that campus. Any University of California or California State University campus selected to maintain the registry shall do so in a manner consistent with this section. Funds deposited in the Secretary of State's Business Fees Fund pursuant to this section shall be transferred to the university selected to maintain the registry, and shall be used to administer the registry program. The Secretary of State shall maintain the registry until a University of California or California State University campus agrees to do so.

SEC. 6. Section 57031 of the Food and Agricultural Code is amended to read:

57031. (a) Any union representing registered unloaders is authorized and entitled to bargain with the employer of the registered unloaders to establish a scale of charges for unloading produce.

(b) If the union or unions representing registered unloaders and the employer of registered unloaders are unable to agree on a scale of charges, the ~~director~~ *Public Employment Relations Board* shall mediate the dispute pursuant to Section ~~65~~ *3601* of the ~~Labor~~ *Government* Code.

(c) The scale of charges in effect on December 31, 1978, shall remain in effect until new charges are established pursuant to this section.

SEC. 7. Section 3502.5 of the Government Code is amended to read:

3502.5. (a) Notwithstanding Section 3502, any other provision of this chapter, or any other law, rule, or regulation, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, ordinances, and enactments, in accordance with this chapter. As used in this chapter, "agency shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization.

(b) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the public agency and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may be filed only after the recognized employee organization has requested the public agency to negotiate on an agency shop arrangement and, beginning seven working days after the public agency received this request, the two parties have had 30 calendar days to attempt

good faith negotiations in an effort to reach agreement. An election that may not be held more frequently than once a year shall be conducted by the ~~Division of Conciliation of the Department of Industrial Relations~~ *California State Mediation and Conciliation Service* in the event that the public agency and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that is in effect, the recognized employee organization shall indemnify and hold the public agency harmless against any liability arising from a claim, demand, or other action relating to the public agency's compliance with the agency fee obligation.

(c) An employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support a public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the public agency and the public employee organization, or if the memorandum of understanding fails to designate the funds, then to a fund of that type chosen by the employee. Proof of the payments shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization.

(d) An agency shop provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for that type of vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit, (2) the vote is by secret ballot, and (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during that term. Notwithstanding the above, the public agency and the recognized employee organization may

negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on an agency shop agreement. The procedures in this subdivision are also applicable to an agency shop agreement placed in effect pursuant to subdivision (b).

(e) An agency shop arrangement shall not apply to management employees.

(f) A recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement shall keep an adequate itemized record of its financial transactions and shall make available annually, to the public agency with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.) covering employees governed by this chapter, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the public agency with a copy of the financial reports.

SEC. 8. Section 3507.1 of the Government Code is amended to read:

3507.1. (a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a public agency in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a public agency pursuant to Section 3507, a bargaining unit in effect as of the effective date of this section shall continue in effect unless changed under the rules adopted by a public agency pursuant to Section 3507.

(c) A public agency shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously

been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party selected by the public agency and the employee organization who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. In the event the public agency and the employee organization cannot agree on a neutral third party, the ~~Division of Conciliation of the Department of Industrial Relations~~ *California State Mediation and Conciliation Service* shall be the neutral third party and shall verify the exclusive or majority status of the employee organization. In the event that the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

SEC. 9. Section 3507.3 of the Government Code is amended to read:

3507.3. Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of ~~such~~ *those* professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the ~~Division of Conciliation of the Department of Industrial Relations~~ *California State Mediation and Conciliation Service* for mediation or for recommendation for resolving the dispute.

"Professional employees," for the purposes of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientists.

SEC. 10. Section 3513 of the Government Code is amended to read:

3513. As used in this chapter:

(a) "Employee organization" means any organization that includes employees of the state and that has as one of its primary

purposes representing these employees in their relations with the state.

(b) "Recognized employee organization" means an employee organization that has been recognized by the state as the exclusive representative of the employees in an appropriate unit.

(c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the *California* State *Mediation and* Conciliation Service ~~within the Department of Industrial Relations~~, employees of the Office of the State Chief Information Officer except as otherwise provided in Section 11546.5, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

(h) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(i) "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the Controller's office.

(j) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(k) "Fair share fee" means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

SEC. 11. Section 3527 of the Government Code is amended to read:

3527. As used in this chapter:

(a) "Employee" means a civil service employee of the State of California. The "State of California" as used in this chapter includes ~~such~~ *those* state agencies, boards, and commissions as may be designated by law that employ civil service employees, except the University of California, Hastings College of the Law, and the California State University.

(b) "Excluded employee," means all managerial employees, as defined in subdivision (e) of Section 3513, all confidential employees, as defined in subdivision (f) of Section 3513, and all supervisory employees, as defined in subdivision (g) of Section 3513, and all civil service employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the Public Employment Relations Board, conciliators employed by the *California* State *Mediation and* Conciliation Service ~~within the Department of Industrial Relations~~, employees of the office of the State Chief Information Officer except as provided in Section 11546.5, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(c) "Supervisory employee organization" means an organization that represents members who are supervisory employees under subdivision (g) of Section 3513.

(d) "Excluded employee organization" means an organization that includes excluded employees of the state, as defined in subdivision (b), and that has as one of its primary purposes representing its members in employer-employee relations. Excluded employee organization includes supervisory employee organizations.

(e) "State employer" or "employer," for purposes of meeting and conferring on matters relating to supervisory

employer-employee relations, means the Governor or his or her designated representatives.

SEC. 12. Section 3541.3 of the Government Code is amended to read:

3541.3. The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections that shall be conducted by means of secret ballot elections, and certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. ~~In no case shall these lists include persons who are on the staff of the board.~~

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) Within its discretion, to conduct studies relating to employer-employee relations, including the collection, analysis, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by October 15 of each year on its activities during the immediately preceding fiscal year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.

(g) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its

jurisdiction. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this chapter, except a hearing to determine an unfair practice charge.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(*l*) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SEC. 13. Section 3563 of the Government Code is amended to read:

3563. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. ~~In no case shall the lists include persons who are on the staff of the board.~~

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in

the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(*l*) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SEC. 14. Division 4.5 (commencing with Section 3600) is added to Title 1 of the Government Code, to read:

DIVISION 4.5. MEDIATION AND CONCILIATION SERVICE

Chapter 1. General Provisions

3600. There is within the Public Employment Relations Board a division known as the California State Mediation and Conciliation Service, which shall conduct the services provided pursuant to Section 3601 and carryout the functions vested by any other statute in the California State Mediation and Conciliation Service, the State Mediation and Conciliation Service, the State Conciliation Service, or the Division of Conciliation of the Department of Industrial Relations.

3601. The board may investigate and mediate labor disputes providing any bona fide party to this type of dispute requests intervention by the board and the board may proffer its services to both parties when work stoppage is threatened and neither party requests intervention. In the interest of preventing labor disputes, the board shall endeavor to promote sound union-employer relationships. The board may arbitrate or arrange for the selection of boards of arbitration on those terms that as all of the bona fide parties to the dispute may agree upon. Any decision or award arising out of an arbitration conducted pursuant to this section is a public record. Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted by the California State Mediation and

Conciliation Service, and any person conducting the mediation. All other records of the California State Mediation and Conciliation Service relating to labor disputes are confidential.

3602. Notwithstanding any other law, the board may seek and collect reimbursement from private and public sector employers, labor unions, and employee organizations for election, arbitration, training, and facilitation services provided by the California State Mediation and Conciliation Service pursuant to Section 3601 and for representation services, including the provision of hearing officers, related to public transit labor relations provided by the California State Mediation and Conciliation Service pursuant to the Public Utilities Code.

Chapter 2. Succession to Functions and Responsibilities

3603. (a) The Public Employment Relations Board succeeds to and is vested with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department of Industrial Relations and exercised or carried out through the California State Mediation and Conciliation Service.

(b) All powers, duties, and responsibilities of the Director of Industrial Relations or the Department of Industrial Relations under Sections 19455 and 19604 of the Business and Professions Code, Section 89542.5 of the Education Code, Section 57031 of the Food and Agricultural Code, Sections 3502.5, 3507.1, 3507.3, 71632.5, 71636.1, 71636.3, 71637, 71802 to 71806, inclusive, and 71814 of the Government Code, Sections 1164 and 2686 of the Labor Code, and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 100301 to 100306, inclusive, 101341, 101342, 101344, 102401, 102403, 103401 to 103406, inclusive, 105142, 120502 to 120505, inclusive, and 125521 to 125526, inclusive, of the Public Utilities Code, Section 4.2 (as repealed and added by Chapter 1335 of the Regular Session of the Statutes of 1971) and Section 4.4 (as added by the Chapter 1335 of the Regular Session of the Statutes of 1971) of the Fresno Metropolitan Transit District Act of 1961, and Sections 13.90 to 13.96, inclusive, of the West Bay Rapid Transit Authority Act (as added by Chapter 104 of the First Extraordinary Session of the Statutes of 1964) are hereby transferred to the Public Employment Relations Board.

(c) The regulations of the Director of Industrial Relations at Subchapter 2.2 (Sections 15800 to 15875.1, inclusive) and Subchapter 7 (Section 17300) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations shall remain in effect and shall be deemed to be regulations of the Public Employment Relations Board.

(d) All persons serving in the state civil service, other than temporary employees, in the California State Mediation and Conciliation Service in the Department of Industrial Relations, and engaged in the performance of functions transferred to the Public Employment Relations Board, are transferred to the Public Employment Relations Board. The status, positions, and rights of those persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2), except as to positions the duties of which are vested in a position exempt from civil service. The personnel records of all transferred employees shall be transferred to the Public Employment Relations Board.

(e) The property of the Department of Industrial Relations that is used exclusively or primarily for the functions transferred to the Public Employment Relations Board is transferred to the Public Employment Relations Board. If any doubt arises as to whether or where property is to be transferred, the Department of General Services shall determine whether or where the property is to be transferred.

(f) All unexpended balances of appropriations or other funds available for use in connection with any function or the administration of any law transferred to the Public Employment Relations Board shall be transferred to the Public Employment Relations Board. If any doubt arises as to whether or where those balances and funds are to be transferred, the Department of Finance shall determine whether or where those balances and funds are to be transferred.

Chapter 3. Public Transportation Labor Disputes

3610. The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:

(a) "Local agency" means any city, county, special district, or other public entity in the state. It includes a charter city or a charter county.

(b) "Public transit employee" means an employee of any transit district of the state, an employee of the Golden Gate Bridge, Highway and Transportation District, and an employee of any local agency who is employed to work for transit service provided by that agency.

3611. Notwithstanding any other law, the following provisions shall govern disputes between exclusive bargaining representatives of public transit employees and local agencies:

(a) The disputes shall not be subject to any fact-finding procedure otherwise provided by law.

(b) Each party shall exchange contract proposals not less than 90 days before the expiration of a contract, and shall be in formal collective bargaining not less than 60 days before that expiration.

(c) Each party shall supply to the other party all reasonable data as requested by the other party.

(d) At the request of either party to a dispute, a conciliator from the California State Mediation and Conciliation Service shall be assigned to mediate the dispute and shall have access to all formal negotiations.

The provisions of this section shall not apply to any local agency subject to the provisions of Chapter 10 (commencing with Section 3500) of Division 4.

3612. (a) Whenever in the opinion of the Governor, a threatened or actual strike or lockout will, if permitted to occur or continue, significantly disrupt public transportation services and endanger the public's health, safety, or welfare, and upon the request of either party to the dispute, the Governor may appoint a board to investigate the issues involved in the dispute and to make a written report to him or her within seven days. The report shall include a statement of the facts with respect to the dispute, including the respective positions of the parties, but shall not contain recommendations. The report shall be made available to the public.

(b) Any strike or lockout during the period of investigation of the board appointed pursuant to this section is prohibited.

3613. The board of investigation shall be composed of no more than five members, one of whom shall be designated by the

Governor as chairperson. Members of the board shall receive one hundred dollars ($100) for each day actually spent by them in the work of the board and shall receive their actual and necessary expenses incurred in the performance of their duties.

The board may hold public hearings to ascertain the facts with respect to the causes and circumstances of the dispute. For the purpose of any hearing or investigation, the board may summon and subpoena witnesses, require the production of papers, books, accounts, reports, documents, records, and papers of any kind and description, to issue subpoenas, and to take all necessary means to compel the attendance of witnesses and procure testimony.

3614. Upon receiving a report from a board of investigation, the Governor may request the Attorney General to, and he or she shall, petition any court of competent jurisdiction to enjoin the strike or lockout or the continuing thereof, for a period of 60 days. The court shall issue an order enjoining the strike or lockout, or the continuation thereof, if the court finds that the threatened or actual strike or lockout, if permitted to occur or continue, will significantly disrupt public transportation services and endanger the public's health, safety, or welfare.

3615. If the charter or establishing legislation of the local agency establishes a time period for the negotiating or meeting and conferring process which is shorter than 60 days, the provisions of this chapter shall not be applicable to any disputes which may arise between the exclusive bargaining representative of public transit employees and the local agency.

3616. Except as expressly provided by subdivision (b) of Section 3612 and Section 3614, nothing in this chapter shall be construed to grant or deprive employees of a right to strike.

SEC. 15. Section 5924 of the Government Code, as amended by Section 1 of Chapter 646 of the Statutes of 2009, is amended to read:

5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement, as specified in paragraph (2), that is entered into by the state

pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.

(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.

(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur fees, costs, and other similar expenses under or in connection with any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.

(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed 3 percent.

(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.

~~(c) This section shall become inoperative on June 30, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.~~

SEC. 16. Section 5924 of the Government Code, as added by Section 2 of Chapter 633 of the Statutes of 2009, is repealed.

~~5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement,~~

~~as specified in paragraph (2), that is entered into by the state pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.~~

~~(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.~~

~~(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur fees, costs, and other similar expenses under or in connection with any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.~~

~~(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the percentage set forth in paragraph (1) of subdivision (g) of Section 147 of Title 26 of the United States Code enacted as of January 1, 2003.~~

~~(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.~~

~~(c) This section shall become operative June 30, 2013.~~

SEC. 17. Section 5924 of the Government Code, as added by Section 2 of Chapter 646 of the Statutes of 2009, is repealed.

~~5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement,~~

~~as specified in paragraph (2), that is entered into by the state pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.~~

~~(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.~~

~~(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur fees, costs, and other similar expenses under or in connection with any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.~~

~~(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the percentage set forth in paragraph (1) of subdivision (g) of Section 147 of Title 26 of the United States Code enacted as of January 1, 2003.~~

~~(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.~~

~~(c) This section shall become operative June 30, 2013.~~

SEC. 18. Section 8169.7 is added to the Government Code, to read:

8169.7. (a) The department may sell all or a portion of the following properties located in the County of Sacramento, City of Sacramento, State of California, and leased by the department to the Capitol Area Development Authority:

(1) Parcel 1. Approximately 0.14 acres of land, not including improvements thereon, located at 1510 14th Street, and identified by Sacramento County Assessor Parcel Number 006-0224-026.

(2) Parcel 2. Approximately 0.22 acres of land, not including improvements thereon, located at 1530 N Street and 1412 16th Street, and identified by Sacramento County Assessor Parcel Numbers 006-0231-008 and 006-0231-009.

(3) Parcel 3. Approximately 0.15 acres of land, not including improvements thereon, located at 1416 17th Street and 1631 O Street, and identified by Sacramento County Assessor Parcel Numbers 006-0233-012 and 006-0233-013.

(4) Parcel 4. Approximately 0.59 acres of land, not including improvements thereon, located at 1609 O Street, and identified by Sacramento County Assessor Parcel Number 006-0233-026.

(5) Parcel 5. Approximately 0.07 acres of land, not including improvements thereon, located at 1612 14th Street, and identified by Sacramento County Assessor Parcel Number 006-0284-011.

(6) Parcel 6. Approximately 0.30 acres of land, not including improvements thereon, located at 1616, 1622, and 1626 14th Street and 1325 and 1331 Q Street, and identified by Sacramento County Assessor Parcel Numbers 006-0284-012, 006-0284-013, 006-0284-014, 006-0284-015, and 006-0284-016.

(b) The properties shall be sold for market value, or upon terms and conditions as the director, with concurrence of the Department of Finance, determines are in the best interest of the state.

(c) The department may offer the property for sale pursuant to a public bidding process designed to obtain the highest return for the state. Any transaction based on such a bidding process shall be deemed to be the market value. The director, at the director's sole discretion, may reject all bids received if it is in the best interest of the state to do so.

(d) The department shall be reimbursed for any cost or expense incurred in the disposition of any parcels from the sale proceeds.

(e) The Director of Finance may provide a loan from the General Fund in the amount of not more than two hundred thousand dollars ($200,000) to augment Item 1760-001-0002 of Section 2.00 of the Budget Act of 2012 and may adjust the amounts appropriated in Item 1760-001-0002 of Section 2.00 of the Budget Act of 2012, for the purposes of supporting the management of the state's real property footprint reduction to accommodate any increase in workload or other costs to the department in implementing this section.

(f) The disposition of the properties shall be made on an "as is" basis, and any sale 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.

(g) As to any property sold pursuant to this section, the director shall except and reserve to the state all mineral deposits possessed by the state, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

(h) The disposition of the properties pursuant to this section shall not constitute a sale or other disposition of surplus state property pursuant to Section 11011.

(i) The net proceeds of any moneys received from the disposition of any parcels described in this section shall be deposited in the General Fund or the Deficit Recovery Fund as determined by the Department of Finance.

SEC. 19. Section 8240 of the Government Code is amended to read:

8240. The Legislature finds and declares that despite the fact that women apparently have greater equality in California than in many states, they still are not able to contribute to society according to their full potential. With a view to developing recommendations which will enable women to make the maximum contribution to society, the Legislature has created the Commission on the Status of Women *and Girls*.

SEC. 20. Section 8241 of the Government Code is amended to read:

8241. *(a)* There is in the state government the Commission on the Status of Women *and Girls*. The commission shall consist of 17 ~~members: three~~ *members to be appointed as follows:*

(1) Three Members of the Senate and one public member appointed by the Senate Committee on Rules~~, three~~.

(2) Three Members of the Assembly and one public member appointed by the Speaker~~, the~~.

(3) One public member appointed by the Superintendent of Public Instruction, *and* the Chief of the Division of Industrial Welfare in the Department of Industrial Relations~~, and seven~~.

(4) Seven public members appointed by the Governor, with the consent of the Senate.~~ The~~

(b) The Members of the Legislature shall serve at the pleasure of the appointing powers.

~~Public~~

(c) Public member appointees of the Speaker and the Senate Committee on Rules, and appointees of the Governor shall serve four-year terms. All persons appointed pursuant to Section 2 of Chapter 1378 of the Statutes of 1965, as amended by Chapter 382 of the Statutes of 1973, shall continue in office until the expiration of their term and the appointment of their successors. The appointing powers may reappoint a member whose term has expired, and shall immediately fill any vacancy for the unexpired portion of the term in which it occurs. *The appointing powers shall, in making appointments of public members to the commission, make every effort to ensure that there is a geographic balance of representation on the commission.*

~~All~~

(d) All appointees shall hold office until the appointment of their successors.

SEC. 21. Section 8245 of the Government Code is amended to read:

8245. (a) The commission shall study~~ the following:~~ *the following policy areas, including, but not limited to, for the purpose of examining any laws, practices, or conditions concerning or affecting women and girls which impose special limitations or burdens upon them or upon society, or which limit or tend to limit opportunities available to women and girls:*

(1) Gender equity in the media.

(2) Educational needs of women and girls.

(3) Gender in the workplace and employment.

(4) Health and safety of women and girls.

(5) Women in the military, women veterans, and military families.

~~(1) Women's educational and employment problems, needs, and opportunities.~~

~~(2)~~

(6) State laws in regard to the civil and political rights of women, including pensions, tax requirements, property rights, marriage and dissolution of marriage provisions, and similar matters.

~~(3)~~

(7) The effect of social attitudes and pressures and economic considerations in shaping the roles to be assumed by women in the society.

~~(4) Any laws, practices, or conditions concerning or affecting women which impose special limitations or burdens upon them or upon society, or which limit or tend to limit opportunities available to women.~~

(b) The commission shall act as an information center on ~~the status of women and women's educational, employment, and other related needs~~ *issues that affect the lives of women and girls*.

(c) The commission shall recommend, develop, prepare, or coordinate materials, projects, or other activities, and shall give technical and consultative advice to public or private groups or persons concerned with any of the following:

(1) Preventing or minimizing problems brought about by the changing roles and responsibilities of women.

(2) Developing programs to encourage and enable women to be fully contributing members of society.

(d) The commission shall develop a strategy to attract financial support from private donors in order to reduce the commission's dependence on state funding.

~~(d)~~

(e) A prime function of the commission shall be to encourage women's *and girls'* organizations and other groups to institute local self-help activities designed to meet women's educational, employment, and related needs. The commission shall make reports on its activities, findings, and recommendations to the Legislature from time to time, but not less often than every odd-numbered year.

SEC. 22. Article 1 (commencing with Section 8260) of Chapter 3.5 of Division 1 of Title 2 of the Government Code is repealed.

SEC. 23. Section 8879.58 of the Government Code is amended to read:

8879.58. (a) (1) No later than September 1 of the first fiscal year in which the Legislature appropriates funds from the Transit System Safety, Security, and Disaster Response Account, and no

later than September 1 of each fiscal year thereafter in which funds are appropriated from that account, the Controller shall develop and make public a list of eligible agencies and transit operators and the amount of funds each is eligible to receive from the account pursuant to subdivision (a) of Section 8879.57. It is the intent of the Legislature that funds allocated to specified recipients pursuant to this section provide each recipient with the same proportional share of funds as the proportional share each received from the allocation of State Transit Assistance funds, pursuant to Sections 99313 and 99314 of the Public Utilities Code, over fiscal years 2004–05, 2005–06, and 2006–07.

(2) In establishing the amount of funding each eligible recipient is to receive under subdivision (a) of Section 8879.57 from appropriated funds to be allocated based on Section 99313 of the Public Utilities Code, the Controller shall make the following computations:

(A) For each eligible recipient, compute the amounts of State Transit Assistance funds allocated to that recipient pursuant to Section 99313 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(B) Compute the total statewide allocation of State Transit Assistance funds pursuant to Section 99313 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(C) Divide subparagraph (A) by subparagraph (B).

(D) For each eligible recipient, multiply the allocation factor computed pursuant to subparagraph (C) by 50 percent of the amount available for allocation pursuant to subdivision (a) of Section 8879.57.

(3) In establishing the amount of funding each eligible recipient is eligible to receive under subdivision (a) of Section 8879.57 from funds to be allocated based on Section 99314 of the Public Utilities Code, the Controller shall make the following computations:

(A) For each eligible recipient, compute the amounts of State Transit Assistance funds allocated to that recipient pursuant to Section 99314 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(B) Compute the total statewide allocation of State Transit Assistance funds pursuant to Section 99314 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(C) Divide subparagraph (A) by subparagraph (B).

(D) For each eligible recipient, multiply the allocation factor computed pursuant to subparagraph (C) by 50 percent of the amount available for allocation pursuant to subdivision (a) of Section 8879.57.

(4) The Controller shall notify eligible recipients of the amount of funding each is eligible to receive pursuant to subdivision (a) of Section 8879.57 for the duration of time that these funds are made available for these purposes based on the computations pursuant to subparagraph (D) of paragraph (2) and subparagraph (D) of paragraph (3).

(b) Prior to seeking a disbursement of funds for an eligible project, an agency or transit operator on the public list described in paragraph (1) of subdivision (a) shall submit to the California Emergency Management Agency a description of the project it proposes to fund with its share of funds from the account. The description shall include all of the following:

(1) A summary of the proposed project that describes the safety, security, or emergency response benefit that the project intends to achieve.

(2) That the useful life of the project shall not be less than the required useful life for capital assets specified in subdivision (a) of Section 16727.

(3) The estimated schedule for the completion of the project.

(4) The total cost of the proposed project, including identification of all funding sources necessary for the project to be completed.

(c) After receiving the information required to be submitted under subdivision (b), the agency shall review the information to determine all of the following:

(1) The project is consistent with the purposes described in subdivision (h) of Section 8879.23.

(2) The project is an eligible capital expenditure, as described in subdivision (a) of Section 8879.57.

(3) The project is a capital improvement that meets the requirements of paragraph (2) of subdivision (b).

(4) The project, or a useful component thereof, is, or will become, fully funded with an allocation of funds from the Transit System Safety, Security, and Disaster Response Account.

(d) (1) Upon conducting the review required in subdivision (c) and determining that a proposed project meets the requirements

of that subdivision, the agency shall, on a quarterly basis, provide the Controller with a list of projects and the sponsoring agencies or transit operators eligible to receive an allocation from the account.

(2) The list of projects submitted to the Controller for allocation for any one fiscal year shall be constrained by the total amount of funds appropriated by the Legislature for the purposes of this section for that fiscal year.

(3) For a fiscal year in which the number of projects submitted for funding under this section exceeds available funds, the agency shall prioritize projects contained on the lists submitted pursuant to paragraph (1) so that (A) projects addressing the greatest risks to the public *and that demonstrate the ability and intent to expend a significant percentage of project funds within six months* have the highest priority and (B) to the maximum extent possible, the list reflects a distribution of funding that is geographically balanced.

(e) Upon receipt of the information from the agency required by subdivision (d), the Controller's office shall commence any necessary actions to allocate funds to eligible agencies and transit operators sponsoring projects on the list of projects, including, but not limited to, seeking the issuance of bonds for that purpose. The total allocations to any one eligible agency or transit operator shall not exceed that agency's or transit operator's share of funds from the account pursuant to the formula contained in subdivision (a) of Section 8879.57.

(f) During each fiscal year that an agency or transit operator receives funds pursuant to this section, the California Emergency Management Agency may monitor the project expenditures to ensure compliance with this section.

~~(f)~~

(g) The Controller's office may, pursuant to Section 12410, use its authority to audit the use of state bond funds on projects receiving an allocation under this section. Each eligible agency or transit operator sponsoring a project subject to an audit shall provide any and all data requested by the Controller's office in order to complete the audit. The Controller's office shall transmit copies of all completed audits to the agency and to the policy committees of the Legislature with jurisdiction over transportation and budget issues.

SEC. 24. Section 8879.59 of the Government Code is amended to read:

8879.59. (a) For funds appropriated from the Transit System Safety, Security, and Disaster Response Account for allocation to transit agencies eligible to receive funds pursuant to subdivision (b) of Section 8879.57, the California Emergency Management Agency (Cal EMA) shall administer a grant application and award program for those transit agencies.

(b) Funds awarded to transit agencies pursuant to this section shall be for eligible capital expenditures as described in subdivision (b) of Section 8879.57.

(c) Prior to allocating funds to projects pursuant to this section, Cal EMA shall adopt guidelines to establish the criteria and process for the distribution of funds described in this section. Prior to adopting the guidelines, Cal EMA shall hold a public hearing on the proposed guidelines.

(d) For each fiscal year in which funds are appropriated for the purposes of this section, Cal EMA shall issue a notice of funding availability no later than October 1.

(e) No later than December 1 of each fiscal year in which the notice in subdivision (d) is issued, eligible transit agencies may submit project nominations for funding to Cal EMA for its review and consideration. Project nominations shall include all of the following:

(1) A description of the project, which shall illustrate the physical components of the project and the security or emergency response benefit to be achieved by the completion of the project.

(2) Identification of all nonbond sources of funding committed to the project.

(3) An estimate of the project's full cost and the proposed schedule for the project's completion.

(f) For a fiscal year in which the number of projects submitted for funding under this section exceeds available funds, Cal EMA shall prioritize projects so that projects addressing the greatest risks to the public and that demonstrate the ability and intent to expend a significant percentage of project funds within six months have the highest priority.

~~(f)~~

(g) No later than February 1, Cal EMA shall select eligible projects to receive grants under this section and shall provide the

Controller with a list of the projects and the sponsoring agencies eligible to receive an allocation from the account. Upon receipt of this information, the Controller's office shall commence any necessary actions to allocate funds to those agencies, including, but not limited to, seeking the issuance of bonds for that purpose. Grants awarded to eligible transit agencies pursuant to subdivision (b) of Section 8879.57 shall be for eligible capital expenditures, as described in paragraph (2) of subdivision (b) of that section.

(h) During each fiscal year that a transit agency receives funds pursuant to this section, Cal EMA may monitor the project expenditures to ensure project funds are expended in compliance with the submitted project nomination.

SEC. 25. Section 10210 of the Government Code is amended to read:

10210. ~~Neither~~ *Subject to Article 3 (commencing with Section 10270), neither* the Legislative Counsel nor any employee of the bureau shall oppose or urge legislation.

SEC. 26. Article 3 (commencing with Section 10270) is added to Chapter 1 of Part 2 of Division 2 of Title 2 of the Government Code, to read:

Article 3. Commission on Uniform State Laws

10270. There is, in the Legislative Counsel Bureau, the Commission on Uniform State Laws.

10271. (a) The commission consists of one Member of the Senate, appointed by the Senate Committee on Rules; one Member of the Assembly, appointed by the Speaker of the Assembly; six additional members, appointed by the Governor; the Legislative Counsel; any person, not otherwise a member of the commission, elected as a life member of the National Conference of Commissioners on Uniform State Laws based upon service as a member of the commission; and any person, not otherwise a member of the commission, who served as a member of the commission, other than as an appointee of the Governor, for a period of at least five years.

(b) The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their positions as

Members of the Legislature. For the purposes of this article, the Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article, and shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

10272. Each appointed member of the commission shall be any of the following:

(a) A member in good standing of the State Bar of California.

(b) A person admitted to practice before the highest court of any other state of the United States.

(c) A judge of a court of record in this state.

10273. Each member appointed by the Governor to the commission shall hold office for a term of four years and until the appointment and qualification of a successor.

10274. When a vacancy occurs in an office filled by appointment by the Governor, the Governor shall appoint a person to the office for the balance of the unexpired term.

10275. A member of the commission is eligible for reappointment.

10276. A member of the commission shall not receive compensation for services as a member, but shall receive one hundred dollars ($100) for each day while on official business of the commission. In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including actual and necessary travel expenses.

10277. The commission may participate in the work of the National Conference of Commissioners on Uniform State Laws, and the Legislative Counsel may allocate funds to cover the commission's proportionate share of the expenses of the National Conference of Commissioners on Uniform State Laws. This proportionate share shall be based upon the population of the state in comparison to that of other states.

10278. The commission shall meet at some place in the state at least once every two years. The commission shall elect one of its members as chairperson and another as secretary, who shall hold their respective offices for a term of two years, and until their successors are elected and qualified.

10279. The members of the commission shall attend the meetings of the National Conference of Commissioners on Uniform

State Laws. The attendance of a member at this meeting is an excused or authorized absence from employment.

10280. The commission shall do all in its power to promote uniformity in state laws upon all subjects where uniformity is deemed desirable and practicable.

10281. The commission shall bring about, as far as practicable, the passage of the various uniform acts recommended by the National Conference of Commissioners on Uniform State Laws, and shall devise and recommend additional legislation or other course of action as is deemed necessary to accomplish the purposes of this article.

10282. The commission shall report to the Legislature from time to time as the commission deems desirable and practicable, giving an account of its transactions and its advice and recommendations for legislation.

SEC. 27. Section 11139.5 of the Government Code is amended to read:

11139.5. The Secretary of ~~the Health and Welfare Agency~~ *California Health and Human Services*, with the advice and concurrence of the *Department of* Fair Employment and Housing ~~Commission~~, shall establish standards for determining which persons are protected by this article and standards for determining what practices are discriminatory. The secretary, with the cooperation of the *Department of* Fair Employment and Housing ~~Commission~~, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

SEC. 28. Section 11270 of the Government Code is amended to read:

11270. As used in this article, "administrative costs" means the amounts expended by the Legislature, the Legislative Counsel Bureau, the ~~office of the Governor~~ *Governor's Office*, the ~~office of the State Chief Information Officer~~ *California Technology Agency*, the Office of Planning and Research, the Department of Justice, the ~~office of the Controller~~ *State Controller's Office*, the ~~office of the Treasurer~~ *State Treasurer's Office*, the State Personnel Board, the Department of Finance, *the Financial Information System for California*, the Office of Administrative Law, the

Department of ~~Personnel Administration~~ *Human Resources*, the Secretary of the State and Consumer Services Agency, the Secretary of the California Health and Human Services Agency, the Bureau of State Audits, and the California State Library, and a proration of any other cost to or expense of the state for services or facilities provided for the Legislature and the above agencies, for supervision or administration of the state government or for services to other state agencies.

SEC. 29. Section 11532 of the Government Code is amended to read:

11532. For purposes of this chapter, the following terms shall have the following meanings, unless the context requires otherwise:

~~(a) "Board member" means a member of the Technology Services Board.~~

~~(b) "Board" means the Technology Services Board created pursuant to Section 11535.~~

~~(c)~~

(a) "Director" means the Director of the Office of Technology Services.

~~(d)~~

(b) "Technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, and business telecommunications systems and services.

~~(e)~~

(c) "Business telecommunications systems and services" includes, but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite facilities, equipment, system controls, simulation, electronic commerce, and all related interactions between people and machines. Public safety communications are excluded from this definition.

~~(f)~~

(d) "Public agencies" include, but are not limited to, all state and local governmental agencies in the state, including cities, counties, other political subdivisions of the state, state departments, agencies, boards, and commissions, and departments, agencies, boards, and commissions of other states and federal agencies.

SEC. 30. Section 11535 of the Government Code is repealed.

~~11535. (a) There is, in the Office of Technology Services, the Technology Services Board.~~

~~(b) The board shall consist of 13 members, as follows:~~

~~(1) The Secretary of California Technology, who shall serve as the chair of the board.~~

~~(2) The Director of Finance, who shall serve as vice chair of the board.~~

~~(3) The Controller.~~

~~(4) The Secretary of Food and Agriculture, the Secretary of Business, Transportation and Housing, the Secretary of the Department of Corrections and Rehabilitation, the Secretary for Environmental Protection, the Secretary of California Health and Human Services, the Secretary of Labor and Workforce Development, the Secretary of the Natural Resources Agency, the Secretary of State and Consumer Services, and the Secretary of Veterans Affairs.~~

~~(5) The Secretary of California Emergency Management.~~

SEC. 31. Section 11536 of the Government Code is repealed.

~~11536. The board shall meet not less than once each quarter. A quorum shall consist of seven members of the board. All decisions of the board shall be made by a majority vote of a quorum of the board.~~

SEC. 32. Section 11537 of the Government Code is repealed.

~~11537. (a) The Secretary of California Technology shall engage an independent firm of certified public accountants to conduct an annual financial audit of all accounts and transactions of the Office of Technology Services. The audit shall be conducted in accordance with generally accepted government auditing standards. The audited financial statements shall be presented to the board, the Governor, and the Legislature not more than 120 days after the submittal of the annual financial statements.~~

~~(b) The Secretary of California Technology may arrange for other audits as are necessary or prudent to ensure proper oversight and management of the Office of Technology Services.~~

SEC. 33. Section 11538 of the Government Code is amended to read:

11538. The director shall be appointed by, and serve at the pleasure of, the Governor, subject to Senate confirmation. ~~The director shall act as executive officer of the board.~~

SEC. 34. Section 11540 of the Government Code is amended to read:

~~11540. (a) The director shall propose for board consideration and approval an annual budget for the Office of Technology Services' operations.~~

~~(b)~~

11540. The Secretary of California Technology shall propose ~~for board consideration~~ *to the Director of Finance* rates for Office of Technology Services' services based on a formal rate methodology~~ approved by the board. At least 60 days before submitting proposed rates to the board, the Secretary of California Technology shall submit the proposed rates to the Department of Finance. Submittal of the rates to the Department of Finance shall be in a format and timeframe determined by the Department of Finance. The Department of Finance shall prepare a report for the board evaluating the reasonableness of the proposed rates and any significant impact the Office of Technology Services' rates are likely to have upon the budgets of other departments~~. *The Director of Finance shall approve the proposal based on the reasonableness of the rates and any significant impact on departmental budgets. The secretary and the Director of Finance shall coordinate to develop policies and procedures to implement this section, including, but not limited to, the format and timeframe of the rate proposal.*

SEC. 35. Section 11543 of the Government Code is repealed.

~~11543. (a) The Secretary of California Technology shall confer as frequently as necessary or desirable, but not less than once every quarter, with the board, on the operation and administration of the Office of Technology Services. The Secretary of California Technology shall make available for inspection by the board or any board member, upon request, all books, records, files, and other information and documents of the Office of Technology Services and recommend any matters as he or she deems necessary and advisable to improve the operation and administration of the Office of Technology Services.~~

~~(b) The Secretary of California Technology shall make and keep books and records to permit preparation of financial statements in conformity with generally accepted accounting principles and any state policy requirements.~~

SEC. 36. Section 11544 of the Government Code is amended to read:

11544. (a) The Technology Services Revolving Fund, hereafter known as the fund, is hereby created within the State Treasury. The fund shall be administered by the ~~State Chief Information Officer~~ *Secretary of California Technology* to receive all revenues from the sale of technology or technology services provided for in this chapter, for other services rendered by the ~~office of the State Chief Information Officer~~ *California Technology Agency*, and all other moneys properly credited to the ~~office of the State Chief Information Officer~~ *California Technology Agency* from any other source, to pay, upon appropriation by the Legislature, all costs arising from this chapter and rendering of services to state and other public agencies, including, but not limited to, employment and compensation of necessary personnel and expenses, such as operating and other expenses of the ~~board and the office of the State Chief Information Officer~~ *California Technology Agency*, and costs associated with approved information technology projects, and to establish reserves. At the discretion of the ~~State Chief Information Officer~~ *Secretary of California Technology*, segregated, dedicated accounts within the fund may be established. The amendments made to this section by the act adding this sentence shall apply to all revenues earned on or after July 1, 2010.

(b) The fund shall consist of all of the following:

(1) Moneys appropriated and made available by the Legislature for the purposes of this chapter.

(2) Any other moneys that may be made available to the ~~office of the State Chief Information Officer~~ *California Technology Agency* from any other source, including the return from investments of moneys by the Treasurer.

(c) The ~~office of the State Chief Information Officer~~ *California Technology Agency* may collect payments from public agencies for providing services to those agencies that the agencies have requested from the ~~office of the State Chief Information Officer~~ *California Technology Agency*. The ~~office of the State Chief Information Officer~~ *California Technology Agency* may require monthly payments by client agencies for the services the agencies have requested. Pursuant to Section 11255, the Controller shall transfer any amounts so authorized by the ~~office of the State Chief Information Officer~~ *California Technology Agency*, consistent

with the annual budget of each department, to the fund. The ~~office of the State Chief Information Officer~~ *California Technology Agency* shall notify each affected state agency upon requesting the Controller to make the transfer.

(d) At the end of any fiscal year, if the balance remaining in the fund at the end of that fiscal year exceeds 25 percent of the portion of the ~~office of the State Chief Information Officer's~~ *California Technology Agency's* current fiscal year budget used for support of data center and other client services, the excess amount shall be used to reduce the billing rates for services rendered during the following fiscal year.

SEC. 37. Section 11546 of the Government Code is amended to read:

11546. (a) The California Technology Agency shall be responsible for the approval and oversight of information technology projects, which shall include, but are not limited to, all of the following:

(1) Establishing and maintaining a framework of policies, procedures, and requirements for the initiation, approval, implementation, management, oversight, and continuation of information technology projects. *Unless otherwise required by law, a state department shall not procure oversight services of information technology projects without the approval of the California Technology agency.*

(2) Evaluating information technology projects based on the business case justification, resources requirements, proposed technical solution, project management, oversight and risk mitigation approach, and compliance with statewide strategies, policies, and procedures. Projects shall continue to be funded through the established Budget Act process.

(3) Consulting with agencies during initial project planning to ensure that project proposals are based on well-defined programmatic needs, clearly identify programmatic benefits, and consider feasible alternatives to address the identified needs and benefits consistent with statewide strategies, policies, and procedures.

(4) Consulting with agencies prior to project initiation to review the project governance and management framework to ensure that it is best designed for success and will serve as a resource for agencies throughout the project implementation.

(5) Requiring agencies to provide information on information technology projects including, but not limited to, all of the following:

(A) The degree to which the project is within approved scope, cost, and schedule.

(B) Project issues, risks, and corresponding mitigation efforts.

(C) The current estimated schedule and costs for project completion.

(6) Requiring agencies to perform remedial measures to achieve compliance with approved project objectives. These remedial measures may include, but are not limited to, any of the following:

(A) Independent assessments of project activities, the cost of which shall be funded by the agency administering the project.

(B) Establishing remediation plans.

(C) Securing appropriate expertise, the cost of which shall be funded by the agency administering the project.

(D) Requiring additional project reporting.

(E) Requiring approval to initiate any action identified in the approved project schedule.

(7) Suspending, reinstating, or terminating information technology projects. The agency shall notify the Joint Legislative Budget Committee of any project suspension, reinstatement, and termination within 30 days of that suspension, reinstatement, or termination.

(8) Establishing restrictions or other controls to mitigate nonperformance by agencies, including, but not limited to, any of the following:

(A) The restriction of future project approvals pending demonstration of successful correction of the identified performance failure.

(B) The revocation or reduction of authority for state agencies to initiate information technology projects or acquire information technology or telecommunications goods or services.

(b) The California Technology Agency shall have the authority to delegate to another agency any authority granted under this section based on its assessment of the agency's project management, project oversight, and project performance.

SEC. 38. Section 12531 is added to the Government Code, to read:

12531. (a) The Legislature finds and declares that California, represented by the California Attorney General, entered a national multistate settlement with the country's five largest loan servicers. This agreement, the National Mortgage Settlement stemmed from successful resolution of federal court action (Consent Judgment, United States v. Bank of America (No. 1:12-cv-00361, Banzr. D.C. Apr. 4, 2012). The National Mortgage Settlement is broad ranging, with California's share of this settlement estimated to be up to eighteen billion dollars ($18,000,000,000). Of this amount, approximately four hundred ten million dollars ($410,000,000) will come directly to the state in costs, fees, and penalty payments.

(b) There is hereby created in the State Treasury the National Mortgage Special Deposit Fund. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are hereby continuously appropriated, and shall be allocated by the Department of Finance.

(c) Direct payments made to the State of California as civil penalties pursuant to the National Mortgage Settlement shall be deposited in the Unfair Competition Law Fund as required by the settlement.

(d) Direct payments made to the State of California pursuant to the National Mortgage Settlement, except for those payments made pursuant to subdivision (c), shall be deposited in the National Mortgage Special Deposit Fund.

(e) Notwithstanding any other law, the Director of Finance may allocate or otherwise use the funds in the National Mortgage Special Deposit Fund to offset General Fund expenditures in the 2011–12, 2012–13, and 2013–14 fiscal years. The Department of Finance and the Controller's office shall recognize this fiscal alignment accordingly for the purpose of the state budget process and legal basis of accounting.

(f) Not less than 30 days prior to allocating any moneys pursuant to subdivision (e), the Department of Finance shall submit an expenditure plan to the Joint Legislative Budget Committee detailing the proposed use of the moneys in the National Mortgage Special Deposit Fund.

(g) Notwithstanding any other law, the Controller may use the funds in the National Mortgage Special Deposit Fund for cashflow loans to the General Fund as provided in Sections 16310 and 16381.

SEC. 39. Section 12804 of the Government Code is amended to read:

12804. The Agriculture and Services Agency is hereby renamed the State and Consumer Services Agency.

The State and Consumer Services Agency consists of the following: the Department of General Services; the Department of Consumer Affairs; the Franchise Tax Board; the Public Employees' Retirement System; the State Teachers' Retirement System; the Department of Fair Employment and Housing; ~~the Fair Employment and Housing Commission;~~ the California Science Center; the California Victim Compensation and Government Claims Board; the California African American Museum; the California Building and Standards Commission; the Alfred E. Alquist Seismic Safety Commission; and the Office of Privacy Protection.

SEC. 40. Section 12901 of the Government Code is amended to read:

12901. *(a)* There is in the state government, in the State and Consumer Services Agency, the Department of Fair Employment and Housing. The department is under the direction of an executive officer known as the Director of Fair Employment and Housing, who is appointed by the Governor, subject to confirmation by the Senate, and who holds office at the pleasure of the Governor. The annual salary of the director is provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2.

(b) Unless the context clearly requires otherwise, whenever the term "Fair Employment and Housing Commission" appears in any statute, regulation, or contract, it shall be deemed to refer to the Department of Fair Employment and Housing, and whenever the term "executive secretary of the Fair Employment and Housing Commission" appears in statute, regulation, or contract, it shall be deemed to refer to the Director of the Department of Fair Employment and Housing. Whenever the term "commission" appears in any statute in reference to the Fair Employment and Housing Commission, it shall be deemed to refer to either the Department of Fair Employment and Housing or the Director of the Department of Fair Employment and Housing, as the context requires.

SEC. 41. Section 12903 of the Government Code is amended to read:

12903. There is in the ~~State and Consumer Services Agency~~ *Department of Fair Employment and Housing* the Fair Employment and Housing ~~Commission~~ *Council*. The ~~commission~~ *council* shall consist of seven members, to be known as ~~commissioners~~ *council members*, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated as chairperson by the Governor. The term of office of each member of the ~~commission~~ *council* shall be for four years.

SEC. 42. Section 12904 of the Government Code is amended to read:

12904. Any member chosen to fill a vacancy on the ~~commission~~ *council* occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed. Four members of the ~~commission~~ *council* shall constitute a quorum for the purpose of conducting the business thereof.

SEC. 43. Section 12905 of the Government Code is amended to read:

12905. Each member of the ~~commission~~ *council* shall serve without compensation but shall receive one hundred dollars ($100) for each day actually spent in the performance of his or her duties under this part and shall also be entitled to his or her expenses actually and necessarily incurred in the performance of his or her duties.

SEC. 44. Section 12906 of the Government Code is amended to read:

12906. Any member of the ~~commission~~ *council* may be removed by the Governor for inefficiency, for neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

SEC. 45. Section 12907 is added to the Government Code, to read:

12907. (a) The Fair Employment and Housing Enforcement and Litigation Fund is hereby established in the State Treasury, to be administered by the Department of Fair Employment and Housing.

(b) The fund shall consist of attorney's fees and costs the court has awarded to the Department of Fair Employment and Housing

when the department is the prevailing party in a civil action brought under the California Fair Employment and Housing Act.

(c) Upon appropriation by the Legislature in the annual Budget Act, moneys in the fund may be used by the department to support training and outreach to employers, housing providers, and business owners on the mandates of the California Fair Employment and Housing Act and to investigate, resolve, or prosecute any matter within the department's authority.

(d) Upon order of the Director of Finance, moneys in the fund may be transferred to the General Fund to offset the costs of the Department of Fair Employment and Housing.

SEC. 46. Section 12925 of the Government Code is amended to read:

12925. As used in this part, unless a different meaning clearly appears from the context:

(a) ~~"Commission"~~ "*Council*" means the Fair Employment and Housing ~~Commission~~ *Council* and ~~"commissioner"~~ "*council member*" means a member of the ~~commission~~ *council*.

(b) "Department" means the Department of Fair Employment and Housing.

(c) "Director" means the Director of Fair Employment and Housing.

(d) "Person" includes one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries.

SEC. 47. Section 12930 of the Government Code is amended to read:

12930. The department shall have the following functions, powers, and duties:

(a) To establish and maintain a principal office and any other offices within the state as are necessary to carry out the purposes of this part.

(b) To meet and function at any place within the state.

(c) To appoint attorneys, investigators, conciliators, and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To obtain upon request and utilize the services of all governmental departments and agencies and, in addition, with respect to housing discrimination, of conciliation councils.

(e) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the functions and duties of the department ~~pursuant to~~*, and to interpret, implement, and apply all provisions of* this part.

(f) (1) To receive, investigate,~~ and~~ conciliate*, mediate, and prosecute* complaints alleging practices made unlawful pursuant to Chapter 6 (commencing with Section 12940).

(2) To receive, investigate,~~ and~~ conciliate*, mediate, and prosecute* complaints alleging a violation of Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(g) In connection with any matter under investigation or in question before the department pursuant to a complaint filed under Section 12960, 12961, or 12980:

(1) To issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials.

(2) To administer oaths, examine witnesses under oath and take evidence, and take depositions and affidavits.

(3) To issue written interrogatories.

(4) To request the production for inspection and copying of books, records, documents, and physical materials.

(5) To petition the superior courts to compel the appearance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories.

(h) To~~ issue accusations~~ *bring civil actions* pursuant to Section 12965 or 12981 and to prosecute those~~ accusations~~ *civil actions* before~~ the commission~~ *state and federal trial and appellate courts*.

(i) To issue those publications and those results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in employment on the bases enumerated in this part and discrimination in housing because of race, religious creed, color, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, familial status, disability, genetic information, or sexual orientation.

(j) To investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 12990.

(k) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.

(l) To conduct mediations at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may end mediation at any time to pursue an investigation.

(m) To create or provide technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the basis enumerated in this part, or in specific instances of housing discrimination because of race, religious creed, color, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, familial status, disability, genetic information, or sexual orientation, and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations for the development of policies and procedures in general. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

SEC. 48. Section 12935 of the Government Code is amended to read:

12935. The ~~commission~~ *council* shall have the following functions, powers, and duties:

(a) To ~~adopt, promulgate, amend, and rescind~~ *assist the department in adopting, promulgating, amending, and rescinding* suitable rules, regulations, and standards ~~(1) to interpret, implement, and apply all provisions of this part, (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12981, and (3) to carry out all other functions and duties of the commission pursuant to this part.~~ *that do both of the following:*

(1) Interpret, implement, and apply all provisions of this part.

(2) Carry out all other functions and duties of the department pursuant to this part.

~~(b) To conduct hearings pursuant to Sections 12967 and 12981.~~

~~(c) To conduct mediations at the request of the department at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may withdraw a request for mediation at any time to pursue an investigation.~~

~~(d) To establish and maintain a principal office within the state and to meet and function at any place within the state.~~

~~(e) To appoint an executive secretary, and any attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.~~

~~(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.~~

~~(g)~~

(b) To create or provide ~~financial or~~ technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination because of race, religious creed, color, national origin, ancestry, familial status, disability, genetic information, marital status, sex, gender, gender identity, gender expression, or sexual orientation and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the commission for the development of policies and procedures in general. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

~~(h) With respect to findings and orders made pursuant to this part, to establish a system of published opinions that shall serve as precedent in interpreting and applying the provisions of this part. Commission findings, orders, and opinions in an adjudicative proceeding are subject to Section 11425.60.~~

~~(i)~~

(c) To issue publications ~~and~~, results of inquiries and research, *and reports to the Governor and the Legislature* that, in its judgment, will tend to promote good will ~~and~~, minimize or eliminate unlawful discrimination, *or advance civil rights in the State of California*. ~~These publications shall include an annual report to the Governor and the Legislature of its activities and recommendations.~~

~~(j) Notwithstanding Sections 11370.3 and 11502, to appoint administrative law judges, as it may deem necessary, to conduct hearings and mediations. Each administrative law judge shall possess the qualifications established by the State Personnel Board for the particular class of position involved. The hearing officers of the commission shall become administrative law judges on January 1, 2005.~~

SEC. 49. Section 12944 of the Government Code is amended to read:

12944. (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, gender, gender identity, gender expression, age, medical condition, genetic information, physical disability, mental disability, or sexual orientation, unless the practice can be demonstrated to be job related.

~~Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted.~~

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the ~~commission~~ *department*, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, sex, gender, gender identity, gender expression, age, or sexual

orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

SEC. 50. Section 12946 of the Government Code is amended to read:

12946. It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain the records and files for a period of one year. Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the complaint is fully and finally disposed of and all appeals or related proceedings terminated. The ~~commission~~

department shall adopt suitable rules, regulations, and standards to carry out the purposes of this section. Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

SEC. 51. Section 12947.5 of the Government Code is amended to read:

12947.5. (a) It shall be an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee.

(b) Nothing in this section shall prohibit an employer from requiring employees in a particular occupation to wear a uniform.

(c) Nothing in this section shall prohibit an employer from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

(d) The ~~commission~~ *department* may exempt an employer from the requirements of this section for good cause shown and shall adopt standards and procedures for granting exemptions.

SEC. 52. Section 12950 of the Government Code is amended to read:

12950. In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section 12940 and in rules adopted by the department ~~and the commission~~, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) The department shall amend its current poster on discrimination in employment to include information relating to the illegality of sexual harassment. This amended poster shall be distributed to employers when the supply of the current poster is exhausted. One copy of the amended poster shall be provided by the department to an employer upon request. The amended poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the amended poster shall be made available online by the Department of Fair Employment and Housing. Each employer shall post the amended poster in a prominent and accessible location in the workplace.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to employees. One copy of the information sheet shall be provided

by the department to an employer upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the information sheet shall be made available online by the Department of Fair Employment and Housing. Each employer shall distribute this information sheet to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, components on the following:

(1) The illegality of sexual harassment.

(2) The definition of sexual harassment under applicable state and federal law.

(3) A description of sexual harassment, utilizing examples.

(4) The internal complaint process of the employer available to the employee.

(5) The legal remedies and complaint process available through the department ~~and the commission~~.

(6) Directions on how to contact the department ~~and the commission~~.

(7) The protection against retaliation provided by ~~Section 7287.8 of~~ Title 2 of the California Code of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department ~~or the commission~~.

(c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

~~(e) If an employer violates the requirements of this section, the commission shall issue an order requiring the employer to comply with these requirements.~~

SEC. 53. Section 12950.1 of the Government Code is amended to read:

12950.1. (a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) For purposes of this section only, “employer” means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of

itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

~~(e) If an employer violates this section, the commission shall issue an order requiring the employer to comply with these requirements.~~

~~(f)~~

(e) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

SEC. 54. Section 12963.5 of the Government Code is amended to read:

12963.5. (a) The superior courts shall have jurisdiction to compel the attendance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories. If an individual or organization fails to comply with a subpoena, interrogatory, request for production, or examination under oath by refusing to respond fully or objecting thereto, or by obstructing any proceeding before the department, the department may file with a superior court a petition for an order compelling compliance, naming as respondent the individual or organization that has failed to comply. Such an action may be brought in any county in which the department's investigation or inquiry takes place, but if the respondent is not found within any such county, such an action may be brought in the county of the respondent's residence or principal office.

(b) The petition shall describe the inquiry or investigation before the department, the basis for its jurisdiction therein, and state facts showing that the subpoena, interrogatory, request for production, or examination under oath was issued or carried out in accordance with the requirements of this part, that the information sought was identified with sufficient particularity to permit response and is reasonably relevant to the inquiry or investigation before the department, and that the respondent has failed to comply. If the

petition sets forth good cause for relief, the court shall issue an order to show cause to the respondent; otherwise the court shall enter an order denying the petition. The order to show cause shall be served, along with the department's petition, on the respondent in the same manner as summons must be served in civil actions, and the order shall be returnable not less than 10 days from its issuance nor later than 45 days after the filing of the petition. The respondent shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(c) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order granting or denying the petition. However, the court may on its own motion for good cause extend such time an additional 30 days. If the order grants the petition in whole or part, the order shall set forth the manner in which the respondent shall comply and the period of time following the effective date of the order within which such compliance is required. A copy of the order shall be served by mail by the clerk upon the parties. If the order grants the petition in whole or in part, the order shall not become effective until 10 days after it is served. If the order denies the petition, it shall become effective on the date it is served.

(d) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the superior court's order, serve and file in the appropriate court of appeal a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. If or whenever such review is sought from an order granting discovery, the order of the trial court shall be stayed upon the filing of the petition for a writ of mandamus, provided, however, the court of appeal may dissolve or modify the stay thereafter if it is in the public interest to do so. If or whenever such review is sought from a denial of discovery, the trial court's order shall not be stayed by the court of appeal except upon a clear showing of probable error.

(e) Within 15 days after the end of the compliance period specified in the final order of the superior court, after the exhaustion of any challenges to the order in higher courts, the department shall in writing certify to the court either that the order has been complied with or that the respondent has failed to comply. A copy of the certified statement shall be served on the respondent

by personal delivery or certified mail. After receipt of a certified statement indicating the respondent's failure to comply with the order, the court may compel obedience to its order by contempt proceedings, and by making such additional orders as may be appropriate. Following such proceedings, the department shall, within 15 days after the respondent complies with the original order of the court, certify in writing to the court that such order has been complied with. A copy of the certified statement shall be served on the respondent by personal delivery or certified mail.

(f) The period of time within which the department is directed to ~~file an accusation~~ *initiate a civil action* by Section 12965 shall be extended by the length of the period between the filing of a petition under this section and either (1) the final effective date, after the exhaustion of any challenges to the original order in higher courts, of an order of the superior court denying the petition, or (2) the filing by the department of a certified statement, pursuant to subdivision (e), indicating the respondent's compliance with the order of the superior court granting the petition in whole or in part, whichever occurs later.

SEC. 55. Section 12965 of the Government Code is amended to read:

12965. (a) *Prior to filing a civil action, all investigated cases shall undergo mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties.* In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, ~~or~~ persuasion, or ~~in advance thereof if circumstances warrant,~~ *mediation,* the director ~~in his or her discretion may cause to be issued~~ *may bring a civil action* in the name of the department ~~a written accusation. The accusation~~. *In this civil action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. The civil action* shall contain the name of the person, employer, labor organization, or employment agency accused, which shall be known as the ~~respondent~~ *defendant,* shall set forth the nature of the charges, shall be served upon the ~~respondent~~ *defendant* together with a copy of the verified complaint, as amended, and shall require the ~~respondent~~ *defendant* to answer the charges ~~at a hearing~~ *in the superior courts of California in any county in which unlawful practices are alleged to have been committed, in the county in*

which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office.

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, ~~and accusation~~ *mediation, or civil action* pursuant to Section 12961, ~~an accusation~~ *a civil action* shall be ~~issued~~ *brought*, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, ~~an accusation~~ *a civil action* shall be ~~issued~~ *brought*, if at all, within two years after the filing of the complaint. For all other complaints, ~~an accusation~~ *a civil action* shall be ~~issued~~ *brought*, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation ~~and accusation~~, *mediation, or civil action* as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If ~~an accusation~~ *a civil action* is not ~~issued~~ *brought* within 150 days after the filing of a complaint, or if the department earlier determines that no ~~accusation~~ *civil action* will ~~issue~~ *be brought*, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local

ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department ~~and of the commission~~. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In *civil* actions brought under this section, the court, in its discretion, may award to the prevailing party, *including the department*, reasonable attorney's fees and costs, including expert witness fees~~, except where the action is filed by a public agency or a public official, acting in an official capacity~~. *Any request for attorney's fees against the department shall be made by motion pursuant to Section 128.5 or 1021.5 of the Code of Civil Procedure.*

~~(c) (1) If an accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, the respondent may within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, the~~

~~commission, and the person claiming to be aggrieved. The commission shall prescribe the form and manner of giving written notice.~~

~~(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the superior court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.~~

~~(3)~~

(c) A court may grant as relief in any action filed pursuant to this ~~subdivision~~ *section* any relief a court is empowered to grant in a *private* civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures.

~~(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.~~

(d) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person

claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

(3) This subdivision is intended to codify the holding in Downs v. Department of Water and Power of City of Los Angeles (1997) 58 Cal.App.4th 1093.

(e) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Equal Employment Opportunity Commission to the Department of Fair Employment and Housing.

(C) After investigation and determination by the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission agrees to perform a substantial weight review of the determination of the department or conducts its own investigation of the claim filed by the aggrieved person.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) shall expire when the federal right-to-sue period to commence a civil action expires, or

one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

SEC. 56. Section 12966 of the Government Code is amended to read:

12966. Where the department ~~issues an accusation~~ *initiates a civil action*, or is about to do so, and the ~~respondent~~ *party* accused of engaging in unlawful practices under this part is a state contractor or is a supplier of goods and services to the state, the director shall send a written notice of the ~~issuance of the accusation~~ *civil action* and a copy of the ~~accusation~~ *civil complaint* to the appropriate awarding agency and request a report of any action which the awarding agency takes in response to the department's notification and ~~issuance of accusation~~ *filing of a civil action*.

SEC. 57. Section 12967 of the Government Code is repealed.

~~12967. The commission shall hold hearings on accusations issued pursuant to Section 12965 and shall determine the issues raised therein.~~

SEC. 58. Section 12968 of the Government Code is repealed.

~~12968. Hearings shall take place not more than 90 days after the issuance of the accusation upon which they are based.~~

SEC. 59. Section 12969 of the Government Code is repealed.

~~12969. The case in support of the accusation shall be presented before the commission by the attorneys or agents of the department. Any commissioner who, in regard to a particular case, shall have previously been assigned to engage in investigation or conciliation endeavors or shall otherwise have been or be personally or professionally connected with the parties or factual situation of the original complaint upon which the accusation is based, shall not participate in the hearing except as a witness and shall not give his or her opinion of the merits of the case, nor shall he or she participate in the deliberations of the commission in such case. In connection with complaints initiated by the director, the personal or professional association of the commissioners with the director shall not prohibit the commissioners from participating in the deliberations of such cases. In any hearing, the content of discussions or endeavors at conciliation shall not be received in evidence.~~

SEC. 60. Section 12970 of the Government Code is amended to read:

12970. (a) If the ~~commission~~ *court* finds that a ~~respondent~~ *defendant* has engaged in any unlawful practice under this part, it ~~it~~ shall state its findings of fact and determination and shall issue ~~and cause to be served on the parties~~ an order requiring the ~~respondent~~ *defendant* to cease and desist from the unlawful practice and to take action, including, but not limited to, any of the following:

(1) The hiring, reinstatement, or upgrading of employees, with or without backpay.

(2) The admission or restoration to membership in any ~~respondent~~ *defendant* labor organization.

(3) The payment of actual damages as may be available in *private* civil actions under this part, except as otherwise provided in this section. Actual damages include, but are not limited to, damages for emotional injuries*, including, but not limited to, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses,* if the ~~accusation~~ *civil complaint* or amended ~~accusation~~ *civil complaint* prays for those damages. ~~Actual damages awarded under this section for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses shall not exceed, in combination with the amounts of any administrative fines imposed pursuant to subdivision (c), one hundred fifty thousand dollars ($150,000) per aggrieved person per respondent.~~

~~(4) Notwithstanding paragraph (3), the payment of actual damages up to one hundred fifty thousand dollars ($150,000) assessed against a respondent for a violation of Section 51.7 of the Civil Code, as an unlawful practice under this part.~~

~~(5)~~

(4) Affirmative or prospective relief to prevent the recurrence of the unlawful practice.

~~(6)~~

(5) A report to the ~~commission~~ *department* as to the manner of compliance with the ~~commission's~~ *court's* order.

(b) An unlawful practice under this part alone is not sufficient to sustain an award of actual damages pursuant to this section. The department is required to prove, by a preponderance of the evidence, that an aggrieved person has sustained actual injury. In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the ~~commission~~ *court*

shall consider relevant evidence of the effects of discrimination on the aggrieved person with respect to any or all of the following:

(1) Physical and mental well-being.

(2) Personal integrity, dignity, and privacy.

(3) Ability to work, earn a living, and advance in his or her career.

(4) Personal and professional reputation.

(5) Family relationships.

(6) Access to the job and ability to associate with peers and coworkers.

The ~~commission~~ *court* shall also consider the duration of the emotional injury, and whether that injury was caused or exacerbated by an aggrieved person's knowledge of a ~~respondent's~~ *defendant's* failure to respond adequately to, or to correct, the discriminatory practice or by the egregiousness of the discriminatory practice.

(c) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the ~~commission~~ *court* may assess *punitive damages* against the ~~respondent~~ *defendant*, if the ~~accusation~~ *civil complaint* or amended ~~accusation~~ *civil complaint* so prays~~, an administrative fine per aggrieved person per respondent, the amount of which shall be determined in accordance with the combined amount limitation of paragraph (3) of subdivision (a)~~.

(d) In determining whether to assess ~~an administrative fine~~ *punitive damages* pursuant to this section, the ~~commission~~ *court* shall find that the ~~respondent~~ *defendant* has been guilty of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of ~~fines~~ *punitive damages*, the ~~commission~~ *court* shall consider relevant evidence of, including, but not limited to, the following:

(1) Willful, intentional, or purposeful conduct.

(2) Refusal to prevent or eliminate discrimination.

(3) Conscious disregard for the rights of employees.

(4) Commission of unlawful conduct.

(5) Intimidation or harassment.

(6) Conduct without just cause or excuse.

(7) Multiple violations of the Fair Employment and Housing Act.

~~The moneys derived from an administrative fine assessed pursuant to this subdivision shall be deposited in the General Fund. No administrative fine~~

No punitive damages shall be assessed against ~~a public entity~~ *the state*. ~~The commission shall have no authority to award punitive damages as a remedy for a finding of employment discrimination.~~

(e) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the ~~commission~~ *court* may assess against the ~~respondent~~ *defendant*, if the ~~accusation~~ *civil complaint* or amended ~~accusation~~ *civil complaint* so prays, a civil penalty of up to twenty-five thousand dollars ($25,000) to be awarded to a person denied any right provided for by Section 51.7 of the Civil Code, as an unlawful practice prohibited under this part.

(f) If the ~~commission~~ *court* finds the ~~respondent~~ *defendant* has engaged in an unlawful practice under this part, and the ~~respondent~~ *defendant* is licensed or granted a privilege by an agency of the state to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, the ~~commission~~ *department* shall provide the licensing or privilege granting agency with a copy of its decision or order.

(g) If the ~~commission~~ *court* finds that a ~~respondent~~ *defendant* has not engaged in an unlawful practice under this part, the ~~commission~~ *court* shall state its findings of fact and determination and issue ~~and cause to be served on the parties~~ an order dismissing the accusation as to that ~~respondent~~ *defendant*.

(h) Any findings and determination made or any order issued pursuant to this section shall be written ~~and shall indicate the identity of the members of the commission who participated therein~~ *in an order, minute order, or decision and judgment*.

~~(i) Any order issued by the commission shall have printed on its face references to the rights of appeal of any party to the proceeding to whose position the order is adverse.~~

~~(j)~~

(i) If the ~~commission~~ *court* finds that a ~~respondent~~ *defendant* has engaged in an unlawful practice under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the ~~commission~~ *department*, with the consent of the ~~complainant~~ *real party in*

interest, shall provide the local district attorney's office with a copy of its decision and order.

~~(k)~~

(j) Notwithstanding Section 12960, if the ~~commission~~ *court* finds that a ~~respondent~~ *defendant* has engaged in unlawful discrimination in housing under Section 12948, the remedies afforded in Section 12987 or any other provision in this part pertaining to housing discrimination, shall apply.

(k) In civil actions brought pursuant to this part, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees, against any party other than the department. Any request for attorney's fees against the department shall be made by motion pursuant to Section 128.5 or 1021.5 of the Code of Civil Procedure.

SEC. 61. Section 12972 of the Government Code is repealed.

~~12972. (a) The commission shall conduct all actions and procedures in accordance with its procedural regulations.~~

~~(b) (1) If the commission does not have a procedural regulation on a particular issue, the commission shall rely upon pertinent provisions of the Administrative Procedure Act (Chapter 4 (commencing with Section 11370) of Part 1).~~

~~(2) Notwithstanding paragraph (1), the Administrative Adjudication Bill of Rights set forth in Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1, and the rules for judicial review set forth in Section 11523, shall apply to the commission.~~

~~(c) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.~~

SEC. 62. Section 12973 of the Government Code is amended to read:

12973. ~~(a)~~ Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

~~(b) If the time for judicial review of a final commission order or decision has lapsed, or if all means of judicial review have been exhausted, the department may apply to the superior court in any county in which an action could have been brought under subdivision (b) of Section 12965 for the enforcement of the order or decision or order as modified in accordance with a decision on judicial review. If, after a hearing, the court determines that an order or decision has been issued by the commission and that either the time limits for judicial review have lapsed, or the order or decision was upheld in whole or in part on judicial review, the court shall issue a judgment and order enforcing the order or decision or order as modified in accordance with a decision on judicial review. The court shall not review the merits of the order or decision. The court's judgment shall be nonappealable and shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action.~~

~~(c) Notwithstanding subdivisions (a) and (b), where the reviewing court denies a petition for writ of mandate seeking review of a commission order or decision, the court shall enter judgment denying the petition and enforcing the commission's final order or decision.~~

~~(d) If the commission has found that a respondent has engaged in an unlawful practice under this part and is liable for actual damages, an administrative fine, or a civil penalty, any amount due to that respondent by a state agency may be offset to satisfy the commission's final order or decision.~~

~~(e) Notwithstanding any other provision of law, the commission is not liable for attorney's fees of parties to the administrative adjudication of cases brought before the commission, including proceedings brought pursuant to Section 11523 of this code and Section 1094.5 of the Code of Civil Procedure.~~

SEC. 63. Section 12975 of the Government Code is amended to read:

12975. Any person who shall willfully resist, prevent, impede, or interfere with any member of the department ~~or the commission~~ or any of its agents or employees in the performance of duties pursuant to the provisions of this part relating to employment discrimination, or who shall in any manner willfully violate an order of the ~~commission~~ *court* relating to such matter, is guilty of a misdemeanor, punishable by imprisonment in a county jail, not

exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both.

SEC. 64. Section 12980 of the Government Code is amended to read:

12980. This article governs the procedure for the prevention and elimination of discrimination in housing made unlawful pursuant to Article 2 (commencing with Section 12955) of Chapter 6.

(a) Any person claiming to be aggrieved by an alleged violation of Section 12955, 12955.1, or 12955.7 may file with the department a verified complaint in writing that shall state the name and address of the person alleged to have committed the violation complained of, and that shall set forth the particulars of the alleged violation and contain any other information required by the department.

The filing of a complaint and pursuit of conciliation or remedy under this part shall not prejudice the complainant's right to pursue effective judicial relief under other applicable laws, but if a civil action has been filed under Section 52 of the Civil Code, the department shall terminate proceedings upon notification of the entry of final judgment unless the judgment is a dismissal entered at the complainant's request.

(b) The Attorney General or the director may, in a like manner, make, sign, and file complaints citing practices that appear to violate the purpose of this part or any specific provisions of this part relating to housing discrimination.

No complaint may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated.

(c) The department may thereupon proceed upon the complaint in the same manner and with the same powers as provided in this part in the case of an unlawful practice, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than the provisions of Article 1 (commencing with Section 12960), the provisions of this article shall prevail.

(d) Upon the filing of a complaint, the department shall serve notice upon the complainant of the time limits, rights of the parties, and choice of forums provided for under the law.

(e) The department shall commence proceedings with respect to a complaint within 30 days of filing of the complaint.

(f) An investigation of allegations contained in any complaint filed with the department shall be completed within 100 days after

receipt of the complaint, unless it is impracticable to do so. If the investigation is not completed within 100 days, the complainant and respondent shall be notified, in writing, of the department's reasons for not doing so.

(g) Upon the conclusion of each investigation, the department shall prepare a final investigative report containing all of the following:

(1) The names of any witnesses and the dates of any contacts with those witnesses.

(2) A summary of the dates of any correspondence or other contacts with the aggrieved persons or the respondent.

(3) A summary of witness statements.

(4) Answers to interrogatories.

(5) A summary description of other pertinent records.

A final investigative report may be amended if additional evidence is later discovered.

(h) If ~~an accusation~~ *a civil action* is not ~~issued~~ *brought* within 100 days after the filing of a complaint, or if the department earlier determines that no ~~accusation~~ *civil action* will ~~issue~~ *be brought*, the department shall promptly notify the person claiming to be aggrieved. This notice shall, in any event, be issued no more than 30 days after the date of the determination or 30 days after the date of the expiration of the 100-day period, whichever date first occurs. The notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person named in the verified complaint within the time period specified in Section 12989.1. The notice shall also indicate, unless the department has determined that no ~~accusation~~ *civil action* will be ~~issued~~ *brought*, that the person claiming to be aggrieved has the option of continuing to seek redress for the alleged discrimination through the procedures of the department if he or she does not desire to file a civil action. The superior courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be

served on the principal offices of the department ~~and of the commission~~. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees.

(i) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be made public, unless otherwise agreed by the complainant and respondent, and the department determines that the disclosure is not required to further the purposes of the act.

(j) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be agreements between the respondent and complainant, and shall be subject to approval by the department.

SEC. 65. Section 12981 of the Government Code is amended to read:

12981. (a) *Prior to filing a civil action, all investigated cases shall undergo mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties.* In the case of failure to eliminate a violation of Section 12955, 12955.1, or 12955.7 that has occurred, or is about to occur, through conference, conciliation, ~~and~~ persuasion, or ~~in advance thereof if circumstances warrant~~ *mediation*, the director ~~shall cause to be issued~~ *may bring a civil action* in the name of the department, notwithstanding Section 12971, ~~a written accusation,~~ in the same manner and with the same powers as provided in Section 12965, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than Section 12965, the provisions of this article shall prevail. ~~An accusation~~ *A civil action* alleging an unfair housing practice shall be issued within 100 days after the filing of a complaint unless it is impracticable to do so. The ~~accusation~~ *civil action* shall require the ~~respondent~~ *defendant* to answer the charges ~~at an administrative hearing or~~ *in a* civil trial ~~as elected by the parties pursuant to Section 12989~~. Any aggrieved person may intervene as a matter of right in the proceeding, and the appeal or other judicial review of that proceeding.

(b) If the department determines that an allegation concerns the legality of any zoning or other land use law or ordinance, the department or the Attorney General shall take appropriate action

with respect to the complaint according to the procedures established in this part for other complaints of housing discrimination.

~~(c) The commission shall hold hearings on accusations issued pursuant to subdivision (a) in the same manner and with the same powers as provided in Sections 12967 to 12972, inclusive, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than do Sections 12967 to 12972, inclusive, the provisions of this article shall prevail. The commission shall make final administrative disposition of a complaint alleging unfair housing practices within one year of the date of filing of the complaint, unless it is impracticable to do so. If the department is unable to make final administrative disposition of a complaint within one year, it shall notify the complainant and the respondent, in writing, of its reasons for not doing so.~~

~~(d) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.~~

~~(e)~~

(c) Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall ~~refer the matter to the Attorney General with a recommendation that a~~ *initiate a* civil action ~~be filed for the enforcement of~~ *to enforce* the agreement.

~~(f) If the time for judicial review of a final commission order or decision has lapsed, or if all means of judicial review have been exhausted, the department may apply to the superior court in any county in which an action could have been brought under subdivision (b) of Section 12965 for the enforcement of the order or decision or order as modified in accordance with a decision on judicial review. If, after a hearing, the court determines that an order or decision has been issued by the commission and that either the time limits for judicial review have lapsed, or the order or decision was upheld in whole or in part on judicial review, the court shall issue a judgment and order enforcing the order or decision or order as modified in accordance with a decision on judicial review. The court shall not review the merits of the order or decision. The court's judgment shall be nonappealable and shall~~

~~have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action.~~

SEC. 66. Section 12981.1 of the Government Code is amended to read:

12981.1. The department shall not dismiss a complaint~~ or an accusation~~ unless the complainant withdraws the complaint or the department determines after a thorough investigation that, based on the facts, no reasonable cause exists to believe that an unlawful housing practice, as prohibited by this part, has occurred or is about to occur.

SEC. 67. Section 12985 of the Government Code is amended to read:

12985. When a person is contacted by the department~~, a commissioner,~~ or a member of the department's staff, following the filing of a complaint against that person, the person shall be informed whether the contact is for the purpose of investigation or conference, conciliation,~~ or~~ persuasion~~;~~*, or mediation,* and if it is for conference, conciliation,~~ or~~ persuasion, *or mediation,* the person shall be informed that all matters relating thereto are privileged *and confidential*.

SEC. 68. Section 12987 of the Government Code is amended to read:

12987. (a) If the~~ commission~~ *court*, after~~ hearing~~ *trial*, finds that a~~ respondent~~ *defendant* has engaged in any unlawful practice, as defined in this part, the~~ commission~~ *court* shall state its findings of fact and shall issue and cause to be served on the~~ respondent~~ *defendant* an order requiring the~~ respondent~~ *defendant* to cease and desist from the practice and to take those actions, as, in the judgment of the~~ commission~~ *court*, will effectuate the purpose of this part, including, but not limited to, any of the following:

(1) The sale or rental of the housing accommodation, if it is still available, or the sale or rental of a like housing accommodation, if one is available, or the provision of financial assistance, terms, conditions, or privileges previously denied in violation of subdivision (f) of Section 12955 in the purchase, organization, or construction of the housing accommodation, if available.

(2) Affirmative or prospective relief, including injunctive or other equitable relief.

(3) The payment to the~~ complainant~~ *plaintiff* of~~ a civil penalty~~ *punitive damages* against any named~~ respondent, not to exceed~~

~~sixteen thousand dollars ($16,000), unless, in a separate accusation, the respondent has been adjudged to have, with intent, committed a prior violation of Section 12955. If the respondent has, in a separate accusation, been adjudged to have committed a prior violation of Section 12955 within the five years preceding the filing of the complaint, the amount of the civil penalty may exceed sixteen thousand dollars ($16,000), but may not exceed thirty-seven thousand five hundred dollars ($37,500). If the respondent, in separate accusations, has been adjudged to have, with intent, violated Section 12955 two or more times within the seven-year period preceding the filing of the complaint, the civil penalty may exceed thirty-seven thousand five hundred dollars ($37,500), but may not exceed sixty-five thousand dollars ($65,000). All civil penalties awarded under this provision shall be collected by the department. The commission may award the prevailing party, other than the state, reasonable attorney's fees and costs against any party other than the state, including expert witness fees~~ *defendant*.

(4) The payment of actual damages to the ~~complainant~~ *plaintiff*.

(b) In determining whether to assess ~~a civil penalty~~ *punitive damages* pursuant to this section, the ~~commission~~ *court* shall find that the ~~respondent~~ *defendant* has been guilty of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of ~~a civil penalty~~ *the punitive damages*, the ~~commission~~ *court* shall consider Section 12955.6 and relevant evidence of, including, but not limited to, the following:

(1) Willful, intentional, or purposeful conduct.

(2) Refusal to prevent or eliminate discrimination.

(3) Conscious disregard for fair housing rights.

(4) Commission of unlawful conduct.

(5) Intimidation or harassment.

(6) Conduct without just cause or excuse.

(7) Multiple violations of the Fair Employment and Housing Act.

(c) If the ~~commission~~ *court* finds that the ~~respondent~~ *defendant* has engaged in an unlawful practice under this part, and the ~~respondent~~ *defendant* is licensed or granted a privilege by an agency of the state or the federal government to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of

that license or privilege, the ~~commission~~ *department* shall provide the licensing or privilege granting agency with a copy of its decision or order.

(d) If the ~~commission~~ *court* finds that the ~~respondent~~ *defendant* has engaged in an unlawful practice under this part and is liable for actual *or punitive* damages ~~or a civil penalty~~, any amount due to the ~~respondent~~ *defendant* by a state agency may be offset to satisfy the ~~commission's~~ *court's* final order or decision.

(e) No remedy shall be available to the aggrieved person unless the aggrieved person waives any and all rights or claims under Section 52 of the Civil Code prior to receiving a remedy, and signs a written waiver to that effect.

(f) The ~~commission~~ *court* may require a report of the manner of compliance.

(g) If the ~~commission~~ *court* finds that a ~~respondent~~ *defendant* has not engaged in any practice which constitutes a violation of this part, the ~~commission~~ *court* shall state its findings of fact and shall issue and cause to be served on the ~~complainant~~ an order dismissing the ~~accusation~~ *civil action* as to that ~~respondent~~ *defendant*.

~~(h) Any order issued by the commission shall have printed on its face references to the provisions of the Administrative Procedure Act prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse.~~

(h) In civil actions brought under this part, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees, against any party other than the department.

(i) Notwithstanding any other law, the department is not liable for the attorney's fees of parties to civil actions brought before the court.

(j) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

SEC. 69. Section 12987.1 of the Government Code is repealed.

~~12987.1. (a) Any party aggrieved by the commission's final order for relief may obtain a review of that order in accordance with the provisions of Section 11523 of this code and Section 1094.5 of the Code of Civil Procedure except that the limitations~~

~~on the court's remedial powers as described in subdivision (f) of Section 1094.5 of the Code of Civil Procedure shall not apply.~~

~~(b) The superior court, in reviewing the commission's final order, may award the following relief:~~

~~(1) Grant to the petitioner, or any other party, temporary relief, including, but not limited to, a restraining order, or other order as the court deems just and proper.~~

~~(2) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings, and enforce the order to the extent that it is affirmed or modified.~~

~~(c) Any party to the proceeding before the commission or aggrieved person may intervene as a matter of right in the superior court proceeding.~~

~~(d) When the time for petitioning a court for review of the commission's order has expired, the department or any party to the commission proceeding may petition a court for a decree enforcing the commission's order. The court may grant any relief necessary to ensure compliance with the commission's order.~~

~~(e) Notwithstanding subdivisions (a) to (d), inclusive, where the reviewing court denies a petition for writ of mandate seeking review of a commission order or decision, the court shall enter judgment denying the petition and enforcing the commission's order or decision.~~

SEC. 70. Section 12988 of the Government Code is amended to read:

12988. The ~~commission and the~~ department may engage in affirmative actions with owners in furtherance of the purpose of this part as expressed in Section 12920.

SEC. 71. Section 12989 of the Government Code is repealed.

~~12989. (a) If an accusation is issued under Section 12981, a complainant, a respondent, or an aggrieved person on whose behalf a complaint is filed may elect, in lieu of an administrative proceeding under Section 12981, to have the claims asserted in the charge adjudicated in a civil action under this part.~~

~~(b) An election under this section may be made within 20 days after the service of the accusation, and not later than 20 days after service of the complaint to the respondent. A notice of election shall be filed with the department, and the department shall serve a copy of the notice to the director, the respondent, and the aggrieved person on whose behalf the complaint is filed. The notice~~

~~shall be filed and served on all parties to the complaint in accordance with the procedures established by Section 12962.~~

~~(c) If either party serves a notice of election upon the department, as prescribed, the department shall, within 30 days after service of the notice of the election, dismiss the accusation. The department shall itself, or at its election through the Attorney General, within 30 days of receipt of the notice of election, file a civil action with the proper superior court in its name or on behalf of the aggrieved person as a real party in interest. In bringing a civil or administrative action, or pursuing subsequent appeals of those actions, the department or the Attorney General shall, in its representation of an aggrieved person's interests, comply with the Rules of Professional Conduct of the State Bar of California. The action may be filed in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to that practice are maintained and administered, or in the county in which the aggrieved person would have resided in the housing accommodation. If the respondent is not found within that county, the action may be filed in the county of the respondent's residence or principal office.~~

~~(d) Any person aggrieved with respect to the issues to be determined in a civil action filed under this part may intervene as of right in that civil action.~~

~~(e) If an election is not made pursuant to this section, the director shall maintain an administrative proceeding based on the charges in the complaint in accordance with the procedures set forth in Section 12981.~~

~~(f) The director or his or her designated representative shall be available for consultation concerning any legal issues raised by the Attorney General that relate to evidentiary or tactical matters relevant to any civil action brought under this part.~~

SEC. 72. Section 12989.1 of the Government Code is amended to read:

12989.1. An aggrieved person may commence a civil action in an appropriate court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach. The computation of the two-year period shall not include any time during which an

administrative proceeding under this part was pending with respect to a complaint ~~or accusation~~ under this part based upon the discriminatory housing practice or breach.

An aggrieved person may commence a civil action whether or not a complaint has been filed under this part and without regard to the status of any complaint. Any aggrieved person who is aggrieved with respect to the issues to be determined in a civil action filed under this part, may intervene in that civil action. However, if the department has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this part by the aggrieved person with respect to the alleged discriminatory housing practice that forms the basis for the complaint, except for the purpose of enforcing the terms of the agreement.

An aggrieved person may not commence a civil action with respect to an alleged discriminatory housing practice that forms the basis of ~~an accusation issued~~ *a civil action brought* by the department ~~if the department has commenced a hearing on the accusation~~.

SEC. 73. Section 12989.2 of the Government Code is amended to read:

12989.2. ~~(a)~~ In a civil action brought under Section ~~12989 or~~ 12989.1, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award the plaintiff or complainant actual and punitive damages and may grant other relief, including the issuance of a temporary or permanent injunction, or temporary restraining order, or other order, as it deems appropriate to prevent any defendant from engaging in or continuing to engage in an unlawful practice. ~~The~~ *In a civil action brought under this section, the* court may, at its discretion, award the prevailing party, ~~other than the state,~~ *including the department,* reasonable attorney's fees and costs, including expert witness fees, against any party other than the state.

~~(b) Notwithstanding any other provision of law, the commission is not liable for the attorney's fees of parties to the administrative adjudication of cases brought before the commission, including proceedings under Sections 11523 and 12987.1 of this code and Section 1094.5 of the Code of Civil Procedure.~~

SEC. 74. Section 12990 of the Government Code is amended to read:

12990. (a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations that implement it.

(b) Prior to becoming a contractor or subcontractor with the state, an employer may be required to submit a nondiscrimination program to the department for approval and certification and may be required to submit periodic reports of its compliance with that program.

(c) Every state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations under that clause to labor organizations with which they have a collective bargaining or other agreement. These contractual provisions shall be fully and effectively enforced. This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(d) The department shall periodically develop rules and regulations for the application and implementation of this section~~, and submit them to the commission for consideration and adoption~~ in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1. Those rules and regulations shall describe and include, but not be limited to, all of the following:

(1) Procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination programs.

(2) The size of contracts or subcontracts below which any particular provision of this section shall not apply.

(3) The circumstances, if any, under which a contractor or subcontractor is not subject to this section.

(4) Criteria for determining the appropriate plant, region, division, or other unit of a contractor's or subcontractor's operation for which a nondiscrimination program is required.

(5) Procedures for coordinating the nondiscrimination requirements of this section and its implementing rules and regulations with the California Plan for Equal Opportunity in Apprenticeship, with the provisions and implementing regulations of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, and with comparable federal laws and regulations concerning nondiscrimination, equal employment opportunity, and affirmative action by those who contract with the United States.

(6) The basic principles and standards to guide the department in administering and implementing this section.

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, that program may be filed with the department, instead of any nondiscrimination program regularly required by this section or its implementing rules and regulations. Such a program shall constitute a prima facie demonstration of compliance with this section. Where the department or a federal compliance agency has required the preparation of an affirmative action, equal employment, or nondiscrimination program subject to review and approval by the department or a federal compliance agency, evidence of such a program shall also constitute prima facie compliance with an ordinance or regulation of any city, city and county, or county that requires an employer to submit such a program to a local awarding agency for its approval prior to becoming a contractor or subcontractor with that agency.

(f) Where the department determines and certifies that the provisions of this section or its implementing rules and regulations are violated or ~~where the commission, after hearing an accusation pursuant to Section 12967,~~ determines a contractor or subcontractor is engaging in practices made unlawful under this part, the department ~~or the commission~~ may recommend appropriate sanctions to the awarding agency. Any such recommendation shall take into account the severity of the violation or violations and any other penalties, sanctions, or remedies previously imposed.

SEC. 75. Section 13071 of the Government Code is amended to read:

13071. *The Director of Finance shall be responsible for coordinating state agency internal audits and identifying when agencies are required to comply with federally mandated audits.* The Director of Finance, in coordinating the internal auditors of state agencies, shall ensure that these auditors utilize the "Standards for the Professional Practices of Internal Auditing."

SEC. 76. Section 13300.5 is added to the Government Code, to read:

13300.5. (a) The Legislature finds and declares that the project of the FISCal Project to modernize the state's internal financial systems is a critical project that must be subject to the highest level of oversight. According to the California Technology Agency, the size and scope of this modernization and automation effort make this project one of the highest risk projects undertaken by the state. Therefore, the Legislature must take steps to ensure it is fully informed as the project is implemented. It is the intent of the Legislature to adopt additional reporting requirements for the FISCal Project Office to adequately manage the project's risk and to ensure the successful implementation of this effort.

(b) The FISCal Project Office shall report to the Legislature, by February 15 of each year, an update on the project. The report shall include all of the following:

(1) An executive summary and overview of the project's status.

(2) An overview of the project's history.

(3) Significant events of the project within the current reporting period and a projection of events during the next reporting period.

(4) A discussion of mitigation actions being taken by the project for any missed major milestones.

(5) A comparison of actual to budgeted expenditures, and an explanation of variances and any planned corrective actions, including a summary of FISCal project and staffing levels and an estimate of staff participation from partner agencies.

(6) An articulation of expected functionality and qualitative benefits from the project that were achieved during the reporting period and that are expected to be achieved in the subsequent year.

(7) An overview of change management activities and stakeholder engagement in the project, including a summary of departmental participation in the FISCal project.

(8) A discussion of lessons learned and best practices that will be incorporated into future changes in management activities.

(9) A description of any significant software customization, including a justification for why, if any, customization was granted.

(10) Updates on the progress of meeting the project objectives, including the objectives provided in paragraph (1) of subdivision (c) of Section 15849.22.

(c) The initial report, due February 15, 2013, shall provide a description of the approved project scope. Later reports shall describe any later deviations to the project scope, cost, or schedule.

(d) The initial report shall also provide a summary of the project history from Special Project Report 1 to Special Project Report 4, inclusive.

(e) This section shall remain in effect until a postimplementation evaluation report has been approved by the California Technology Agency. The California Technology Agency shall post a notice on its Internet Web site when the report is approved.

SEC. 77. Chapter 1 (commencing with Section 14995) of Part 5.6 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 78. Section 15849.6 of the Government Code, as added by Section 13 of Chapter 726 of the Statutes of 2010, is repealed.

~~15849.6. Notwithstanding any provision of this part to the contrary, the board may issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature, in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. This additional amount may include interest during acquisition or interest prior to, during, and for a period of six months after construction of the public building, facility, or equipment, interest payable on any interim loan for the public building, facility, or equipment from the General Fund or from the Pooled Money Investment Account, a reasonably required reserve fund, and the costs of issuance of any interim financing and permanent financing after completion of the construction or acquisition of the public building, facility, or equipment.~~

~~This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by appropriations of the Legislature made prior to the effective date of this section.~~

SEC. 79. Section 15849.6 of the Government Code, as added by Section 2 of Chapter 727 of the Statutes of 2010, is amended to read:

15849.6. Notwithstanding any provision of this part to the contrary, the board may issue bonds, notes, or other obligations to finance the acquisition, *design,* or construction of a public building~~, facility, or equipment~~ as authorized by the Legislature, in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. This additional amount may include interest during acquisition or interest prior to, during, and for a period of six months after construction of the public building~~, facility, or equipment~~, interest payable on any interim loan *or interim financing* for the public building~~, facility, or equipment from the General Fund or from the Pooled Money Investment Account~~, a reasonably required reserve fund, and the costs of issuance of any interim financing and permanent financing ~~after completion of the construction or acquisition of the public building, facility, or equipment~~.

This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by appropriations of the Legislature made prior to the effective date of this section.

SEC. 80. Section 15849.65 is added to the Government Code, to read:

15849.65. (a) Notwithstanding any provision of this part to the contrary, when a public building for the University of California is authorized, in full or in part, to be financed under this part, the board may issue bonds, notes, or other obligations to reimburse any debt service related to obligations issued or entered into by the Regents of the University of California as interim financing for the public building. In addition to the amount authorized by the Legislature for a public building for the University of California, the board may authorize an additional amount to pay related interest and issuance costs associated with the obligations issued or entered into by the Regents of the University of California.

(b) This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by

appropriations of the Legislature made prior to the effective date of this section.

(c) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 81. Section 16340 is added to the Government Code, to read:

16340. (a) (1) The Voluntary Investment Program Fund (Fund) is hereby created within the State Treasury, for the receipt of voluntary deposits from local entities.

(2) For purposes of this section, a "local entity" includes, but is not limited to, any city, county, school district, or special district.

(b) Each local entity that is approved by its governance body to deposit moneys in the Fund shall deposit no less than a total of two hundred million dollars ($200,000,000). The total amount of moneys that may be deposited in the Fund from all eligible sources shall not exceed, at any point in time, a total of ten billion dollars ($10,000, 000,000), or lesser amount as determined by the Director of Finance, in consultation with the Treasurer.

(c) The terms and conditions of deposits made into the Fund shall be set by the Director of Finance, in consultation with the Treasurer. Those terms shall include, but not limited to, the size of deposit from a particular local entity, the length of time those moneys shall be held in deposit in the Fund, the availability of funds for withdrawal by the local entity depositing the finds, and the annual rate of interest paid on deposits, as described in subdivision (e). However, the Director and the Treasurer may only permit deposits that do not exceed funds needed to address an actual or anticipated cash shortfall in the General Fund not exceeding the amounts of existing appropriations, including continuing and continuous appropriations, to which resulting proceeds are to be applied.

(d) Moneys held in the Fund shall be invested by the Treasurer in investment authorized pursuant to Sections 16430 and 16480 through the Pooled Money Investment Account, and whenever the State Controller determines that moneys in the General Fund, after allowing for internal borrowing from other funds, are, or are expected to be, insufficient for the payment of all appropriations made by the Legislature which are to be paid out of the moneys

in the General Fund, the State Controller may, based upon his or her estimate of the probable income to the General Fund during the then fiscal year and the probably dates of receipt thereof, may draw a demand or demands against appropriations made from the General Fund to be paid in the then current fiscal year prior to the receipt of the income, and deliver the demand or demands to the Treasurer. The Treasurer shall register the demand or demands for nonpayment and may borrow moneys from the Fund in an amount or amounts that is no grater than the demand or demands provided. The borrowing, together with the interest owed upon the account thereon, shall be paid exclusively from moneys in the General Fund on probable or reasonably anticipated revenues that are expected to be forthcoming within a short period of time, but not excepting recourse to internal borrowing from other funds in the event insufficient moneys are available from the General Fund. Repayment of any of those borrowings shall be considered a priority payment, equivalent to any other loan repayment made from the General Fund to another state fund.

(e) Notwithstanding any other law, the rate of interest to be earned by the depositors shall be the base apportionment rate based on their pro rata share of the earnings of the Pooled Money Investment Account on a quarterly basis at the end of each quarter plus an enhanced amount. The pro rata share shall be determined by a dollar day participation in the Fund shall be the quarter-to-date average yield of the Pooled Money Investment Account for the current quarter. The enhancement amount paid to depositors in the Fund shall be determined by the Director of Finance, consultation with the Treasurer, and shall be added to the base rate earned by the Pooled Money Investment Account at the time the apportionment is made. The total interest cost described in this subdivision shall not exceed that provided for in paragraph (1) of subdivision (d) of Section 16731.

(f) Notwithstanding Section 13340, moneys in the Fund are hereby continuously appropriated for payment of interest expenditures to depositors calculated in accordance with subdivision (e), other related expenses as determined by the Department of Finance, and subdivision (e), other related expenses as determined by the Department of Finance, and return of deposits to depositors according to terms and conditions set by the Director of Finance, in consultation with the Treasurer. The amounts paid

for interest and other related expenses shall be attributable to the fiscal year in which the borrowing occurred which is also the fiscal year upon which the appropriations against which the demand or demands were made.

(g) The Department of Finance shall determine the budget items to be used for the recording and reporting of interest expenditures and other related expenses pursuant to this section.

(h) Deposits in the Fund shall be tracked separately for each participant in the state's accounting system, and shall be deemed to be assets of each participant. These assets shall be reflected as such on each participant's individual financial statements.

(i) These deposits are, and my only be used to cover short-term cash needs of the state and are, and must be, in compliance with the provisions of Proposition 58 of March 2004 as stated in subdivision (c), Sec. 1.3 of Article XVI of the California Constitution. Deposits and borrowing from the Fund must comply with the state's debt limit restrictions.

(j) Actions by the Director of Finance, in consultation with the Treasurer, in implementing and administering the investment program provided for in this section and the Treasurer's and Controller's actions in borrowing from the Fund shall be exempt from the provisions of the Administrative Procedure Act (Chapter (commencing with Section 11340) of Part 1 of Division 3).

(k) Upon projection of insufficient cash in the General Fund, the Director of Finance, in consultation with the Treasurer and Controller, may utilize provisions similar to Section 16381 to facilitate the implementation of the program.

SEC. 82. Section 19704 of the Government Code is amended to read:

19704. (a) It is unlawful to require, permit, or suffer any notation or entry to be made upon or in any application, examination paper, or other paper, book, document, or record used under this part indicating or in any way suggesting or pertaining to any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1.

(b) Notwithstanding subdivision (a), subsequent to employment, ethnic, marital status, and gender data may be obtained and maintained for research and statistical purposes when safeguards preventing misuse of the information exist as approved by the *Department of* Fair Employment and Housing ~~Commission~~, except

that in no event shall any notation, entry, or record of that data be made on papers or records relating to the examination, appointment, or promotion of an individual.

SEC. 83. Section 19815 of the Government Code is amended to read:

19815. As used in this part:

(a) "Department" means the Department of Personnel Administration.

(b) "Director" means the Director of the Department of Personnel Administration.

(c) "Division" means the Division of Labor Relations.

(d) "Employee" or "state employee," except where otherwise indicated, means employees subject to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), supervisory employees as defined in subdivision (g) of Section 3513, managerial employees as defined in subdivision (e) of Section 3513, confidential employees as defined in subdivision (f) of Section 3513, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the Public Employment Relations Board, conciliators employed by the *California* State *Mediation and* Conciliation Service ~~within the Department of Industrial Relations~~, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than audit staff, intermittent athletic inspectors who are employees of the State Athletic Commission, professional employees in the Personnel/Payroll Services Division of the Controller's office and all employees of the executive branch of government who are not elected to office.

SEC. 84. Section 50085.5 of the Government Code is amended to read:

~~50085.5. (a) Every local agency shall provide to the Fair Employment and Housing Commission a copy of any affirmative action plan and subsequent amendments to such plan adopted by the local agency.~~

~~(b)~~

50085.5. (a) Every local agency ~~which~~ *that* is required by federal law, rule, or regulation to submit an annual statistical survey of the employment of the agency to the United States Equal

Employment Opportunity Commission shall annually, commencing with January 1, ~~1975~~ *2013*, submit a copy of ~~such~~ *the* survey to the *Department of* Fair Employment and Housing ~~Commission~~.

~~(c) Such~~

(b) These reports and information shall constitute public records.

SEC. 85. Section 50087 of the Government Code is repealed.

~~50087. Every city, county, or city and county which has at least 5,000 residents or in which 5 percent of the population is of Filipino ancestry or ethnic origin, according to the last federal census, and which conducts any survey as to the ancestry or ethnic origin of its employees, or which maintains any statistical tabulation of minority group employees, shall categorize employees whose ancestry or ethnic origin is Filipino as Filipinos in such survey or tabulation.~~

SEC. 86. Section 71632.5 of the Government Code is amended to read:

71632.5. (a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, "agency shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. That employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in a memorandum of understanding or agreement

between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate any funds, then to any fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement~~, provided that (1) a~~ *under the following circumstances:*

(1) A request for the vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit~~; (2) the~~.

(2) The vote is by secret ballot~~; and (3) the~~.

(3) The vote may be taken at any time during the term of the memorandum of understanding or agreement, but in no event shall there be more than one vote taken during that term.

(c) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the trial court and a recognized employee organization or recognized employee organizations shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of at least 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after the recognized employee organization has requested the trial court to negotiate on an agency shop arrangement and, beginning seven working days after the trial court received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement. An election, that may not be held more frequently than once a year, shall be conducted by the ~~Division of Conciliation of the Department of Industrial Relations~~ *California State Mediation and Conciliation Service* in the event that the trial court and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of

an agency fee arrangement outside of an agreement that was in effect on January 1, 2002, the recognized employee organization shall defend, indemnify, and hold the trial court harmless against any liability arising from any claims, demands, or other action relating to the trial court's compliance with the agency fee obligation. Upon notification to the trial court by the recognized employee organization, the amount of the fee shall be deducted by the trial court from the wages or salary of the employee and paid to the employee organization. This subdivision shall be applicable on the operative date of this section, except that if a memorandum of understanding or agreement between the trial court and a recognized employee organization was in effect before January 1, 2002, as to the employees covered by the memorandum of understanding or agreement, the implementation date of this subdivision shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement. The trial court and representatives of recognized employee organizations may mutually agree to a different date on which this subdivision is applicable.

(d) Notwithstanding subdivisions (a), (b), and (c), the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(e) An agency shop agreement or arrangement does not apply to management, confidential, or supervisory employees. If those employees nonetheless choose to join the recognized employee organization and pay dues or pay the organization a service fee, Section 71638 shall apply to those employees, and the trial court shall administer deductions for which the recognized employee organization shall defend, indemnify, and hold the trial court harmless.

(f) Every recognized employee organization that has agreed to an agency shop provision, or is a party to an agency shop arrangement, shall keep an adequate itemized record of its financial transactions and shall make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report

thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(g) This section shall become operative only if Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement.

(h) A trial court may not offer employees inducements or benefits of any kind in return for employees opposing or rescinding an agency shop arrangement.

SEC. 87. Section 71636.1 of the Government Code is amended to read:

71636.1. In the absence of local procedures for resolving disputes on the appropriateness of a unit of representation, upon the request of any of the parties, the dispute shall be submitted to the ~~Division of Conciliation of the Department of Industrial Relations~~ *California State Mediation and Conciliation Service* for the mediation or for recommendation for resolving the dispute.

SEC. 88. Section 71636.3 of the Government Code is amended to read:

71636.3. (a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a trial court in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a trial court pursuant to Section 71636, a bargaining unit in effect as of January 1, 2002, shall continue in effect unless changed under the rules adopted by the trial court pursuant to Section 71636.

(c) A trial court shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the

representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party, selected by the trial court and the employee organization, who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. If the trial court and the employee organization cannot agree on a neutral third party, the ~~Division of Conciliation of the Department of Industrial Relations~~ *California State Mediation and Conciliation Service* shall be the neutral third party and shall verify the exclusive or majority status of the employee organization. If the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

SEC. 89. Section 71637 of the Government Code is amended to read:

71637. (a) For purposes of this article, professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of those professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the ~~Division of Conciliation of the Department of Industrial Relations~~ *California State Mediation and Conciliation Service* for mediation or for recommendation for resolving the dispute.

(b) For the purpose of this section, "professional employees" means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys.

SEC. 90. Section 76104.7 of the Government Code is amended to read:

76104.7. (a) Except as otherwise provided in this section, in addition to the penalty levied pursuant to Section 76104.6, there shall be levied an additional state-only penalty of ~~three~~ *four* dollars ~~($3)~~ *($4)* 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 local ordinance adopted pursuant to the Vehicle Code.

(b) This additional penalty shall be collected together with, and in the same manner as, the amounts established by Section 1464 of the Penal Code. These 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. These funds shall be deposited into the county treasury DNA Identification Fund. One hundred percent of these funds, including any interest earned thereon, shall be transferred to the state Controller at the same time that moneys are transferred pursuant to paragraph (2) of subdivision (b) of Section 76104.6, for deposit into the state's DNA Identification Fund. These funds shall be used to fund the operations of the Department of Justice forensic laboratories, including the operation of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, and to facilitate compliance with the requirements of subdivision (e) of Section 299.5 of the Penal Code.

(c) This additional penalty does not apply to the following:

(1) Any restitution fine.

(2) Any penalty authorized by Section 1464 of the Penal Code or this chapter.

(3) Any parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(4) The state surcharge authorized by Section 1465.7 of the Penal Code.

(d) The fees collected pursuant to this section shall not be subject to subdivision (e) of Section 1203.1d of the Penal Code, but shall be disbursed under paragraph (3) of subdivision (b) of Section 1203.1d of the Penal Code.

SEC. 91. Section 102346 of the Health and Safety Code is amended to read:

102346. (a) The local registrar of births and deaths shall transmit each month to the ~~Division of Labor Statistics and Research of the~~ Department of Industrial Relations a copy of each certificate of death for which the death has been marked as work-related and which was accepted for registration by him or her during the preceding month.

(b) This section shall become operative on January 1, 2003.

SEC. 92. Section 11770 of the Insurance Code is amended to read:

11770. (a) The State Compensation Insurance Fund is continued in existence, to be administered by its board of directors for the purpose of transacting workers' compensation insurance, and insurance against the expense of defending any suit for serious and willful misconduct, against an employer or his or her agent, and insurance to employees and other persons of the compensation fixed by the workers' compensation laws for employees and their dependents. Any appropriation made therefrom or thereto before the effective date of this code shall continue to be available for the purposes for which it was made.

(b) (1) The Board of Directors of the State Compensation Insurance Fund is composed of 11 members, nine of whom shall be appointed by the Governor. The Governor shall appoint the chairperson. One of the members appointed by the Governor shall be from organized labor. The members appointed by the Governor, other than the labor member, shall have substantial experience in positions involving workers' compensation, legal, investment, financial, corporate governance and management, accounting, or auditing responsibilities with entities of sufficient size as to make their qualifications relevant to an enterprise of the financial and operational size of the State Compensation Insurance Fund. At all times the board shall have a member with auditing background for the purposes of fulfilling the responsibility of the chair of the audit committee. A quorum is a majority of those appointed, provided that at no time shall a quorum be established with ~~less~~ *fewer* than five members.

(2) The Speaker of the Assembly shall appoint one member who shall represent organized labor, and the Senate Committee on Rules shall appoint one member who shall have been a policyholder of the State Compensation Insurance Fund, or an officer or employee of a policyholder, for one year immediately preceding the appointment, and must continue in this status during the period of his or her membership.

(3) The Director of Industrial Relations shall be an ex officio, nonvoting member of the board, and shall not be counted as members of the board for quorum purposes or any other purpose.

(4) Notwithstanding subdivision (c), the initial term of the members of the board added in the 2008 portion of the 2007–08 Regular Session shall be as follows:

(A) One of the members appointed by the Governor shall serve an initial term of two years, one shall serve an initial term of four years, and two shall serve an initial term of five years.

(B) The member appointed by the Senate Committee on Rules shall serve an initial term of four years.

(C) The member appointed by the Speaker of the Assembly shall serve an initial term of three years.

(c) The term of office of the members of the board, other than that of the director, shall be five years and they shall hold office until the appointment and qualification of their successors.

(d) (1) Each member of the board shall receive his or her actual and necessary traveling expenses incurred in the performance of his or her duties as a member and, with the exception of the ex officio members, one hundred dollars ($100) for each day of his or her actual attendance at meetings of the board.

(2) (A) Each member of the board appointed pursuant to paragraphs (1) and (2) of subdivision (b) shall receive the compensation fixed pursuant to subparagraph (B).

(B) Each board member described in subparagraph (A) shall be paid an annual compensation of fifty thousand dollars ($50,000), to be automatically adjusted beginning January 1, 2010, by multiplying the compensation in effect the prior June 30 by the percentage of inflation that occurred during the previous year, adding this amount to the annual compensation from the previous year, and rounding off the result to the nearest dollar. “Percentage of inflation” means the percentage of inflation specified in the Consumer Price Index for All Urban Consumers, as published by the Department of Industrial Relations, ~~Division of Labor Statistics and Research,~~ or its successor index.

(e) Each member of the board of directors shall attend training approved by the board of directors that covers topics, including, but not limited to, the duties and obligations of members of a board of directors, corporate governance, ethics, board of director legal issues, insurance, finance and investment, and information technology. The training shall be conducted by persons or entities not affiliated with the State Compensation Insurance Fund.

(f) No person who has had a direct or indirect interest in any transaction with the State Compensation Insurance Fund since the beginning of the last fiscal year of the fund, or who has a direct or indirect material interest in any proposed transaction with the fund, where the amount involved in the transaction exceeds one hundred twenty thousand dollars ($120,000) shall be eligible for appointment as a member of the board of directors of the fund. Once appointed, no member of the board of directors shall have a financial conflict of interest, as defined in Chapter 7 of Title 9 (commencing with Section 87100) of the Government Code, and every member shall be subject to Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, provided that the existence of a contract of insurance between the State Compensation Insurance Fund and the policyholder member appointed by the Senate Committee on Rules shall not constitute a conflict of interest pursuant to this subdivision. For purposes of board actions affecting generally applicable rates, a member of the board of directors shall not be deemed to have a financial interest, as defined in Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of, or pursuant to Chapter 7 (commencing with Section 87100) of Title 9 of, the Government Code, in a contract of insurance between the State Compensation Insurance Fund and an organization of which any member of the board of directors is an owner, officer, or employee.

(g) The appointing authority of a member of the board may remove the member and make an appointment replacing the member for the duration of the term if the member ceases to discharge the duties of his or her office for the period of three consecutive board meetings.

(h) The board of the State Compensation Insurance Fund shall create, at a minimum, an audit committee, an investment committee, a corporate governance committee, and other committees as the board determines are necessary.

SEC. 93. Section 56 of the Labor Code is amended to read:

56. The work of the department shall be divided into at least ~~six~~ *five* divisions known as the Division of Workers' Compensation, the Division of Occupational Safety and Health, the Division of Labor Standards Enforcement, ~~the Division of~~

~~Labor Statistics and Research,~~ the Division of Apprenticeship Standards, and the State Compensation Insurance Fund.

SEC. 94. Section 62.9 of the Labor Code is amended to read:

62.9. (a) (1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993–94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collections process and the cost of reimbursing the ~~Franchise Tax Board~~ *Employment Development Department* or another agency or department for its cost of collection activities pursuant to subdivision (c).

(2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars ($250,000) shall be assessed one hundred dollars ($100).

(B) An employer with a payroll of two hundred fifty thousand dollars ($250,000) or more, but not more than five hundred thousand dollars ($500,000), shall be assessed two hundred dollars ($200).

(C) An employer with a payroll of more than five hundred thousand dollars ($500,000), but not more than seven hundred fifty thousand dollars ($750,000), shall be assessed four hundred dollars ($400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars ($750,000), but not more than one million dollars ($1,000,000), shall be assessed six hundred dollars ($600).

(E) An employer with a payroll of more than one million dollars ($1,000,000), but not more than one million five hundred thousand dollars ($1,500,000), shall be assessed eight hundred dollars ($800).

(F) An employer with a payroll of more than one million five hundred thousand dollars ($1,500,000), but not more than two million dollars ($2,000,000), shall be assessed one thousand dollars ($1,000).

(G) An employer with a payroll of more than two million dollars ($2,000,000), but not more than two million five hundred thousand dollars ($2,500,000), shall be assessed one thousand five hundred dollars ($1,500).

(H) An employer with a payroll of more than two million five hundred thousand dollars ($2,500,000), but not more than three million five hundred thousand dollars ($3,500,000), shall be assessed two thousand dollars ($2,000).

(I) An employer with a payroll of more than three million five hundred thousand dollars ($3,500,000), but not more than four million five hundred thousand dollars ($4,500,000), shall be assessed two thousand five hundred dollars ($2,500).

(J) An employer with a payroll of more than four million five hundred thousand dollars ($4,500,000), but not more than five million five hundred thousand dollars ($5,500,000), shall be assessed three thousand dollars ($3,000).

(K) An employer with a payroll of more than five million five hundred thousand dollars ($5,500,000), but not more than seven million dollars ($7,000,000), shall be assessed three thousand five hundred dollars ($3,500).

(L) An employer with a payroll of more than seven million dollars ($7,000,000), but not more than twenty million dollars ($20,000,000), shall be assessed six thousand seven hundred dollars ($6,700).

(M) An employer with a payroll of more than twenty million dollars ($20,000,000) shall be assessed ten thousand dollars ($10,000).

(b) (1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar year basis, on those insured employers and private sector self-insured employers, as identified pursuant to

paragraph (1), having the highest workers' compensation experience modification ratings or equivalent experience modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the organization's records at the time the list is requested, for policies commencing the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The director immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, or object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after the mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to ~~the Franchise Tax Board or~~ another agency or department for collection. The notices required by this paragraph shall be sent by United States first-class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the ~~Franchise Tax Board~~ *Employment Development Department*, or another agency or department, as deemed appropriate by the director, for collection pursuant to ~~Section 19290.1 of the Revenue and Taxation Code, or~~ Section 1900 of the Unemployment Insurance Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

SEC. 95. Section 65 of the Labor Code is repealed.

~~65. The department may investigate and mediate labor disputes providing any bona fide party to this type of dispute requests intervention by the department and the department may proffer its services to both parties when work stoppage is threatened and neither party requests intervention. In the interest of preventing labor disputes the department shall endeavor to promote sound union-employer relationships. The department may arbitrate or arrange for the selection of boards of arbitration on such terms as all of the bona fide parties to the dispute may agree upon. Any decision or award arising out of an arbitration conducted pursuant to this section is a public record. Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted by the California State Mediation and Conciliation Service, and any person conducting~~

~~the mediation. All other records of the department relating to labor disputes are confidential.~~

SEC. 96. Chapter 4.5 (commencing with Section 108) is added to Division 1 of the Labor Code, to read:

CHAPTER 4.5. ELECTRICIAN CERTIFICATION

108. (a) The Division of Labor Standards Enforcement shall do all of the following:

(1) Maintain minimum standards for the competency and training of electricians through a system of testing and certification.

(2) Maintain an advisory committee and panels as necessary to carry out the functions under this section. There shall be contractor representation from both joint apprenticeship programs and unilateral nonunion programs in the electrical contracting industry.

(3) Establish and collect fees necessary to implement this section.

(4) Carry out the responsibilities of the Division of Apprenticeship Standards that are specified in Subchapter 4 (commencing with Section 290) of Chapter 2 of Division 1 of Title 8 of the California Code of Regulations. The Labor Commissioner may amend or repeal existing regulations or adopt new regulations as necessary to enforce this section. Pending amendments to conform to this section, any reference within the Subchapter 4 regulations to the Chief of the Division of Apprenticeship Standards is deemed a reference to the Labor Commissioner, and references to prior statutory sections are deemed to refer to current statutory language as follows:

(A) References to former Section 3099 refer to current Section 108.

(B) References to former Section 3099.2 refer to current Section 108.2.

(C) References to former Section 3099.3 refer to current Section 108.3.

(D) References to former Section 3099.4 refer to current Section 108.4.

(E) References to former Section 3099.5 refer to current Section 108.5.

(5) Issue certification cards to electricians who have been certified pursuant to this section. Notwithstanding Section 13340 of the Government Code, fees collected pursuant to paragraph (3) are continuously appropriated in an amount sufficient to pay the costs of issuing certification cards, and that amount may be expended for that purpose by the division.

(6) Maintain an electrical certification curriculum committee comprised of representatives of the State Department of Education, the California Community Colleges, and the division. The electrical certification curriculum committee shall do all of the following:

(A) Establish written educational curriculum standards for enrollees in training programs established pursuant to Section 108.4.

(B) If an educational provider's curriculum meets the written educational curriculum standards established in accordance with subparagraph (A), designate that curriculum as an approved curriculum of classroom instruction.

(C) At the committee's discretion, review the approved curriculum of classroom instruction of any designated educational provider. The committee may withdraw its approval of the curriculum if the educational provider does not continue to meet the established written educational curriculum standards.

(D) Require each designated educational provider to submit an annual notice to the committee stating whether the educational provider is continuing to offer the approved curriculum of classroom instruction and whether any material changes have been made to the curriculum since its approval.

(b) There shall be no discrimination for or against any person based on membership or nonmembership in a union.

(c) As used in this section, "electricians" includes all persons who engage in the connection of electrical devices for electrical contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically, contractors classified as electrical contractors in the Contractors' State License Board Rules and Regulations. This section does not apply to electrical connections under 100 volt-amperes. This section does not apply to persons performing work to which Section 7042.5 of the Business and Professions Code is applicable, or to electrical work ordinarily and customarily performed by stationary engineers. This section does not apply to electrical work in connection with the

installation, operation, or maintenance of temporary or portable electrical equipment performed by technicians in the theatrical, motion picture production, television, hotel, exhibition, or trade show industries.

108.2. (a) Persons who perform work as electricians shall become certified pursuant to Section 108. Uncertified persons shall not perform electrical work for which certification is required.

(b) (1) Certification is required only for those persons who perform work as electricians for contractors licensed as class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations.

(2) Certification is not required for persons performing work for contractors licensed as class C-7 low voltage systems or class C-45 electric sign contractors as long as the work performed is within the scope of the class C-7 or class C-45 license, including incidental and supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a class C-10 contractor.

(3) Certification is not required for work performed by a worker on a high-voltage electrical transmission or distribution system owned by a local publicly owned electric utility, as defined in Section 224.3 of the Public Utilities Code; an electrical corporation, as defined in Section 218 of the Public Utilities Code; a person, as defined in Section 205 of the Public Utilities Code; or a corporation, as defined in Section 204 of the Public Utilities Code; when the worker is employed by the utility or a licensed contractor principally engaged in installing or maintaining transmission or distribution systems.

(c) The division shall maintain separate certifications for general electrician, fire/life safety technician, residential electrician, voice data video technician, and nonresidential lighting technician.

(d) Notwithstanding subdivision (a), certification is not required for registered apprentices performing electrical work as part of an apprenticeship program approved under Chapter 4 of Division 3 (commencing with Section 3070), a federal Office of Apprenticeship program, or a state apprenticeship program authorized by the federal Office of Apprenticeship. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification

examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(e) Notwithstanding subdivision (a), certification is not required for any person employed pursuant to Section 108.4.

(f) Notwithstanding subdivision (a), certification is not required for a nonresidential lighting trainee (1) who is enrolled in an on-the-job instructional training program approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3090, and (2) who is under the onsite supervision of a nonresidential lighting technician certified pursuant to Section 108.

(g) Notwithstanding subdivision (a), the qualifying person for a class C-10 electrical contractor license issued by the Contractors' State License Board need not also be certified pursuant to Section 108 to perform electrical work for that licensed contractor or to supervise an uncertified person employed by that licensed contractor pursuant to Section 108.4.

(h) The following shall constitute additional grounds for disciplinary proceedings, including suspension or revocation of the license of a class C-10 electrical contractor pursuant to Article 7 (commencing with Section 7090) of Chapter 9 of Division 3 of the Business and Professions Code:

(1) The contractor willfully employs one or more uncertified persons to perform work as electricians in violation of this section.

(2) The contractor willfully fails to provide the adequate supervision of uncertified workers required by paragraph (3) of subdivision (a) of Section 108.4.

(3) The contractor willfully fails to provide adequate supervision of apprentices performing work pursuant to subdivision (d).

(i) The Labor Commissioner shall maintain a process for referring cases to the Contractors' State License Board when it has been determined that a violation of this section has likely occurred. The Labor Commissioner shall have a memorandum of understanding with the Registrar of Contractors in furtherance of this section.

(j) Upon receipt of a referral by the Labor Commissioner alleging a violation under this section, the Registrar of Contractors shall open an investigation. Any disciplinary action against the licensee shall be initiated within 60 days of the receipt of the referral. The Registrar of Contractors may initiate disciplinary

action against any licensee upon his or her own investigation, the filing of any complaint, or any finding that results from a referral from the Labor Commissioner alleging a violation under this section. Failure of the employer or employee to provide evidence of certification or trainee status shall create a rebuttable presumption of violation of this provision.

(k) For the purposes of this section, "electricians" has the same meaning as the definition set forth in Section 108.

108.3. The Division of Labor Standards Enforcement shall do all of the following:

(a) Make information about electrician certification available in non-English languages spoken by a substantial number of construction workers, as defined in Section 7296.2 of the Government Code.

(b) Provide for the administration of certification tests in Spanish and, to the extent practicable, other non-English languages spoken by a substantial number of applicants, as defined in Section 7296.2 of the Government Code, except insofar as the ability to understand warning signs, instructions, and certain other information in English is necessary for safety reasons.

(c) Ensure, in conjunction with the California Apprenticeship Council, that all electrician apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 that impose minimum formal education requirements as a condition of entry provide for reasonable alternative means of satisfying those requirements.

(d) Ensure, in conjunction with the California Apprenticeship Council, that all electrician apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 have adopted reasonable procedures for granting credit toward a term of apprenticeship for other vocational training and on-the-job training experience.

108.4. (a) An uncertified person may perform electrical work for which certification is required under Section 108 in order to acquire the necessary on-the-job experience for certification, if all of the following requirements are met:

(1) The person is registered with the Labor Commissioner. A list of current registrants shall be maintained by the division and made available to the public upon request.

(2) The person either has completed or is enrolled in an approved curriculum of classroom instruction.

(3) The employer attests that the person shall be under the direct supervision of an electrician certified pursuant to Section 108 who is responsible for supervising no more than one uncertified person. An employer who is found by the division to have failed to provide adequate supervision may be barred by the division from employing uncertified individuals pursuant to this section in the future.

(b) For purposes of this section, "an approved curriculum of classroom instruction" means a curriculum of classroom instruction approved by the electrician certification curriculum committee established pursuant to paragraph (6) of subdivision (a) of Section 108 and provided under the jurisdiction of the State Department of Education, the Board of Governors of the California Community Colleges, or the Bureau for Private Postsecondary and Vocational Education.

(c) The curriculum committee may grant approval to an educational provider that presently offers only a partial curriculum if the educational provider intends in the future to offer, or to cooperate with other educational providers to offer, a complete curriculum for the type of certification involved. The curriculum committee may require an educational provider receiving approval for a partial curriculum to periodically renew its approval with the curriculum committee until a complete curriculum is offered and approved. A partial curriculum means a combination of classes that does not include all classroom educational components of the complete curriculum for one of the categories of certification established in accordance with subdivision (c) of Section 108.2.

(d) An educational provider that receives approval for a partial curriculum must disclose in all communications to students and to the public that the educational provider has only received approval for a partial curriculum and shall not make any representations that the provider offers a complete approved curriculum of classroom instruction as established by subparagraph (A) of paragraph (6) of subdivision (a) of Section 108.

(e) For purposes of this section, a person is enrolled in an approved curriculum of classroom instruction if the person is attending classes on a full-time or part-time basis toward the completion of an approved curriculum.

(f) Registration under this section shall be renewed annually and the registrant shall provide to the division certification of the classwork completed and on-the-job experience acquired since the prior registration.

(g) For purposes of verifying the information provided by a person registered with the division, an educational provider of an approved curriculum of classroom instruction shall, upon the division's request, provide the division with information regarding the enrollment status and instruction completed by a person registered. By registering with the division in accordance with this section, a person consents to the release of this information.

(h) The division shall establish registration fees necessary to implement this section, not to exceed twenty-five dollars ($25) for the initial registration. There shall be no fee for annual renewal of registration. Notwithstanding Section 13340 of the Government Code, fees collected are continuously appropriated in an amount sufficient to administer this section and that amount may be expended by the division for this purpose.

(i) The division shall issue regulations to implement this section.

(j) For purposes of Section 1773, persons employed pursuant to this section do not constitute a separate craft, classification, or type of worker.

(k) Notwithstanding any other provision of law, an uncertified person who has completed an approved curriculum of classroom instruction and is currently registered with the division may take the certification examination. The person shall be certified upon passing the examination and satisfactorily completing the requisite number of on-the-job hours required for certification. A person who passes the examination prior to completing the requisite hours of on-the-job experience shall continue to comply with subdivision (f).

108.5. (a) The Electrician Certification Fund is established as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the costs of the Division of Labor Standards Enforcement program to validate and certify electricians as provided by Section 108, and shall not be used for any other purpose.

(b) The fund shall consist of the fees collected pursuant to Section 108.

SEC. 97. Section 138.7 of the Labor Code, as amended by Section 3 of Chapter 568 of the Statutes of 2011, is amended to read:

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) (A) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(B) The administrative director may publish the identity of claims administrators in the annual report disclosing the compliance rates of claims administrators pursuant to subdivision (d) of Section 138.6.

(2) (A) The State Department of Public Health may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(B) (i) The State Department of Health Care Services may use individually identifiable information for purposes of seeking recovery of Medi-Cal costs incurred by the state for treatment provided to injured workers that should have been incurred by employers and insurance carriers pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(ii) The Department of Industrial Relations shall furnish individually identifiable information to the State Department of Health Care Services, and the State Department of Health Care Services may furnish the information to its designated agent, provided that the individually identifiable information shall not be disclosed for use other than the purposes described in clause (i). The administrative director may adopt regulations solely for the purpose of governing access by the State Department of Health

Care Services or its designated agents to the individually identifiable information as defined in subdivision (a).

(3) (A) Individually identifiable information may be used by the Division of Workers' Compensation~~,~~ *and* the Division of Occupational Safety and Health~~, and the Division of Labor Statistics and Research~~ as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. No individually identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph may be disclosed to any other person or entity, public or private, for a use other than that research project for which the information was obtained. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information. Within a reasonable period of time after

the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) *(A)* This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5.

~~However~~

(B) However, individually identifiable information shall not be provided to any person or public or private entity who is not a party to the claim unless that person identifies himself or herself or that public or private entity identifies itself and states the reason for making the request. The administrative director may require the person or public or private entity making the request to produce information to verify that the name and address of the requester is valid and correct. If the purpose of the request is related to preemployment screening, the administrative director shall notify the person about whom the information is requested that the information was provided and shall include the following in 12-point type:

"IT MAY BE A VIOLATION OF FEDERAL AND STATE LAW TO DISCRIMINATE AGAINST A JOB APPLICANT BECAUSE THE APPLICANT HAS FILED A CLAIM FOR WORKERS' COMPENSATION BENEFITS."

~~Any~~

(C) Any residence address is confidential and shall not be disclosed to any person or public or private entity except to a party to the claim, a law enforcement agency, an office of a district attorney, any person for a journalistic purpose, or other governmental agency.

~~Nothing~~

(D) Nothing in this paragraph shall be construed to prohibit the use of individually identifiable information for purposes of identifying bona fide lien claimants.

(c) Except as provided in subdivision (b), individually identifiable information obtained by the division is privileged and is not subject to subpoena in a civil proceeding unless, after reasonable notice to the division and a hearing, a court determines that the public interest and the intent of this section will not be jeopardized by disclosure of the information. This section shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility of that information in a criminal proceeding.

(d) It shall be unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

(e) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 98. Section 138.7 of the Labor Code, as amended by Section 4 of Chapter 568 of the Statutes of 2011, is amended to read:

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) (A) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(B) The administrative director may publish the identity of claims administrators in the annual report disclosing the compliance rates of claims administrators pursuant to subdivision (d) of Section 138.6.

(2) The State Department of Public Health may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational

disease prevention as specified in Section 105175 of the Health and Safety Code.

(3) (A) Individually identifiable information may be used by the Division of Workers' Compensation~~,~~ *and* the Division of Occupational Safety and Health~~, and the Division of Labor Statistics and Research~~ as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. No individually identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph may be disclosed to any other person or entity, public or private, for a use other than that research project for which the information was obtained. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information. Within a reasonable period of time after

the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) *(A)* This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5.

~~However~~

(B) However, individually identifiable information shall not be provided to any person or public or private entity who is not a party to the claim unless that person identifies himself or herself or that public or private entity identifies itself and states the reason for making the request. The administrative director may require the person or public or private entity making the request to produce information to verify that the name and address of the requester is valid and correct. If the purpose of the request is related to preemployment screening, the administrative director shall notify the person about whom the information is requested that the information was provided and shall include the following in 12-point type:

"IT MAY BE A VIOLATION OF FEDERAL AND STATE LAW TO DISCRIMINATE AGAINST A JOB APPLICANT BECAUSE THE APPLICANT HAS FILED A CLAIM FOR WORKERS' COMPENSATION BENEFITS."

~~Any~~

(C) Any residence address is confidential and shall not be disclosed to any person or public or private entity except to a party to the claim, a law enforcement agency, an office of a district attorney, any person for a journalistic purpose, or other governmental agency.

~~Nothing~~

(D) Nothing in this paragraph shall be construed to prohibit the use of individually identifiable information for purposes of identifying bona fide lien claimants.

(c) Except as provided in subdivision (b), individually identifiable information obtained by the division is privileged and is not subject to subpoena in a civil proceeding unless, after reasonable notice to the division and a hearing, a court determines that the public interest and the intent of this section will not be jeopardized by disclosure of the information. This section shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility of that information in a criminal proceeding.

(d) It shall be unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

(e) This section shall become operative on January 1, 2017.

SEC. 99. The heading of Chapter 7 (commencing with Section 150) of Division 1 of the Labor Code is amended to read:

CHAPTER 7. ~~DIVISION OF~~ LABOR STATISTICS AND RESEARCH

SEC. 100. Section 150 of the Labor Code is amended to read:

150. *(a)* The ~~Division of Labor Statistics and Research, hereafter in this chapter referred to as the division,~~ *department* shall collect, compile, and present facts and statistics relating to the condition of labor in the state, including information as to cost of living, labor supply and demand, industrial relations, industrial disputes, industrial accidents and safety, labor productivity, sanitary and other conditions, prison labor, and such other matters in relation to labor as the Director of Industrial Relations deems desirable. ~~Except for statistics relating to internal administration, all statistical functions of the department shall be performed by the division.~~

(b) To the extent not in conflict with this or any other section, on the date this subdivision becomes operative, the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 1 (commencing with Section 14000) and Subchapter 2 (commencing with Section 14900) of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Occupational Safety and Health and the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 3 (commencing with Section 16000) of Chapter 8

of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Labor Standards Enforcement.

SEC. 101. Section 151 of the Labor Code is amended to read:

151. *(a)* The ~~division~~ *department* shall conduct an annual survey of the ethnic derivation of the individuals who are parties to apprentice agreements described in Section 3077 ~~of this code~~. In conducting this survey, the division shall use any pertinent data which the federal government may provide to avoid duplication of effort.

~~The~~

(b) The Division of Apprenticeship Standards shall cooperate in the accomplishment of the survey required by this section ~~as the division may request~~. The occasion of this survey may be used to gather such additional current data as may be of benefit to apprenticeship programs.

~~Data~~

(c) Data gathered pursuant to this section shall not be evidence per se of an unlawful employment practice.

~~Nothing~~

(d) Nothing in this section shall be construed to authorize any state agency to require an employer to employ a specified percentage of individuals of any particular ethnic derivation irrespective of such individuals' qualifications for employment.

SEC. 102. Section 152 of the Labor Code is amended to read:

152. The ~~Chief of the Division of Labor Statistics and Research~~ *Director of Industrial Relations* and *authorized* employees of the ~~division authorized by him~~ *department* may issue subpoenas to compel the attendance of witnesses and production of books, papers, and records; administer oaths; examine witnesses under oath; take the verification or proof of written instruments; and take depositions and affidavits for the purpose of carrying out the provisions of this code and performing the duties ~~which the division is~~ required ~~to perform~~ *by this chapter*. They shall have free access to all places of labor. Any person, or agent or officer thereof, who willfully neglects or refuses to furnish statistics requested by the division, which are in his *or her* possession, or under his *or her* control, or who refuses to admit the ~~chief~~ *director* or his *or her* authorized employee to a place of labor, is guilty of a misdemeanor. The ~~Director of Industrial Relations~~ *director* may direct the chief and the employees of other divisions of the department to transmit

~~to the Division of Labor Statistics and Research~~ any statistical information in their possession, or to conduct investigations and otherwise assist ~~the Division of Labor Statistics and Research~~ in the gathering of whatever statistics the director deems desirable.

SEC. 103. Section 153 of the Labor Code is amended to read:

153. Except as provided in Section 151 no use shall be made in the *statistical or other* reports ~~of the division~~ *prepared pursuant to this chapter* of the names of persons supplying the information required under this code. Any agent or employee of the ~~division~~ *department* who violates this section is guilty of a misdemeanor.

SEC. 104. Section 156 of the Labor Code is amended to read:

156. An annual report containing statistics on California work injuries and occupational diseases and fatalities by industry classifications shall be completed and published by the ~~Division of Labor Statistics and Research~~ *department* no later than December 31 of the following calendar year. All of the reports and statistics shall be available to the public.

SEC. 105. Section 511 of the Labor Code is amended to read:

511. (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding subdivision (c) of Section 500, the menu of work schedule options may include a regular schedule of eight-hour days that are compensated in accordance with subdivision (a) of Section 510. Employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

(b) An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative

workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

(c) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal, or nullification of an alternative workweek schedule.

(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor ~~Statistics and Research~~ *Standards Enforcement* within 30 days after the results are final.

(f) Any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees pursuant to this section. Any alternative workweek schedule that was adopted pursuant to Wage Order ~~Numbers~~ *Number* 1, 4, 5, 7, or 9 of the Industrial Welfare Commission is null and void, except for an alternative workweek

providing for a regular schedule of no more than 10 hours' work in a workday that was adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998. This subdivision does not apply to exemptions authorized pursuant to Section 515.

(g) Notwithstanding subdivision (f), an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Order Numbers 4 and 5 in effect prior to 1998 that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation shall be valid until July 1, 2000. An employer in the health care industry shall make a reasonable effort to accommodate any employee in the health care industry who is unable to work the alternative schedule established as the result of a valid election held in accordance with provisions of Wage Order Number 4 or 5 that were in effect prior to 1998.

(h) Notwithstanding subdivision (f), if an employee is voluntarily working an alternative workweek schedule providing for a regular work schedule of not more than 10 hours' work in a workday as of July 1, 1999, an employee may continue to work that alternative workweek schedule without the entitlement of the payment of daily overtime compensation for the hours provided in that schedule if the employer approves a written request of the employee to work that schedule.

(i) For purposes of this section, "work unit" includes a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision thereof. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this section is met.

SEC. 106. Section 515.5 of the Labor Code is amended to read:

515.5. (a) Except as provided in subdivision (b), an employee in the computer software field shall be exempt from the requirement that an overtime rate of compensation be paid pursuant to Section 510 if all of the following apply:

(1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(2) The employee is primarily engaged in duties that consist of one or more of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

(C) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(3) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering. A job title shall not be determinative of the applicability of this exemption.

(4) The employee's hourly rate of pay is not less than thirty-six dollars ($36.00) or, if the employee is paid on a salaried basis, the employee earns an annual salary of not less than seventy-five thousand dollars ($75,000) for full-time employment, which is paid at least once a month and in a monthly amount of not less than six thousand two hundred fifty dollars ($6,250). The ~~Division of Labor Statistics and Research~~ *department* shall adjust both the hourly pay rate and the salary level described in this paragraph on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) does not apply to an employee if any of the following apply:

(1) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(2) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(3) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(4) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not engaged in computer systems analysis, programming, or any other similarly skilled computer-related occupation.

(5) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(6) The employee is engaged in any of the activities set forth in subdivision (a) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

SEC. 107. Section 515.6 of the Labor Code is amended to read:

515.6. (a) Section 510 shall not apply to any employee who is a licensed physician or surgeon, who is primarily engaged in duties that require licensure pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and whose hourly rate of pay is equal to or greater than fifty-five dollars ($55.00). The ~~Division of Labor Statistics and Research~~ *department* shall adjust this threshold rate of pay each October 1, to be effective the following January 1, by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) shall not apply to an employee employed in a medical internship or resident program or to a physician employee covered by a valid collective bargaining agreement pursuant to Section 514.

SEC. 108. Chapter 9 (commencing with Section 1137) of Part 3 of Division 2 of the Labor Code is repealed.

SEC. 109. Section 1202 of the Labor Code is amended to read:

1202. Upon the request of the commission, the ~~Division of Labor Statistics and Research~~ *department* shall cause such statistics

and other data and information to be gathered, and investigations made, as the commission may require. The cost thereof shall be paid out of the appropriations made for the expenses of the commission.

SEC. 110. Section 1773.3 of the Labor Code is amended to read:

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section *1771.3, 1771.5, or* 1777.5*, or any other statute providing for the payment of fees to the Department of Industrial Relations for enforcing prevailing wage requirements on that project,* shall, within five days of the award, send a copy of the award to the ~~Division of Apprenticeship Standards~~ *department*. ~~When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request.~~ *In lieu of responding to any specific request for contract award information, the department my make such information available for public review by posting on its Internet Web site.* Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of ~~Apprenticeship Standards~~ *Labor Standards Enforcement*.

SEC. 111. Section 1776 of the Labor Code is amended to read:

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable

hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract~~,~~ *and* the Division of Labor Standards Enforcement~~, and the Division of Apprenticeship Standards~~ of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract~~, the Division of Apprenticeship Standards,~~ or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body~~, the Division of Apprenticeship Standards,~~ or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the

contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political

subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the ~~Division of Apprenticeship Standards or the~~ Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

SEC. 112. Section 1777.5 of the Labor Code is amended to read:

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the

work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the ~~Chief of the Division~~ *Administrator* of Apprenticeship ~~Standards~~, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the ~~Chief of the Division~~ *Administrator* of Apprenticeship ~~Standards~~ may grant a certificate exempting the

contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(*l*) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002–03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the ~~Division of Apprenticeship Standards~~ *Department of Industrial Relations* for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the ~~Division of Apprenticeship Standards~~ *Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code*.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all ~~money~~ *moneys* in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the ~~Division of Apprenticeship Standards~~ *Department of Industrial Relations*.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

~~(p) All decisions of an apprenticeship program under this section are subject to Section 3081.~~

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

SEC. 113. Section 1777.7 of the Labor Code is amended to read:

1777.7. (a) (1) A contractor or subcontractor that is determined by the ~~Chief of the Division of Apprenticeship Standards~~ *Labor Commissioner* to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the ~~Chief~~ *Labor Commissioner* if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the ~~Chief~~ *Labor Commissioner*, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the ~~Chief~~ *Labor Commissioner* may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the ~~Chief~~ *Labor Commissioner* to have knowingly committed a serious violation of any provision of Section 1777.5, the ~~Chief~~ *Labor Commissioner* may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public

works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the ~~Chief~~ *Labor Commissioner* becomes a final order ~~of the Administrator of Apprenticeship~~.

(c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the ~~Chief~~ *Labor Commissioner* imposing the debarment or civil penalty by transmitting a written request to the office of the ~~Administrator~~ *Labor Commissioner that appears on the determination* within ~~30~~ *60* days after service of the determination of debarment or civil penalty. ~~A copy of this report shall also be served on the Chief.~~ If ~~the Administrator does not receive a timely request for review~~ *no hearing is requested within 60 days after service* of the determination ~~of debarment or civil penalty made by the Chief~~, the ~~order~~ *determination* shall become ~~the~~ final ~~order of the Administrator~~.

~~(2) Within 20 days of the timely receipt of a request for review, the Chief shall provide the contractor, subcontractor, or responsible officer the opportunity to review any evidence the Chief may offer at the hearing. The Chief shall also promptly disclose any nonprivileged documents obtained after the 20-day time limit at a time set forth for exchange of evidence by the Administrator.~~

~~(3) Within 90 days of the timely receipt of a request for review, a hearing shall be commenced before the Administrator or an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.~~

~~(4) Within 45 days of the conclusion of the hearing, the Administrator shall issue a written decision affirming, modifying, or dismissing the determination of debarment or civil penalty. The decision shall contain a statement of the factual and legal basis for the decision and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party that the party has filed with the Administrator. Within 15 days of issuance of the decision, the Administrator may~~

~~reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.~~

~~(5) An affected contractor, subcontractor, or responsible officer who has timely requested review and obtained a decision under paragraph (4) may obtain review of the decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision. If no timely petition for a writ of mandate is filed, the decision shall become the final order of the Administrator. The decision of the Administrator shall be affirmed unless the petitioner shows that the Administrator abused his or her discretion. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.~~

(2) The provisions of Section 1742 shall apply to the review of any determination issued pursuant to subdivision (a) or (b), subject to the following:

(A) The provisions of Section 1742 and any regulations implementing that section shall apply to a responsible officer who requests review of a determination under this section to the same extent as any affected contractor or subcontractor who requests review.

(B) In the review of a determination under this section, the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(3) For purposes of this section, a determination issued pursuant to subdivision (a) or (b) includes a determination that has been approved by the Labor Commissioner and issued by an awarding body that has been authorized to assist the director in the enforcement of Section 1777.5 pursuant to subdivision (p) of that section. The Labor Commissioner shall have the right to intervene in any proceeding for review of a determination issued by an awarding body. If the involvement of the Labor Commissioner in a labor compliance program enforcement action is limited to a review of the determination and the matter is resolved without litigation by or against the Labor Commissioner or the department, the awarding body shall enforce any applicable penalties, as

specified in this section, and shall deposit any penalties and forfeitures collected in the General Fund.

~~(6)~~

(4) The ~~Chief~~ *Labor Commissioner* may certify a copy of the final order of the ~~Administrator~~ *Director of Industrial Relations* and file it with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination ~~by the Chief~~ imposing a penalty under this section shall, upon receipt of a certified copy of a final order ~~of the Administrator~~ *that is no longer subject to judicial review*, promptly transmit the withheld funds, up to the amount of the certified order, to the ~~Administrator~~ *Labor Commissioner*.

(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds

due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) *(1)* The ~~Chief~~ *Labor Commissioner* shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

~~(1)~~

(A) Whether the violation was intentional.

~~(2)~~

(B) Whether the party has committed other violations of Section 1777.5.

~~(3)~~

(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

~~(4)~~

(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

~~(5)~~

(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

~~If~~

(2) If a party seeks review of a decision by the *Labor Commissioner* ~~Chief~~ to impose a monetary penalty or period of debarment, the ~~Administrator~~ *Director of Industrial Relations* shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and *the substantive requirements of* this section*, including the limitations period for issuing a determination under subdivision (a) or (b),* shall be in accordance with the regulations of the California Apprenticeship

Council. The ~~Administrator~~ *Director of Industrial Relations* may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.

SEC. 114. Section 2012 of the Labor Code is amended to read:

2012. The ~~Division of Labor Statistics and Research~~ *department* shall keep constantly advised of industrial conditions throughout the State as affecting the employment of labor. Whenever the Governor represents or the division has reason to believe, that a period of extraordinary unemployment caused by industrial depression exists in the ~~State~~ *state*, it shall immediately hold an inquiry into the facts relating thereto, and report to the Governor whether, in fact, such condition exists.

SEC. 115. Section 2013 of the Labor Code is amended to read:

2013. If the ~~Division of Labor Statistics and Research~~ *department* reports to the Governor that a condition of extraordinary unemployment caused by industrial depression does exist within this ~~State~~ *state*, the Department of Finance may apportion the available Emergency Fund among the several ~~State~~ *state* agencies for the extension of the public works of the ~~State~~ *state* under the charge or direction thereof, in the manner which the Department of Finance believes to be best adapted to advance the public interest by providing the maximum of public employment consistent with the most useful, permanent, and economic extension of public works.

SEC. 116. Section 2686 of the Labor Code is amended to read:

2686. Upon the written request of any manufacturer or contractor, the *California State Mediation and* Conciliation Service ~~of the Department of Industrial Relations~~ shall notify the other party to the dispute of the request for arbitration and shall, within seven days of receipt of the request, appoint an arbitration panel to hear and render a decision regarding the dispute. The panel shall be constituted as follows:

(a) A management level representative from a manufacturer in the general geographic area in which the dispute arises, provided that insofar as possible the manufacturer shall not be a direct competitor of the manufacturer involved in the dispute to be arbitrated. This panel member also shall be selected in accordance with the terms of the written contract.

(b) A representative from the contractors' association whose membership encompasses the general geographic area in which the dispute arises. This panel member also shall be selected in accordance with the terms of the written contract.

(c) A third party to be chosen and agreed upon by the first two parties to the dispute from a list of arbitrators provided by the American Arbitration Association. This party shall act as chairperson of the panel.

SEC. 117. Section 3072 of the Labor Code is amended to read:

3072. ~~(a)~~ The Director of Industrial Relations is ex officio the Administrator of Apprenticeship and is authorized to appoint assistants as necessary to effectuate the purposes of this chapter.

~~(b) An awarding body, as defined in Section 1722, that implements an approved labor compliance program pursuant to subdivision (b) of Section 1771.5 may, upon mutual agreement with the Chief of the Division of Apprenticeship Standards and at his or her discretion, assist the director in the enforcement of Section 1777.5 through the operation of that approved labor compliance program under the terms and conditions prescribed by the Chief of the Division of Apprenticeship Standards.~~

~~(c) A contractor may appeal the result of a labor compliance program enforcement action related to Section 1777.5 through the procedures described in Section 1777.7.~~

~~(d) If the involvement of the Chief of the Division of Apprenticeship Standards in a labor compliance program enforcement action is limited to a review of an assessment and the matter is resolved without litigation by or against the chief, the awarding body that has implemented the labor compliance program shall enforce any applicable penalties, as specified in Section 1777.7, and shall deposit any penalties and forfeitures collected in its general fund.~~

SEC. 118. Section 3073 of the Labor Code is amended to read:

3073. The Chief of the Division of Apprenticeship Standards, or his or her duly authorized representative, shall administer the provisions of this chapter; act as secretary of the California Apprenticeship Council; shall foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment; shall ensure that selection procedures are impartially administered to all applicants for apprenticeship; shall

gather and promptly disseminate information through apprenticeship and training information centers; shall maintain on public file in all high schools and field offices of the Employment Development Department the name and location of the local area apprenticeship committees, the filing date, and minimum requirements for application of all registered apprenticeship programs; shall cooperate in the development of apprenticeship programs and may advise with them on problems affecting apprenticeship standards; shall audit all selection and disciplinary proceedings of apprentices or prospective apprentices; may enter joint agreements with the Employment Development Department outreach education and employment programs, and educational institutions on the operation of apprenticeship information centers, including positive efforts to achieve information on equal opportunity and affirmative action programs for women and minorities; and shall supervise and recommend apprenticeship agreements as to these standards and perform such other duties associated therewith as the California Apprenticeship Council may recommend. The chief shall coordinate the exchange, by the California Apprenticeship Council, the apprenticeship program sponsors, the *Department of* Fair Employment and Housing ~~Commission~~, community organizations, and other interested persons, of information on available minorities and women who may serve as apprentices.

SEC. 119. Section 3099 of the Labor Code is repealed.

~~3099. (a) The Division of Apprenticeship Standards shall do all of the following:~~

~~(1) On or before July 1, 2001, establish and validate minimum standards for the competency and training of electricians through a system of testing and certification.~~

~~(2) On or before March 1, 2000, establish an advisory committee and panels as necessary to carry out the functions under this section. There shall be contractor representation from both joint apprenticeship programs and unilateral nonunion programs in the electrical contracting industry.~~

~~(3) On or before July 1, 2001, establish fees necessary to implement this section.~~

~~(4) On or before July 1, 2001, establish and adopt regulations to enforce this section.~~

~~(5) Issue certification cards to electricians who have been certified pursuant to this section. Fees collected pursuant to paragraph (3) are continuously appropriated in an amount sufficient to pay the costs of issuing certification cards, and that amount may be expended for that purpose by the division.~~

~~(6) On or before July 1, 2003, establish an electrical certification curriculum committee comprised of representatives of the State Department of Education, the California Community Colleges, and the division. The following shall apply to the electrical certification curriculum committee:~~

~~(A) The committee shall establish written educational curriculum standards for enrollees in training programs established pursuant to Section 3099.4.~~

~~(B) If an educational provider's curriculum meets the written educational curriculum standards established in accordance with subparagraph (A), the committee shall designate that curriculum as an approved curriculum of classroom instruction.~~

~~(C) The committee may review the approved curriculum of classroom instruction of any designated educational provider. The committee may withdraw its approval of the curriculum if the educational provider does not continue to meet the established written educational curriculum standards.~~

~~(D) The committee shall require each designated educational provider to submit an annual notice to the committee stating whether the educational provider is continuing to offer the approved curriculum of classroom instruction and whether any material changes have been made to the curriculum since its approval.~~

~~(b) There shall be no discrimination for or against any person based on membership or nonmembership in a union.~~

~~(c) As used in this section, "electricians" includes all persons who engage in the connection of electrical devices for electrical contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically, contractors classified as electrical contractors in the Contractors' State License Board Rules and Regulations. This section does not apply to electrical connections under 100 volt-amperes. This section does not apply to persons performing work to which Section 7042.5 of the Business and Professions Code is applicable, or to electrical work ordinarily and customarily performed by stationary engineers. This section does~~

~~not apply to electrical work in connection with the installation, operation, or maintenance of temporary or portable electrical equipment performed by technicians in the theatrical, motion picture production, television, hotel, exhibition, or trade show industries.~~

SEC. 120. Section 3099.2 of the Labor Code is repealed.

~~3099.2. (a) (1) Persons who perform work as electricians shall become certified pursuant to Section 3099 by the deadline specified in this subdivision. After the applicable deadline, uncertified persons shall not perform electrical work for which certification is required.~~

~~(2) The deadline for certification as a general electrician or fire/life safety technician is January 1, 2006, except that persons who applied for certification prior to January 1, 2006, have until January 1, 2007, to pass the certification examination. The deadline for certification as a residential electrician is January 1, 2007, and the deadline for certification as a voice data video technician or a nonresidential lighting technician is January 1, 2008. The California Apprenticeship Council may extend the certification date for any of these three categories of electricians up to January 1, 2009, if the council concludes that the existing deadline will not provide persons sufficient time to obtain certification, enroll in an apprenticeship or training program, or register pursuant to Section 3099.4.~~

~~(3) For purposes of any continuing education or recertification requirement, individuals who become certified prior to the deadline for certification shall be treated as having become certified on the first anniversary of their certification date that falls after the certification deadline.~~

~~(4) Individuals desiring to be certified shall submit an application for certification and examination that includes an employment history report from the Social Security Administration. The individual may redact his or her social security number from the employment history report before it is submitted.~~

~~(b) (1) Certification is required only for those persons who perform work as electricians for contractors licensed as class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations.~~

~~(2) Certification is not required for persons performing work for contractors licensed as class C-7 low voltage systems or class~~

~~C-45 sign contractors as long as the work performed is within the scope of the class C-7 or class C-45 license, including incidental and supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a class C-10 contractor.~~

~~(3) Certification is not required for work performed by a worker on a high-voltage electrical transmission or distribution system owned by a local publicly owned electric utility, as defined in Section 224.3 of the Public Utilities Code; an electrical corporation, as defined in Section 218 of the Public Utilities Code; a person, as defined in Section 205 of the Public Utilities Code; or a corporation, as defined in Section 204 of the Public Utilities Code; when the worker is employed by the utility or a licensed contractor principally engaged in installing or maintaining transmission or distribution systems.~~

~~(c) The division shall establish separate certifications for general electrician, fire/life safety technician, residential electrician, voice data video technician, and nonresidential lighting technician.~~

~~(d) Notwithstanding subdivision (a), certification is not required for registered apprentices performing electrical work as part of an apprenticeship program approved under this chapter, a federal Office of Apprenticeship program, or a state apprenticeship program authorized by the federal Office of Apprenticeship. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.~~

~~(e) Notwithstanding subdivision (a), certification is not required for any person employed pursuant to Section 3099.4.~~

~~(f) Notwithstanding subdivision (a), certification is not required for a nonresidential lighting trainee (1) who is enrolled in an on-the-job instructional training program approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3090, and (2) who is under the onsite supervision of a nonresidential lighting technician certified pursuant to Section 3099.~~

~~(g) Notwithstanding subdivision (a), the qualifying person for a class C-10 electrical contractor license issued by the Contractors' State License Board need not also be certified pursuant to Section 3099 to perform electrical work for that licensed contractor or to~~

~~supervise an uncertified person employed by that licensed contractor pursuant to Section 3099.4.~~

~~(h) Commencing July 1, 2009, the following shall constitute additional grounds for disciplinary proceedings, including suspension or revocation of the license of a class C-10 electrical contractor pursuant to Article 7 (commencing with Section 7090) of Chapter 9 of Division 3 of the Business and Professions Code:~~

~~(1) The contractor willfully employs one or more uncertified persons to perform work as electricians in violation of this section.~~

~~(2) The contractor willfully fails to provide the adequate supervision of uncertified workers required by paragraph (3) of subdivision (a) of Section 3099.4.~~

~~(3) The contractor willfully fails to provide adequate supervision of apprentices performing work pursuant to subdivision (d).~~

~~(i) The Chief of the Division of Apprenticeship Standards shall develop a process for referring cases to the Contractors' State License Board when it has been determined that a violation of this section has likely occurred. On or before July 1, 2009, the chief shall prepare and execute a memorandum of understanding with the Registrar of Contractors in furtherance of this section.~~

~~(j) Upon receipt of a referral by the Chief of the Division of Apprenticeship Standards alleging a violation under this section, the Registrar of Contractors shall open an investigation. Any disciplinary action against the licensee shall be initiated within 60 days of the receipt of the referral. The Registrar of Contractors may initiate disciplinary action against any licensee upon his or her own investigation, the filing of any complaint, or any finding that results from a referral from the Chief of the Division of Apprenticeship Standards alleging a violation under this section. Failure of the employer or employee to provide evidence of certification or trainee status shall create a rebuttable presumption of violation of this provision.~~

~~(k) For the purposes of this section, "electricians" has the same meaning as the definition set forth in Section 3099.~~

SEC. 121. Section 3099.3 of the Labor Code is repealed.

~~3099.3. The Division of Apprenticeship Standards shall do all of the following:~~

~~(a) Make information about electrician certification available in non-English languages spoken by a substantial number of~~

~~construction workers, as defined in Section 7296.2 of the Government Code.~~

~~(b) Provide for the administration of certification tests in Spanish and, to the extent practicable, other non-English languages spoken by a substantial number of applicants, as defined in Section 7296.2 of the Government Code, except insofar as the ability to understand warning signs, instructions, and certain other information in English is necessary for safety reasons.~~

~~(c) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter that impose minimum formal education requirements as a condition of entry provide for reasonable alternative means of satisfying those requirements.~~

~~(d) Ensure, in conjunction with the California Apprenticeship Council, that by no later than January 1, 2003, all electrician apprenticeship programs approved under this chapter have adopted reasonable procedures for granting credit toward a term of apprenticeship for other vocational training and on-the-job training experience.~~

~~(e) Report to the Legislature, prior to the deadline for individuals to become certified, on the status of electrician certification, including all of the following:~~

~~(1) The number of persons who have been certified pursuant to Section 3099.~~

~~(2) The number of persons enrolled in electrician apprenticeship programs.~~

~~(3) The number of persons who have registered pursuant to Section 3099.4.~~

~~(4) The estimated number of individuals performing work for Class C-10 electrical contractors for which certification will be required after the deadline for certification, who have not yet been certified and are not enrolled in apprenticeship programs or registered pursuant to Section 3099.4.~~

~~(5) Whether enforcement of the deadline for certification will cause a shortage of electricians in California.~~

~~(6) Whether persons who wish to become certified electricians will have an adequate opportunity to pass the certification exam, to register pursuant to Section 3099.4, or to enroll in an apprenticeship program prior to the deadline for certification.~~

SEC. 122. Section 3099.4 of the Labor Code is repealed.

~~3099.4. (a) After the deadline for certification, an uncertified person may perform electrical work for which certification is required under Section 3099 in order to acquire the necessary on-the-job experience for certification, if all of the following requirements are met:~~

~~(1) The person is registered with the Division of Apprenticeship Standards. A list of current registrants shall be maintained by the division and made available to the public upon request.~~

~~(2) The person either has completed or is enrolled in an approved curriculum of classroom instruction.~~

~~(3) The employer attests that the person shall be under the direct supervision of an electrician certified pursuant to Section 3099 who is responsible for supervising no more than one uncertified person. An employer who is found by the division to have failed to provide adequate supervision may be barred by the division from employing uncertified individuals pursuant to this section in the future.~~

~~(b) For purposes of this section, an "approved curriculum of classroom instruction" means a curriculum of classroom instruction approved by the electrician certification curriculum committee established pursuant to paragraph (6) of subdivision (a) of Section 3099 and provided under the jurisdiction of the State Department of Education, the Board of Governors of the California Community Colleges, or the Bureau for Private Postsecondary and Vocational Education.~~

~~(c) The curriculum committee may grant approval to an educational provider that presently offers only a partial curriculum if the educational provider intends in the future to offer, or to cooperate with other educational providers to offer, a complete curriculum for the type of certification involved. The curriculum committee may require an educational provider receiving approval for a partial curriculum to periodically renew its approval with the curriculum committee until a complete curriculum is offered and approved. A partial curriculum means a combination of classes that do not include all classroom educational components of the complete curriculum for one of the categories of certification established in accordance with subdivision (c) of Section 3099.2.~~

~~(d) An educational provider that receives approval for a partial curriculum must disclose in all communications to students and~~

~~to the public that the educational provider has only received approval for a partial curriculum and shall not make any representations that the provider offers a complete approved curriculum of classroom instruction as established by subparagraph (A) of paragraph (6) of subdivision (a) of Section 3099.~~

~~(e) For purposes of this section, a person is "enrolled" in an approved curriculum of classroom instruction if the person is attending classes on a full-time or part-time basis toward the completion of an approved curriculum.~~

~~(f) Registration under this section shall be renewed annually and the registrant shall provide to the division certification of the classwork completed and on-the-job experience acquired since the prior registration.~~

~~(g) For purposes of verifying the information provided by a person registered with the division, an educational provider of an approved curriculum of classroom instruction shall, upon the division's request, provide the division with information regarding the enrollment status and instruction completed by a person registered. By registering with the division in accordance with this section, a person consents to the release of this information.~~

~~(h) The division shall establish registration fees necessary to implement this section, not to exceed twenty-five dollars ($25) for the initial registration. There shall be no fee for annual renewal of registration. Fees collected are continuously appropriated in an amount sufficient to administer this section and that amount may be expended by the division for this purpose.~~

~~(i) The division shall issue regulations to implement this section.~~

~~(j) For purposes of Section 1773, persons employed pursuant to this section do not constitute a separate craft, classification, or type of worker.~~

~~(k) Notwithstanding any other provision of law, an uncertified person who has completed an approved curriculum of classroom instruction and is currently registered with the division may take the certification examination. The person shall be certified upon passing the examination and satisfactorily completing the requisite number of on-the-job hours required for certification. A person who passes the examination prior to completing the requisite hours of on-the-job experience shall continue to comply with subdivision (f).~~

SEC. 123. Section 3099.5 of the Labor Code is repealed.

~~3099.5. (a) The Electrician Certification Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the costs of the Division of Apprenticeship Standards program to validate and certify electricians as provided by Section 3099, and shall not be used for any other purpose.~~

~~(b) The fund shall consist of the fees collected pursuant to Section 3099.~~

SEC. 124. Section 6332 of the Labor Code is amended to read:

6332. (a) For purposes of this section, the following terms have the following meanings:

(1) "Community health care worker" means an individual who provides health care or health care-related services to clients in home settings.

(2) "Employer" means a person or entity that employs a community health care worker. "Employer" does not include an individual who is a recipient of home-based services and who is responsible for hiring his or her own community health care worker.

(3) "Violence" means a physical assault or a threat of a physical assault.

(b) Every employer shall keep a record of any violence committed against a community health care worker and shall file a copy of that record with the ~~Division of Labor Statistics and Research~~ *department* in the form and detail and within the time limits prescribed by the ~~Division of Labor Statistics and Research~~ *department*.

SEC. 125. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. ~~Beginning January 1, 1994, an~~ *An* employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. ~~Beginning January 1, 1994, an~~ *An* employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with ~~the requirements of~~ this

subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) *(A)* The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

~~For~~

(B) For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low

hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's ~~(A)~~ periodic, scheduled worksite inspections~~, (B)~~*;* investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances~~,~~*;* and ~~(C)~~ investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) *(A)* Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

~~If~~

(B) If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer that controls or directs and directly supervises its own employees on the job.

(i) When a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may

assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization, as defined in Section 11750.1 of the Insurance Code, ~~the Division of Labor Statistics and Research,~~ and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have

complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(k) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, subdivision (d) shall not apply.

(*l*) Every workers' compensation insurer shall conduct a review, including a written report as specified below, of the injury and illness prevention program (IIPP) of each of its insureds with an experience modification of 2.0 or greater within six months of the commencement of the initial insurance policy term. The review shall determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness. The training component of the IIPP shall be evaluated to determine whether training is provided to line employees, supervisors, and upper level management, and effectively imparts the information and skills each of these groups needs to ensure that all of the insured's specific health and safety issues are fully addressed by the insured. The reviewer shall prepare a detailed written report specifying the findings of the review and all recommended changes deemed necessary to make the IIPP effective. The reviewer shall be or work under the direction of a licensed California professional engineer, certified safety professional, or a certified industrial hygienist.

SEC. 126. Section 6409 of the Labor Code is amended to read:

6409. (a) Every physician as defined in Section 3209.3 who attends any injured employee shall file a complete report of every occupational injury or occupational illness to the employee with the employer, or if insured, with the employer's insurer, on forms prescribed for that purpose by the ~~Division of Labor Statistics and Research~~ *Department of Industrial Relations*. A portion of the form shall be completed by the injured employee, if he or she is able to do so, describing how the injury or illness occurred. The form shall be filed within five days of the initial examination. Inability or failure of an injured employee to complete his or her portion of the form shall not affect the employee's rights under this code, and shall not excuse any delay in filing the form. The

employer or insurer, as the case may be, shall file the physician's report with the ~~Department of Industrial Relations, through its Division of Labor Statistics and Research,~~ *department* within five days of receipt. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall also file a complete report, which need not include the affidavit required pursuant to this section, with the ~~Division of Labor Statistics and Research~~ *department*, and within 24 hours of the initial examination shall file a complete report with the local health officer by facsimile transmission or other means. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall not be compensated for the initial diagnosis and treatment unless the report is filed with the employer, or if insured, with the employer's insurer, and includes or is accompanied by a signed affidavit which certifies that a copy of the report was filed with the local health officer pursuant to ~~the requirements of~~ this section.

(b) As used in this section, "occupational illness" means any abnormal condition or disorder caused by exposure to environmental factors associated with employment, including acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

SEC. 127. Section 6410 of the Labor Code is amended to read:

6410. *(a)* The reports required by subdivision (a) of Section 6409 and Section 6413 shall be made in the form and detail and within the time limits prescribed by reasonable rules and regulations adopted by the ~~Division of Labor Statistics and Research~~ *Department of Industrial Relations* in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~Nothing~~

(b) Nothing in this chapter requiring recordkeeping and reporting by employers shall relieve the employer of maintaining records and making reports to the assistant secretary, United States Department of Labor, as required under the ~~Federal~~ *federal* Occupational Safety and Health Act of 1970 (P.L. 91-596). The Division of ~~Labor Statistics and Research~~ *Occupational Safety and Health* shall prescribe and provide the forms necessary for

maintenance of the required records, and ~~the Division of Occupational Safety and Health~~ shall enforce by citation and penalty assessment any violation of the recordkeeping requirements of this chapter.

~~All~~

(c) All state and local government employers shall maintain records and make reports in the same manner and to the same extent as required of other employers by this section.

SEC. 128. Section 6411 of the Labor Code is amended to read:

6411. Every employer or insurer receiving forms with directions from the ~~Division of Labor Statistics and Research~~ *Department of Industrial Relations* to complete them shall cause them to be properly filled out so as to answer fully and correctly each question propounded therein. In case of inability to answer any ~~such~~ questions, a good and sufficient reason shall be given for such failure.

SEC. 129. Section 6413 of the Labor Code is amended to read:

6413. (a) The Department of Corrections *and Rehabilitation*, and every physician or surgeon who attends any injured state prisoner, shall file with the Division of ~~Labor Statistics and Research~~ *Occupational Safety and Health* a complete report, on forms prescribed under Sections 6409 and 6409.1, of every injury to each state prisoner, resulting from any labor performed by the prisoner unless disability resulting from such injury does not last through the day or does not require medical service other than ordinary first aid treatment.

(b) Where the injury results in death a report, in addition to the report required by subdivision (a), shall forthwith be made by the Department of Corrections *and Rehabilitation* to the Division of ~~Labor Statistics and Research~~ *Occupational Safety and Health* by telephone or telegraph.

(c) Except as provided in Section 6304.2, nothing in this section or in this code shall be deemed to make a prisoner an employee, for any purpose, of the Department of Corrections *and Rehabilitation*.

(d) Notwithstanding subdivision (a), no physician or surgeon who attends any injured state prisoner outside of a Department of Corrections *and Rehabilitation* institution shall be required to file the report required by subdivision (a), but the Department of Corrections *and Rehabilitation* shall file the report.

SEC. 130. Section 6413.2 of the Labor Code is amended to read:

6413.2. (a) ~~The Division of Labor Statistics and Research shall, within five working days of their receipt, transmit to the Division of Occupational Safety and Health copies of all reports received by the Division of Labor Statistics and Research pursuant to Section 6413.~~

~~(b)~~ With regard to any report required by Section 6413, the Division of Occupational Safety and Health may make recommendations to the Department of Corrections *and Rehabilitation* of ways in which the department might improve the safety of the working conditions and work areas of state prisoners, and other safety matters. The Department of Corrections *and Rehabilitation* shall not be required to comply with these recommendations.

~~(c)~~

(b) With regard to any report required by Section 6413, the Division of Occupational Safety and Health may, in any case in which the Department of Corrections *and Rehabilitation* has not complied with recommendations made by the division pursuant to subdivision (b), or in any other case in which the division deems the safety of any state prisoner shall require it, conduct hearings and, after these hearings, adopt special orders, rules, or regulations or otherwise proceed as authorized in Chapter 1 (commencing with Section 6300) of this part as it deems necessary. The Department of Corrections *and Rehabilitation* shall comply with any order, rule, or regulation so adopted by the Division of Occupational Safety and Health.

SEC. 131. Section 972.1 of the Military and Veterans Code, as amended by Section 1 of Chapter 183 of the Statutes of 2009, is amended to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for purposes of funding the activities of county ~~veteran~~ *veterans* service ~~officers~~ *offices* pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties that have established and maintain a county ~~veteran~~ *veterans* service ~~officer~~ *office* in accordance with the staffing level

and workload of each county ~~veteran~~ *veterans* service ~~officer~~ *office* under a formula based upon performance that shall be developed by the Department of Veterans Affairs for these purposes.

(1) For the purposes of this section, "workload unit" means a specific claim activity that is used to allocate subvention funds to counties, which is approved by the department, and performed by county veterans service offices.

(2) For the purposes of this subdivision, the department, by June 30, 2013, shall develop a performance-based formula that will incentivize county veterans service offices to perform workload units that help veterans access federal compensation and pension benefits and other benefits, in order to maximize the amount of federal money received by California veterans.

(c) The department shall annually determine the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county ~~veteran~~ *veterans* service ~~officers~~ *offices*. 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 of Finance shall review the department's determination in time to use the information in the annual Budget Act for the budget of the department for the next fiscal year.

(d) The department shall conduct a review of the high-performing and low-performing county veterans service offices and based on this review, shall produce a best-practices manual for county veterans service offices by June 30, 2013.

~~(d)~~

(e) (1) The Legislature finds and declares that 50 percent of the amount annually budgeted for county ~~veteran~~ *veterans* service ~~officers~~ *offices* is approximately eleven million dollars ($11,000,000). The Legislature further finds and declares that it is an efficient and reasonable use of state funds to increase the annual budget for county ~~veteran~~ *veterans* service ~~officers~~ *offices* in an amount not to exceed eleven million dollars ($11,000,000) if it is justified by the monetary benefits to the state's veterans attributable to the effort of these ~~officers~~ *offices*.

(2) It is the intent of the Legislature, after reviewing the department's determination in subdivision (c), to consider an increase in the annual budget for county ~~veteran~~ *veterans* service

~~officers~~ *offices* in an amount not to exceed five million dollars ($5,000,000), if the monetary benefits to the state's veterans attributable to the assistance of county ~~veteran~~ *veterans* service ~~officers~~ *offices* justify that increase in the budget.

~~(e)~~

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed.

SEC. 132. Section 422.92 of the Penal Code is amended to read:

422.92. (a) Every state and local law enforcement agency in this state shall make available a brochure on hate crimes to victims of these crimes and the public.

(b) The Department of Fair Employment and Housing shall provide existing brochures, making revisions as needed, to local law enforcement agencies upon request for reproduction and distribution to victims of hate crimes and other interested parties. In carrying out these responsibilities, the department shall consult the ~~Fair Employment and Housing Commission, the~~ Department of Justice~~,~~ and the Victim Compensation and Government Claims Board.

SEC. 133. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

(b) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (b) of Section 830.2, any peace officer

of the California State University Police Departments, as defined in subdivision (c) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(c) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on peace officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The signs of domestic violence.

(6) The legal rights of, and remedies available to, victims of domestic violence.

(7) The use of an arrest by a private person in a domestic violence situation.

(8) Documentation, report writing, and evidence collection.

(9) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(10) Tenancy issues and domestic violence.

(11) The impact on children of law enforcement intervention in domestic violence.

(12) The services and facilities available to victims and batterers.

(13) The use and applications of this code in domestic violence situations.

(14) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(15) Verification and enforcement of stay-away orders.

(16) Cite and release policies.

(17) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

(d) The guidelines developed by the commission shall also incorporate the foregoing factors.

(e) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

(4) Local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(f) (1) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women *and Girls*; two representatives from the commission; two representatives from the California Partnership to End Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Partnership to End Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence and at least one representative of service providers serving the lesbian, gay, bisexual, and transgender community in connection with domestic

violence. At least one of the persons selected shall be a former victim of domestic violence.

(2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(g) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 134. Section 13776 of the Penal Code is amended to read:

13776. The following definitions apply for the purposes of this title:

(a) "Anti-reproductive-rights crime" means a crime committed partly or wholly because the victim is a reproductive health services client, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or any class of persons or entities from becoming or remaining a reproductive health services client, provider, or assistant. "Anti-reproductive-rights crime" includes, but is not limited to, a violation of subdivision (a) or (c) of Section 423.2.

(b) "Subject matter experts" includes, but is not limited to, the Commission on the Status of Women *and Girls*, law enforcement agencies experienced with anti-reproductive-rights crimes, including the Attorney General and the Department of Justice, and organizations such as the American Civil Liberties Union, the American College of Obstetricians and Gynecologists, the California Council of Churches, the California Medical Association, the Feminist Majority Foundation, NARAL Pro-Choice California, the National Abortion Federation, the California National Organization for Women, the Planned Parenthood Federation of America, Planned Parenthood Affiliates of California, and the Women's Health Specialists clinic that

represent reproductive health services clients, providers, and assistants.

(c) "Crime of violence," "nonviolent," "reproductive health services;" "reproductive health services client, provider, or assistant;" and "reproductive health services facility" each has the same meaning as set forth in Section 423.1.

SEC. 135. Section 13777.2 of the Penal Code is amended to read:

13777.2. (a) The Commission on the Status of Women *and Girls* shall convene an advisory committee consisting of one person appointed by the Attorney General and one person appointed by each of the organizations named in subdivision (b) of Section 13776 that chooses to appoint a member, and any other subject matter experts the commission may appoint. The advisory committee shall elect its chair and any other officers of its choice.

(b) The advisory committee shall make two reports, the first by December 31, 2007, and the second by December 31, 2011, to the Committees on Health, Judiciary, and Public Safety of the Senate and Assembly, to the Attorney General, the Commission on Peace Officer Standards and Training, and the Commission on the Status of Women *and Girls*. The reports shall evaluate the implementation of Chapter 899 of the Statutes of 2001 and any subsequent amendments made to this title and the effectiveness of the plan developed by the Attorney General pursuant to paragraph (4) of subdivision (a) of Section 13777. The reports shall also include recommendations concerning whether the Legislature should extend or repeal the sunset dates in Section 13779, recommendations regarding any other legislation, and recommendations for any other actions by the Attorney General, Commission on Peace Officer Standards and Training, or the Commission on the Status of Women *and Girls*.

(c) The Commission on the Status of Women *and Girls* shall transmit the reports of the advisory committee to the appropriate committees of the Legislature, including, but not limited to, the Committees on Health, Judiciary, and Public Safety in the Senate and Assembly, and make the reports available to the public, including by posting them on the Commission on the Status of ~~Women's~~ *Women and Girls'* Internet Web site. To avoid production and distribution costs, the Commission on the Status of Women *and Girls* may submit the reports electronically or as

part of any other report that the Commission on the Status of Women *and Girls* submits to the Legislature.

(d) The Commission on Peace Officer Standards and Training shall make the telecourse that it produced in 2002 pursuant to subdivision (a) of Section 13778 available to the advisory committee. However, before providing the telecourse to the advisory committee or otherwise making it public, the commission shall remove the name and face of any person who appears in the telecourse as originally produced who informs the commission in writing that he or she has a reasonable apprehension that making the telecourse public without the removal will endanger his or her life or physical safety.

(e) Nothing in this section requires any state agency to pay for compensation, travel, or other expenses of any advisory committee member.

SEC. 136. Section 13836.1 of the Penal Code is amended to read:

13836.1. The committee shall consist of 11 members. Five shall be appointed by the secretary, and shall include three district attorneys or assistant or deputy district attorneys, one representative of a city police department or a sheriff or a representative of a sheriff's department, and one public defender or assistant or deputy public defender of a county. Six shall be public members appointed by the Commission on the Status of Women *and Girls*, and shall include one representative of a rape crisis center, and one medical professional experienced in dealing with sexual assault trauma victims. The committee members shall represent the points of view of diverse ethnic and language groups.

Members of the committee shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties. Staff support for the committee shall be provided by the agency.

SEC. 137. Section 6611 of the Public Contract Code is amended to read:

6611. (a) Notwithstanding any other provision of law, the Department of General Services may, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that one or more of the following conditions exist:

(1) The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process.

(2) The business need or purpose of a procurement or contract is known by the department, but a negotiation process may identify different types of solutions to fulfill this business need or purpose.

(3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high.

(4) The business need or purpose of a procurement or contract is known by the department, but negotiation is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

(b) When it is in the best interests of the state, the department may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another state agency.

(c) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a), which procedures and guidelines shall include, but not be limited to, a clear description of the methodology that will be used by the department to evaluate a bid for the procurement goods, services, information technology, and telecommunications.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

(d) An unsuccessful bidder shall have no right to protest the results of the negotiating process undertaken pursuant to this section. As a remedy, an unsuccessful bidder may file a petition for a writ of mandate in accordance with Section 1085 of the Code of Civil Procedure. The venue for the petition for a writ of mandate shall be Sacramento, California. An action filed pursuant to this subdivision shall be given preference by the court.

(e) (1) The California Technology Agency may utilize the negotiation process described in subdivisions (a) and (b) for the

purpose of procuring information technology and telecommunications goods and services on behalf of state departments and information technology projects.

(2) Nothing in this section shall be interpreted to supersede the department's existing statutory control over procurement processes as dictated in Section 12100.

(f) On or before January 1, 2013, and annually thereafter, the California Technology Agency and the Department of General Services shall report to the relevant budget subcommittees of each house of the Legislature on the use of subdivision (e) during budget hearings.

(g) Subdivisions (e) and (f) shall remain in effect only until January 1, 2018, unless an enacted statute deletes or extends that date. Procurements still in the negotiation process pursuant to subdivision (e) on January 1, 2018, shall complete negotiations using that process.

SEC. 138. Section 25051 of the Public Utilities Code is amended to read:

25051. (a) If a majority of the employees employed by a transit district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the transit board, after determining pursuant to Section 25052 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the transit board and the representatives of the employees, then upon the agreement of both parties, the transit board and the representatives of the employees may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the transit board, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the transit board and labor organization.

(B) If the representatives of the transit board and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service ~~within the Department of Industrial Relations~~. The labor organization and the transit district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the transit district shall determine by lot who shall first strike a name from the list. After the labor organization and the transit district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and the labor organization shall each pay ~~half~~ *one-half* of the cost of the impartial arbitrator.

(b) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(c) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 139. Section 28850 of the Public Utilities Code is amended to read:

28850. (a) If a majority of the employees employed by a district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board, after determining pursuant to Section 28851 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not

resolved by negotiations conducted in good faith between the board and the representatives of the employees, then upon the agreement of both parties, the board and the representatives of the employees may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the district, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the district and the labor organization.

(B) If the representatives of the district and the labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service ~~within the Department of Industrial Relations~~. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and the labor organization shall each pay ~~half~~ *one-half* of the cost of the impartial arbitrator.

(b) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(c) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 140. Section 30750 of the Public Utilities Code is amended to read:

30750. (a) Subject to subdivision (b), if a majority of the employees employed by a district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board, after determining pursuant to Section

30751 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, hours, and working conditions. In the absence of the expression of the desire to be represented by a labor organization, employees are subject to any personnel system established pursuant to Section 30257.

(b) Upon the acquisition by the district of the property of the Los Angeles Metropolitan Transit Authority pursuant to Chapter 8 (commencing with Section 31000), the district shall assume and observe all existing labor contracts and shall recognize the labor organization certified to represent the employees in each existing bargaining unit as the sole representative of the employees in each of those bargaining units. Any certification of a labor organization previously made by the California State Mediation and Conciliation Service under the provisions of the Los Angeles Metropolitan Transit Authority Act of 1957 to represent or act for the employees in any collective bargaining unit shall remain in full force and effect and shall be binding upon the district. Those certifications and any certifications made under this subdivision shall not be subject to challenge on the grounds that a new substantial question of representation within the collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later; provided, that no collective bargaining agreement shall be construed to be a bar to representation proceedings for a period of more than two years.

(c) The obligation of the district to bargain in good faith with a duly designated or certified labor organization and to execute a written collective bargaining agreement with that labor organization covering the wages, hours, and working conditions of the employees represented by that labor organization in an appropriate unit, and to comply with the terms of that collective bargaining agreement, shall not be limited or restricted by any other provision of law. The obligation of the district to bargain collectively shall extend to all subjects of collective bargaining, including, but not limited to, retroactive pay increases. Notwithstanding any other provision of law, the district shall make deductions from the wages and salaries of its employees, upon receipt of authorization to make

those deductions, for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan, or for any other purpose for which deductions may be authorized by employees where the deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

(d) (1) If a dispute arises over wages, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the representatives of the employees, then upon the agreement of both parties, the board and the representative of the employees may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final and binding.

(2) (A) The arbitration board shall be composed of two representatives of the district, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the district and labor organization.

(B) If the representatives of the district and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service ~~within the Department of Industrial Relations~~. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator. The decision of a majority of the arbitration board shall be final and binding upon the parties.

(C) The district and the labor organization shall each pay half of the cost of the impartial arbitrator.

(e) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(f) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section

12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 141. Section 30751 of the Public Utilities Code is amended to read:

30751. Any question which may arise with respect to whether a majority of the employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the ~~Director of the Department of Industrial Relations~~ *Public Employment Relations Board*. In resolving ~~such~~ *those* questions of representation including the determination of the appropriate unit or units, petitions, the conduct of hearings and elections, the ~~director~~ *board* shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended, and for this purpose shall adopt appropriate rules and regulations. ~~Said~~ *Those* rules and regulations shall be administered by the *California* State *Mediation and* Conciliation Service and shall provide for a prompt public hearing and a secret ballot election to determine the question of representation.

SEC. 142. Section 40120 of the Public Utilities Code is amended to read:

40120. Whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the district, upon determining as provided in Section 40122 that the labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited representative of those employees governing wages, salaries, hours, and working conditions. In case of a dispute over wages, salaries, hours, or working conditions, which is not resolved by negotiations in good faith between the district and the labor organization, upon the request of both, the district and the labor organization may submit the dispute to the decision of the majority of an arbitration board, and the decision of the majority of the arbitration board shall be final. The arbitration board shall be composed of two representatives of the district, and two representatives of the labor organization, and they shall endeavor to agree upon the selection of the fifth member. If they are unable to agree, the names of five persons experienced in labor arbitration shall be obtained from the

~~Supervisor of Conciliation of the Division of Conciliation, Department of Industrial Relations~~ *California State Mediation and Conciliation Service*. The labor organization and the district shall, alternately, strike a name from the list so supplied, and the name remaining after the labor organization and the district have stricken four names, shall be designated as the arbitrator. The labor organization and the district shall determine by lot who shall first strike from the list. The decision of a majority of the arbitration board shall be final and binding upon the parties thereto. The expenses of arbitration shall be borne equally by the parties. Each party shall bear his *or her* own costs.

SEC. 143. Section 50120 of the Public Utilities Code is amended to read:

50120. (a) If a majority of the employees employed by a transit district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board, after determining pursuant to Section 50121 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(b) (1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the representatives of the employees, then the board and the representatives of the employees shall submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the transit board, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the transit board and labor organization.

(B) If the representatives of the transit board and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service ~~within the Department of Industrial Relations~~. The labor organization and the district shall, alternately, strike a name from

the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the transit district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and the labor organization shall each pay ~~half~~ *one-half* of the cost of the impartial arbitrator.

(c) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(d) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 144. Section 70120 of the Public Utilities Code is amended to read:

70120. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. It is declared to be in the public interest that the district shall not express any preference for one union over another. Notwithstanding any other provision of this part, whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the district, upon determining as provided in Section 70122 that ~~such~~ *the* labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited representative of ~~such~~ *the* employees governing wages, salaries, hours and working conditions. In case of a dispute over wages, salaries, hours or working conditions, which is not resolved by negotiations in good faith between the district and the labor organization, upon the request of either, the district and the labor organization may submit ~~said~~ *the* dispute to the decision of the majority of an arbitration

board, and the decision of the majority of ~~such~~ *the* arbitration board shall be final. The arbitration board shall be composed of two representatives of the district, and two representatives of the labor organization, and they shall endeavor to agree upon the selection of the fifth member. If they are unable to agree, the names of five persons experienced in labor arbitration shall be obtained from the ~~Supervisor of Conciliation of the Division of Conciliation, Department of Industrial Relations~~ *California State Mediation and Conciliation Service*. The labor organization and the district shall, alternately, strike a name from the list so supplied, and the name remaining after the labor organization and the district have stricken four names, shall be designated as the arbitrator. The labor organization and the district shall determine by lot who shall first strike from the list. The decision of a majority of the arbitration board shall be final and binding upon the parties ~~thereto~~. The expenses of arbitration shall be borne equally by the parties. Each party shall bear his *or her* own costs.

In the event the board and the representatives of the employees do not agree to submit ~~said~~ *the* dispute to an arbitration board as herein provided, the *California* State *Mediation and* Conciliation Service may be notified by either party that a dispute exists and that there is no agreement to arbitrate. ~~Said~~ *The* service shall determine whether or not the dispute may be resolved by the parties and, if not, the issues concerning which the dispute ~~exists; upon such~~ *exists. Upon the* determination, the service shall certify its findings to the Governor ~~of the State of California~~ who shall, within 10 days of receipt of certification appoint a fact finding commission consisting of three persons which shall immediately convene and inquire into and investigate the issues involved in the dispute. ~~Said~~ *The* commission shall report to the Governor within 30 days of the date of its creation.

After the creation of ~~such~~ *the* commission and for 30 days after ~~such~~ *the* commission has made its report to the Governor, no change, except by mutual agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose and service to the public shall be provided.

SEC. 145. Section 90300 of the Public Utilities Code is amended to read:

90300. (a) Employees have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through

representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. It is declared to be in the public interest that the district not express any preference for one union over another.

(1) (A) Notwithstanding any other provision of this act, if a majority of the employees employed by a district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the district, after determining pursuant to subdivision (f) that the labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited representative of those employees governing wages, salaries, hours, and working conditions.

(B) (i) If a dispute arises over wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the district and the labor organization, then upon the request of either party, the district and the labor organization may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(ii) The arbitration board shall be composed of two representatives of the district, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the district and labor organization.

(iii) If the representatives of the district and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service ~~within the Department of Industrial Relations~~. The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator. The decision of a majority of the arbitration board shall be final and binding upon the parties.

(iv) The expenses of arbitration shall be borne equally by the parties. Each party shall bear the party's own costs.

(b) If the board and the representatives of the employees do not agree to submit the dispute to an arbitration board as provided in

subdivision (a), either party may notify the California State Mediation and Conciliation Service that a dispute exists and that there is no agreement to arbitrate. The California State Mediation and Conciliation Service shall determine whether or not the dispute can be resolved by the parties and, if not, the issues that are the subject of the dispute. After making its determination, the service shall certify its findings to the Governor who shall, within 10 days of receipt of certification, appoint a factfinding commission consisting of three persons. The factfinding commission shall immediately convene and investigate the issues involved in the dispute. The commission shall report to the Governor within 30 days of the date of its creation.

(c) After the creation of the commission and for 30 days after the date the commission made its report to the Governor, the parties to the controversy shall not make any change, except by mutual agreement, in the conditions out of which the dispute arose. Service to the public shall be provided during that time.

(d) A contract or agreement shall not be made, or assumed, with any labor organization, association, group, or individual that denies membership to, or in any manner discriminates against, any employee on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(e) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(f) (1) Any questions regarding whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, shall be submitted to the California State Mediation and Conciliation Service for disposition. The California State Mediation and Conciliation Service shall promptly hold a public hearing after due notice to all interested parties to determine the unit appropriate for the purposes of collective bargaining. In making that determination and in establishing rules and regulations governing petitions and the conduct of hearings and elections, the California State Mediation and Conciliation Service shall be guided

by relevant federal law and administrative practice, developed under the Labor-Management Relations Act of 1947 (29 U.S.C. Sec. 141 et seq.).

(2) The California State Mediation and Conciliation Service shall provide for an election to determine the question of representation and shall certify the results to the parties. A certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within the collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later. However, no collective bargaining agreement shall be construed to be a bar to representation proceedings for a period of more than two years.

(g) If the district acquires existing facilities from a publicly or privately owned public utility, either in proceedings by eminent domain or otherwise, the district shall assume and observe all existing labor contracts.

(1) To the extent necessary for operation of facilities, all of the employees of the acquired public utility whose duties pertain to the facilities acquired shall be appointed to comparable positions in the district without examination, subject to all the rights and benefits of this act. Those employees shall be given sick leave, seniority, vacation, and pension credits in accordance with the records and labor agreements of the acquired public utility.

(2) Members and beneficiaries of any pension or retirement system, or other benefits established by the public utility, shall continue to have the rights, privileges, benefits, obligations, and status with respect to the established system. No employee of any acquired public utility may be subject to a reduction in wages, seniority, pension, vacation, or other benefits as a result of the acquisition.

(3) The district may extend the benefits of this section to officers or supervisory employees of the acquired utility.

(h) The district shall not do any of the following:

(1) Acquire any existing system or part of an existing system, whether by purchase, lease, condemnation, or otherwise.

(2) Dispose of or lease any transit system or part of the transit system.

(3) Merge, consolidate, or coordinate any transit system or part of the transit system.

(4) Reduce or limit the lines or service of any existing system or of the district's system unless the district has first made adequate provision for any employees who are or may be displaced. The terms and conditions of that provision shall be a proper subject of collective bargaining.

(i) Notwithstanding any provision of the Government Code, the district may make deductions from the wages and salaries of its employees who authorize the deductions for the following purposes:

(1) Pursuant to a collective bargaining agreement with a duly designated or certified labor organization, for the payment of union dues, fees, or assessments.

(2) For the payment of contributions pursuant to any health and welfare plan, or pension or retirement plan.

(3) For any purpose for which employees of any private employer may authorize deductions.

(j) (1) The obligation of the district to bargain in good faith with a duly designated or certified labor organization and to execute a written collective bargaining agreement with that labor organization covering the wages, hours, and working conditions of the employees represented by that labor organization in an appropriate unit, and to comply with the terms of the collective bargaining agreement, shall not be limited or restricted by any provision of law. The obligation of the district to bargain collectively shall extend to all subjects of collective bargaining that are or may be proper subjects of collective bargaining with a private employer, including retroactive provisions.

(2) Notwithstanding any other provision of law, the district shall make deductions from the wages and salaries of its employees, upon receipt of authorization to make those deductions, for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan, or for any other purpose for which employees of any private employer may authorize deductions, where those deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

(k) The district may provide for a retirement system, provided that the adoption, terms, and conditions of any retirement system

covering employees of the district represented by a labor organization in accordance with this section shall be pursuant to a collective bargaining agreement between the labor organization and the district.

(*l*) The district shall take any steps that may be necessary to obtain coverage for the district and its employees under Title II of the Federal Social Security Act (42 U.S.C. Sec. 401 et seq.), and the related provisions of the Federal Insurance Contributions Act (26 U.S.C. Sec. 3101 et seq.).

(m) The district shall take any steps that may be necessary to obtain coverage for the district and its employees under the workers' compensation (Division 4 (commencing with Section 3200) and Division 4.5 (commencing with Section 6100) of the Labor Code), unemployment compensation disability (Part 2 (commencing with Section 2691) of Division 1 of the Unemployment Insurance Code), and unemployment insurance (Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code) laws of the State of California.

SEC. 146. Section 99561 of the Public Utilities Code is amended to read:

99561. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties, and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for, and supervise, representation elections that shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. ~~In no case shall the lists include persons who are on the staff of the board.~~

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(*l*) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SEC. 147. Section 95650 of the Public Utilities Code is amended to read:

95650. (a) If a majority of the employees employed by a transit district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, then the board after determining pursuant to Section 95651 that the labor organization represents the employees in the appropriate unit, shall bargain with the accredited representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the representatives of the employees, then the board and the representatives of the employees shall submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the transit board, two representatives of the labor organization, and a fifth member to be agreed upon by the representatives of the transit board and labor organization. If the representatives of the transit board and labor organization are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service ~~within the Department of Industrial Relations~~.

(B) The labor organization and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The labor organization and the district shall determine by lot who shall first strike a name from the list. After the labor organization and the district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The transit board and labor organization shall each pay half of the cost of the impartial arbitrator.

~~(c)~~

(b) A contract or agreement shall not be made with any labor organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

~~(d)~~

(c) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 148. Section 98162.5 of the Public Utilities Code is amended to read:

98162.5. Any question which may arise with respect to whether a majority of the employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the ~~Director of Industrial Relations~~ *Public Employment Relations Board*.

In resolving the questions of representation, including the determination of the appropriate unit or units, petitions, and the conduct of hearings and elections, the director shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended, and for this purpose shall adopt appropriate rules and regulations. The rules and regulations shall be administered by the *California* State *Mediation and* Conciliation Service and shall provide for a prompt public hearing and a secret ballot election to determine the question of representation.

SEC. 149. Section 100301 of the Public Utilities Code is amended to read:

100301. Any question which may arise with respect to whether a majority of employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the ~~Director of the Department of Industrial Relations~~ *Public Employment Relations Board*. In resolving ~~such~~ *those* questions of representation including the determination of the appropriate unit or units, petitions, the conduct of hearings and elections, the

~~director~~ *board* shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act of 1947, as amended, and for this purpose shall adopt appropriate rules and regulations. The *California* State *Mediation and* Conciliation Service shall administer ~~such~~ *the* rules and regulations and shall provide for a prompt public hearing and secret ballot election to determine the question of representation and shall certify the results to the parties. Any certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within ~~such~~ *the* collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later, except that no collective bargaining agreement shall be considered to be a bar to representation proceedings for a period of more than two years.

SEC. 150. Section 101341 of the Public Utilities Code is amended to read:

101341. Whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the district, upon determining as provided in Section 101344 that ~~such~~ *the* labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited representative of ~~such~~ *the* employees governing wages, salaries, hours, and working conditions. In case of a dispute over wages, salaries, hours, or working conditions, which is not resolved by negotiations in good faith between the district and the labor organization, the district and the labor organization may submit the dispute to the decision of the majority of an arbitration board, and the decision of the majority of ~~such~~ *the* arbitration board shall be final.

The arbitration board shall be composed of two representatives of the district, and two representatives of the labor organization, and they shall endeavor to agree upon the selection of the fifth member. If they are unable to agree, the names of five persons experienced in labor arbitration shall be obtained from the ~~Supervisor of Conciliation of the Division of Conciliation, Department of Industrial Relations~~ *California State Mediation and Conciliation Service*. The labor organization and the district shall, alternately, strike a name from the list so supplied, and the name

remaining after the labor organization and the district have stricken four names, shall be designated as the arbitrator. The labor organization and the district shall determine by lot who shall first strike from the list. The decision of a majority of the arbitration board shall be final and binding upon the parties ~~thereto~~. The expenses of arbitration shall be borne equally by the parties. Each party shall bear his *or her* own costs.

SEC. 151. Section 102401 of the Public Utilities Code is amended to read:

102401. Notwithstanding any other provision of this part, whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the district, upon determining, as provided in Section 102403, that ~~such~~ *the* labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited representative of ~~such~~ *the* employees governing wages, salaries, hours, pensions, and working conditions. If, after a reasonable period of time, representatives of the district and the accredited representatives of the employees fail to reach agreement either on the terms of a written contract governing wages, hours, pensions, and working conditions or the interpretation or application of the terms of an existing contract, upon the agreement of both the district and the representatives of the employees, the dispute may be submitted to an arbitration board and the decision of the majority of the arbitration board shall be final and binding.

The arbitration board shall be composed of two representatives of the district, and two representatives of the labor organization, and they shall endeavor to agree upon the selection of the fifth member. If they are unable to agree, the names of five persons experienced in labor arbitration shall be obtained from the ~~Supervisor of Conciliation of the Division of Conciliation, Department of Industrial Relations~~ *California State Mediation and Conciliation Service*. The labor organization and the district shall, alternately, strike a name from the list so supplied, and the name remaining after the labor organization and the district have stricken four names, shall be designated as the arbitrator. The labor organization and the district shall determine by lot who shall first strike from the list. The decision of a majority of the arbitration board shall be final and binding upon the parties ~~thereto~~. The

expenses of arbitration shall be borne equally by the parties. Each party shall bear his *or her* own costs.

SEC. 152. Section 103401 of the Public Utilities Code is amended to read:

103401. Any question which may arise with respect to whether a majority of employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the ~~Director of Industrial Relations~~ *Public Employment Relations Board*. In resolving ~~such~~ *those* questions of representation, including the determination of the appropriate unit or units, petitions, and the conduct of hearings and elections, the director shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended, and, for this purpose, shall adopt appropriate rules and regulations.

The *California* State *Mediation and* Conciliation Service shall administer ~~such~~ *any* rules and regulations and shall provide for a prompt public hearing and secret ballot election to determine the question of representation and shall certify the results to the parties.

Any certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within ~~such~~ *the* collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later, except that no collective bargaining agreement shall be considered to be a bar to representation proceedings for a period of more than two years.

SEC. 153. Section 125521 of the Public Utilities Code is amended to read:

125521. Any question which may arise with respect to whether a majority of employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the ~~Director of Industrial Relations~~ *Public Employment Relations Board*. In resolving ~~such~~ *those* questions of representation, including the determination of the appropriate unit or units, petitions, and the conduct of hearings and elections, the ~~director~~ *board* shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act,

1947, as amended, and, for this purpose, shall adopt appropriate rules and regulations.

The *California* State *Mediation and* Conciliation Service shall administer ~~such~~ *any* rules and regulations and shall provide for a prompt public hearing and secret ballot election to determine the question of representation and shall certify the results to the parties.

Any certification of a labor organization to represent or act for the employees in any collective-bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within ~~such~~ *the* collective-bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective-bargaining agreement, whichever is later, except that no collective-bargaining agreement shall be considered to be a bar to representation proceedings for a period of more than two years.

SEC. 154. Article 6 (commencing with Section 19290) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 155. Section 19533 of the Revenue and Taxation Code is amended to read:

19533. *(a)* In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

~~(a)~~

(1) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.

~~(b)~~

(2) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, and amounts authorized to be collected under Section 19722.

~~(c) Payment of delinquent wages collected pursuant to the Labor Code.~~

~~(d)~~

(3) Payment of delinquencies collected under Section 10878.

~~(e)~~

(4) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.

~~(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.~~

~~(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.~~

~~(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.~~

~~(i) Payment of delinquencies referred by the Student Aid Commission.~~

~~(j) Payment of any delinquencies referred for collection under Article 7 (commencing with Section 19291) of Chapter 5.~~

~~(k)~~

(b) Notwithstanding the payment priority established by this section, voluntary payments designated by the taxpayer as payment for a personal income tax liability or as a payment on amounts authorized to be collected under Section 19722, shall not be applied pursuant to this priority, but shall instead be applied as designated.

SEC. 156. Section 401 of the Unemployment Insurance Code is amended to read:

401. *(a)* There is in the department an Appeals Division consisting of the California Unemployment Insurance Appeals Board and its employees. The appeals board consists of ~~seven~~ *five* members. ~~Five~~ *Three* members shall be appointed by the Governor, subject to the approval of the Senate. One member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate *Committee on* Rules ~~Committee~~. ~~Two~~ *All* of the members of the appeals board shall be attorneys at law admitted to practice in ~~the State of California. The other members need not be attorneys~~ *any state of the United States, and shall have, at a minimum, one year of experience in conducting judicial or administrative hearings or five years of experience in the practice of law*. Each member of the board shall devote his *or her* full time to the performance of his *or her* duties. The ~~chairman~~ *chairperson* and each member of the board shall receive the annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. The Governor shall designate the ~~chairman~~ *chairperson* of the appeals board from the membership of the appeals board. The person so

designated shall hold the office of ~~chairman~~ *chairperson* at the pleasure of the Governor. The ~~chairman~~ *chairperson* shall designate a member of the appeals board to act as ~~chairman~~ *chairperson* in his *or her* absence.

(b) The amendments made to this section by the act adding this subdivision shall apply to appointments made on or after January 1, 2013.

(c) It is the intent of the Legislature that the two California Unemployment Insurance Appeals Board member positions that are eliminated pursuant to this act be those board member positions that could have been appointed by the Governor, but were not, and that are currently vacant and have been vacant since October 2011.

SEC. 157. Section 4.2 of the Fresno Metropolitan Transit District Act (Chapter 1932 of the Statutes of 1961), as repealed and added by Section 2 of Chapter 1335 of Statutes 1971, is amended to read:

Sec. 4.2. Whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the district, upon determining, as provided in Section 4.4, that such labor organization represents the employees in the appropriate unit, shall enter into a written contract with the accredited representative of such employees governing wages, hours, pensions, and working conditions. In case of a dispute over wages, salaries, hours, or working conditions, which is not resolved by negotiations in good faith between the district and the labor organization, upon the request of either, the district and the labor organization may submit the dispute to the decision of the majority of an arbitration board, and the decision of the majority of such arbitration board shall be final.

The arbitration board shall be composed of two representatives of the district, and two representatives of the labor organization, and they shall endeavor to agree upon the selection of the fifth member. If they are unable to agree, the names of five persons experienced in labor arbitration shall be obtained from the ~~Supervisor of Conciliation of the Division of Conciliation, Department of Industrial Relations~~ *California State Mediation and Conciliation Service*. The labor organization and the district shall, alternately, strike a name from the list so supplied, and the name

remaining after the labor organization and the district have stricken four names, shall be designated as the arbitrator. The labor organization and the district shall determine by lot who shall first strike from the list. The decision of a majority of the arbitration board shall be final and binding upon the parties thereto. The expenses of arbitration shall be borne equally by the parties. Each party shall bear his own costs.

SEC. 158. Section 13.90 of the West Bay Area Rapid Transit Authority Act, as added by Chapter 104 of the First Extraordinary Session of the Statutes of 1964, is amended to read:

Sec. 13.90. (a) Whenever a majority of the employees employed by the authority in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the authority, upon determining as provided in Section 13.91 that ~~said~~ *the* labor organization represents the employees in the appropriate unit, and the accredited representative shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, hours, and working conditions. In the absence of the expression of ~~said~~ *that* desire, employees would be subject to any personnel system established pursuant to the provisions of Section 13.97.

(b) The obligation of the authority to bargain in good faith with a duly designated or certified labor organization and to execute a written collective bargaining agreement with ~~such~~ *the* labor organization covering the wages, hours, and working conditions of the employees represented by ~~such~~ *the* labor organization in an appropriate unit, and to comply with the terms thereof shall not be limited or restricted by the provisions of the Government Code or other laws or statutes and the obligation of the authority to bargain collectively shall extend to all subjects of collective bargain-ing, including without limitation retroactive pay increases. Notwithstanding the provisions of the Government Code or other laws or statutes, the authority shall make deductions from wages and salaries of its employees upon receipt of authorization ~~therefor~~ for the payment of union dues, fees, or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan or any other purpose for which deductions may be authorized by employees where ~~such~~ *those* deductions are pursuant to a collective bargaining agreement with a duly designated or ~~certi-fied~~ *certified* labor organization.

(c) In case of dispute over wages, hours, or working conditions which is not resolved by negotiations in good faith between the authority and the representatives of the employees, upon the agreement of both the authority and the representative of the employees, the dispute may be submitted to an arbitration board, and the decision of a majority of ~~such~~ *the* arbitration board shall be final and binding. The arbitration board shall be composed of two representatives of the authority and two representatives of the labor organization, and they shall endeavor to agree upon the selection of a fifth member. If they are unable to agree, the names of five persons experienced in labor arbitration shall be obtained from the ~~Supervisor of Conciliation of the Division of Conciliation, Department of Industrial Relations~~ *California State Mediation and Conciliation Service*. The labor organization and the authority shall, alternately, strike a name from the list so supplied, and the name remaining after the labor organization and the authority have stricken four names, shall be designated as the arbitrator. The labor organization and the authority shall determine by lot who shall first strike a name from the list. The decision of a majority of the arbitration board shall be final and binding upon the parties thereto. The expenses of ~~such~~ *the* impartial arbitrator shall be provide ~~half~~ *one-half* by the authority ~~half~~ *one-half* by the labor organization.

(d) No contract or agreement shall be made with any labor organization, association, group or individual where ~~such~~ *the* organization, association, group or individual denies membership on the grounds of race, creed or color; provided, ~~such~~ *the* organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

SEC. 159. Section 13.91 of the West Bay Rapid Transit Authority Act, as added by Chapter 104 of the First Extraordinary Session of the Statutes of 1964, is amended to read:

Sec. 13.91. Any question which may arise with respect to whether a majority of the employees in an appropriate unit desire to be represented by a labor organization shall be submitted to the ~~Director of the Department of Industrial Relations~~ *Public Employment Relations Board*. In resolving ~~such~~ *those* questions of representation including the determination of the appropriate unit or units, petitions, the conduct of hearings and elections, the ~~director~~ *board* shall apply the relevant federal law and administrative practice developed under the Labor Management

Relations Act, 1947, as amended, and for this purpose shall adopt appropriate rules and regulations. ~~Said~~ *The* rules and regulations shall be administered by the *California* State *Mediation and* Conciliation Service and shall provide for a prompt public hearing and a secret ballot election to determine the question of representation.

SEC. 160. (a) Notwithstanding Section 12080.8 of the Government Code, or any other law, Sections 19, 20, and 21 of this act shall prevail over Section 89 of the Governor's Reorganization Plan No. 2 of 2012, regardless of the dates on which this act ad that plan take effect.

(b) Subdivision (a) shall become operative only if the Governor's Reorganization Plan No. 2 of 2012 becomes effective.

SEC. 161. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 162. The sum of one thousand dollars ($1,000) is hereby appropriated from the General Fund to the Department of Finance to implement this act.

SEC. 163. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

~~SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

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